

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
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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
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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
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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
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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
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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
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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:

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Tuesday, April 25, 2017, 9:00 a.m.—1:00 p.m.

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:

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			

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Tuesday, April 25, 2017, 9:00 a.m.—1:00 p.m.

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	Not Considered
With subcommittee recommendation – Finance and Tax			
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	Favorable Yeas 15 Nays 1
With subcommittee recommendation – Finance and Tax			
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

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Tuesday, April 25, 2017, 9:00 a.m.—1:00 p.m.

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

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Tuesday, April 25, 2017, 9:00 a.m.—1:00 p.m.

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:			

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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	Not Considered
With subcommittee recommendation – Pre-K – 12 Education			
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	Favorable Yeas 16 Nays 0
With subcommittee recommendation – Health and Human Services			
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	Fav/CS Yeas 15 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
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	Favorable Yeas 15 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
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	Favorable Yeas 16 Nays 0
With subcommittee recommendation – Health and Human Services			
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	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Higher Education			

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

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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			
<hr/> 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			
<hr/> 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	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Finance and Tax			
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	Favorable Yeas 17 Nays 0
With subcommittee recommendation – Health and Human Services			

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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:

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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	Fav/CS Yeas 17 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
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:

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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
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With subcommittee recommendation – Environment and Natural Resources

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
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With subcommittee recommendation – Health and Human Services

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

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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	Fav/CS Yeas 17 Nays 0
With subcommittee recommendation – General Government			
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	Favorable Yeas 17 Nays 0
With subcommittee recommendation – Health and Human Services			

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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:			
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			
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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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
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With subcommittee recommendation – Transportation, Tourism, and Economic Development

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
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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
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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
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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
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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

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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	Favorable Yeas 15 Nays 0
With subcommittee recommendation – Higher Education			
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	Favorable Yeas 17 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			

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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	Fav/CS Yeas 18 Nays 0
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With subcommittee recommendation – Finance and Tax

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	Favorable Yeas 17 Nays 0
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With subcommittee recommendation – Criminal and Civil Justice

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

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Tuesday, April 25, 2017, 9:00 a.m.—1:00 p.m.

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			

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Tuesday, April 25, 2017, 9:00 a.m.—1:00 p.m.

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

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Tuesday, April 25, 2017, 9:00 a.m.—1:00 p.m.

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.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Blizzard</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/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 devices⁶ and its Worker Protection Standard⁷ 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 system¹⁵ 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

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 renewal¹⁹ 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.(1), 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.

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

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

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.

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	<u>(250,944)</u>	<u>(240,959)</u>	<u>(240,959)</u>
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	<u>(1,795,130)</u>	<u>(1,706,115)</u>	<u>(1,652,295)</u>
Total Revenue Reduction	(1,801,692)	(1,712,863)	(1,659,043)
4% Surcharge to GR Reduction	(72,068)	(68,515)	(66,362)

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.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
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



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

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



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

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

45 472.013 Examinations, prerequisites.—

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

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

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



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69 equivalent, or higher in a ~~is a graduate of a 4-year~~ course of
70 study, other than in surveying and mapping, at an accredited
71 college or university and has a specific experience record of 6
72 or more years as a subordinate to a registered surveyor and
73 mapper in the active practice of surveying and mapping, 5 years
74 of which shall be of a nature indicating that the applicant was
75 in responsible charge of the accuracy and correctness of the
76 surveying and mapping work performed. ~~The course of study in~~
77 ~~disciplines other than surveying and mapping must have included~~
78 ~~not fewer than 32 semester hours of study or its academic~~
79 ~~equivalent.~~ The applicant must have completed a minimum of 25
80 semester hours from a college or university approved by the
81 board in surveying and mapping subjects or in any combination of
82 courses in civil engineering, surveying, mapping, mathematics,
83 photogrammetry, forestry, or land law and the physical sciences.
84 Any of the required 25 semester hours of study completed not as
85 a part of the bachelor's degree, its equivalent, or higher may
86 ~~4-year course of study shall~~ be approved at the discretion of
87 the board. Work experience acquired as a part of the education
88 requirement may ~~shall~~ not be construed as experience in
89 responsible charge.

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

93 (a) The person is in good standing in, or is a graduate of,
94 a bachelor degree program, its equivalent or higher, at an
95 accredited college or university and has obtained a minimum of
96 25 semester hours in surveying, mapping, mathematics,
97 photogrammetry, forestry, civil engineering, or land law and the



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98 physical sciences, or any combination thereof; or

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

106
107 This subsection may not be construed as a substitute for the
108 degree requirement to take the exams for licensure as outlined
109 in subsection (2) ~~the person is in the final year, or is a~~
110 ~~graduate, of an approved surveying and mapping curriculum in a~~
111 ~~school that has been approved by the board.~~

112 Section 5. Paragraph (a) of subsection (5) of section
113 472.015, Florida Statutes, are amended to read:

114 472.015 Licensure.—

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

117 1. Holds a valid license to practice surveying and mapping
118 issued before ~~prior to~~ July 1, 1999, by another state or
119 territory of the United States; has passed a national, regional,
120 state, or territorial licensing examination that is
121 substantially equivalent to the examination required by s.
122 472.013; and has a specific experience record of at least 8
123 years as a subordinate to a registered surveyor and mapper in
124 the active practice of surveying and mapping, 6 years of which
125 must be of a nature indicating that the applicant was in
126 responsible charge of the accuracy and correctness of the



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127 surveying and mapping work performed; or

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

133 ~~3. Is a practicing photogrammetrist who holds the Certified~~
134 ~~Photogrammetrist designation of the American Society for~~
135 ~~Photogrammetry and Remote Sensing and held such designation on~~
136 ~~or before July 1, 2005; is a graduate of a 4-year course of~~
137 ~~study at an accredited college or university; and has a specific~~
138 ~~experience record of 6 or more years as a subordinate to a~~
139 ~~Certified Photogrammetrist of the American Society for~~
140 ~~Photogrammetry and Remote Sensing in the active practice of~~
141 ~~surveying and mapping, 5 years of which shall be of a nature~~
142 ~~indicating that the applicant was in responsible charge of the~~
143 ~~accuracy and correctness of the surveying and mapping work~~
144 ~~performed. The course of study must have included not fewer than~~
145 ~~32 semester hours of study or its academic equivalent. The~~
146 ~~applicant must have completed a minimum of 25 semester hours~~
147 ~~from a college or university approved by the board in surveying~~
148 ~~and mapping subjects or in any combination of courses in civil~~
149 ~~engineering, surveying, mapping, mathematics, photogrammetry,~~
150 ~~forestry, or land law and the physical sciences. Any of the~~
151 ~~required 25 semester hours of study completed not as a part of~~
152 ~~the 4-year course of study shall be approved at the discretion~~
153 ~~of the board. Work experience acquired as a part of the~~
154 ~~education requirement shall not be construed as experience in~~
155 ~~responsible charge. The applicant must have applied to the~~



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

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

159 472.018 Continuing education.—The department may not renew
160 a license until the licensee submits proof satisfactory to the
161 board that during the 2 years before her or his application for
162 renewal the licensee has completed at least 24 hours of
163 continuing education. The board may provide by rule for
164 continuing education hours carryover for each renewal cycle not
165 to exceed 12 hours.

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



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

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

190 (a) For new licensees:

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

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

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

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

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

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

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



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

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

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

234 (10) The board shall issue an order requiring a person or
235 entity to cease and desist from offering any continuing
236 education programs for licensees, and fining, suspending, or
237 revoking any approval of the provider previously granted by the
238 board if the board determines that the person or entity failed
239 to provide appropriate continuing education services ~~that~~
240 ~~conform to approved course material~~. The fine may not exceed
241 \$500 per violation. Investigations and prosecutions of a
242 provider's failure to comply with its duties under this section



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243 shall be conducted under s. 472.033.

244 (11) The board may establish, by rule, a fee not to exceed
245 \$250 for anyone seeking approval to provide continuing education
246 courses and may establish, by rule, a biennial fee not to exceed
247 \$250 for the renewal of providership of such courses. Such
248 postlicensure education courses are subject to the reporting,
249 monitoring, and compliance provisions of this section.

250 (12) The department and the board may adopt rules under
251

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

253 And the title is amended as follows:

254 Delete lines 13 - 30

255 and insert:

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



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272 education providers offering services that fail to
273 conform to approved course material; amending s.
274 472.025, F.S.;



209084

LEGISLATIVE ACTION

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

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

12 ~~(b) An individual who submits an application for a Class~~
13 ~~"D" license on or after January 1, 2007, through December 31,~~
14 ~~2011, who has not completed the 16-hour course must submit proof~~
15 ~~of successful completion of the course within 180 days after the~~
16 ~~date the application is submitted. If documentation of~~
17 ~~completion of the required training is not submitted by that~~
18 ~~date, the individual's license shall be automatically suspended~~
19 ~~until proof of the required training is submitted to the~~
20 ~~department. A person licensed before January 1, 2007, is not~~
21 ~~required to complete additional training hours in order to renew~~
22 ~~an active license beyond the total required hours, and the~~
23 ~~timeframe for completion in effect at the time he or she was~~
24 ~~licensed applies.~~

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

33
34 ===== T I T L E A M E N D M E N T =====

35 And the title is amended as follows:

36 Delete lines 91 - 95

37 and insert:

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



40
41
42

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	.	
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	.	
	.	

The Committee on Appropriations (Young) recommended the following:

Senate Amendment (with title amendment)

1
2
3 Delete line 1097
4 and insert:
5 transportation measurement systems, and those weights and
6 measures used for the

7
8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 Delete line 111



761370

11 and insert:
12 measures" to exclude taximeters and transportation
13 measurement systems;

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

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1 A bill to be entitled
2 An act relating to the Department of Agriculture and
3 Consumer Services; amending s. 288.1175, F.S.;
4 specifying that applications for funding for certain
5 agriculture education and promotion facilities must be
6 postmarked or electronically submitted by a certain
7 date; amending s. 472.003, F.S.; specifying that
8 certain persons under contract with registered or
9 certified surveyors and mappers are not subject to the
10 provisions of ch. 472, F.S.; amending s. 472.005,
11 F.S.; redefining the terms "practice of surveying and
12 mapping" and "subordinate"; amending s. 472.013, F.S.;
13 revising the standards for when an applicant is
14 eligible to take the licensure examination to practice
15 as a surveyor and mapper; amending s. 472.015, F.S.;
16 revising the qualifications for licensure by
17 endorsement; revising the requirements for a certain
18 notice relating to insurance coverage; amending s.
19 472.018, F.S.; revising the continuing education
20 requirements for new licensees and license renewal;
21 authorizing the board to provide by rule the method of
22 delivery of, criteria for, and provisions to carryover
23 hours for continuing education requirements; deleting
24 a requirement that the board approve courses;
25 requiring the board to issue cease and desist orders
26 and enact certain penalties for continuing education
27 providers failing to conform to board rules; requiring
28 the department to establish a system for the
29 administration of continuing education requirements

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

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59 certain partners, officers, and employees of private
 60 investigative, security, and recovery agencies;
 61 amending s. 493.6113, F.S.; specifying that Class "G"
 62 licensees must complete requalification training for
 63 each type and caliber of firearm carried in the course
 64 of performing regulated duties; conforming
 65 terminology; amending s. 493.6115, F.S.; conforming a
 66 cross-reference; revising the circumstances under
 67 which certain licensees may carry a concealed firearm;
 68 revising the conditions under which the department may
 69 issue a temporary Class "G" license; amending s.
 70 493.6118, F.S.; providing that failure of a licensee
 71 to timely notify his or her employer of an arrest is
 72 grounds for disciplinary action by the department;
 73 requiring the department to temporarily suspend
 74 specified licenses of a licensee arrested or formally
 75 charged with certain crimes until disposition of the
 76 case; requiring the department to notify a licensee of
 77 administrative hearing rights; specifying that any
 78 hearing must be limited to a determination as to
 79 whether the licensee has been arrested or charged with
 80 a disqualifying crime; providing that the suspension
 81 may be lifted under certain circumstances; requiring
 82 the department to proceed with revocation under
 83 certain circumstances; amending s. 493.6202, F.S.;
 84 deleting a specification that license fees are
 85 biennial; amending s. 493.6203, F.S.; deleting a
 86 requirement that certain training be provided in two
 87 parts; amending s. 493.6302, F.S.; deleting a

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88 specification that license fees are biennial; amending
 89 s. 493.6303, F.S.; deleting a requirement that certain
 90 training be provided in two parts; deleting obsolete
 91 provisions; making technical changes; deleting a
 92 provision requiring that if a license is suspended,
 93 revoked, or expired for at least 1 year, that the
 94 applicant must submit proof of certain training before
 95 issuance of a new license; amending s. 493.6304, F.S.;
 96 making technical changes; amending s. 493.6402, F.S.;
 97 deleting a specification that license fees are
 98 biennial; amending s. 493.6403, F.S.; requiring that
 99 applicants for Class "E" and "EE" licenses submit
 100 proof of successful completion of certain training,
 101 rather than just completion of such training; amending
 102 s. 501.013, F.S.; providing that a program or facility
 103 offered by an organization for the exclusive use of
 104 its employees and their family members is not subject
 105 to certain health studio regulations; amending s.
 106 501.059, F.S.; removing a limitation on the length of
 107 time for which the department must place certain
 108 persons on a no sales solicitation list; amending s.
 109 507.04, F.S.; making a technical change; amending s.
 110 531.37, F.S.; redefining the term "weights and
 111 measures" to exclude taximeters and digital networks;
 112 amending s. 531.61, F.S.; deleting certain taximeters
 113 from a permitting requirements for commercially
 114 operated or tested weights or measures instruments or
 115 devices; repealing s. 531.63(2)(g), F.S.; relating to
 116 maximum permit fees for taximeters; amending s.

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117 534.021, F.S.; specifying that a detailed drawing,
 118 rather than a facsimile, of a brand must accompany an
 119 application for the recording of certain marks and
 120 brands; amending s. 534.041, F.S.; extending the
 121 registration and renewal period for certain mark or
 122 brand certificates; eliminating a renewal fee;
 123 repealing s. 534.061, F.S., relating to the transfer
 124 of ownership of cattle; amending s. 570.07, F.S.;
 125 authorizing the department to perform certain food
 126 safety inspection services relating to raw
 127 agricultural commodities; amending s. 573.118, F.S.;
 128 specifying that the Division of Fruit and Vegetables,
 129 rather than the Division of Marketing and Development,
 130 must file a specified certification; amending s.
 131 590.02, F.S.; specifying that the department has
 132 exclusive authority to enforce the Florida Building
 133 Code as it relates to Florida Forest Service
 134 facilities under the jurisdiction of the department;
 135 amending s. 597.004, F.S.; authorizing certain
 136 saltwater products dealers to sell certain aquaculture
 137 products without restriction under a specified
 138 circumstance; amending s. 604.16, F.S.; specifying
 139 that dealers in agricultural products who pay by
 140 credit card are exempt from certain dealer
 141 requirements; amending s. 790.06, F.S.; revising the
 142 requirements to obtain a license to carry a concealed
 143 weapon or firearm; revising the requirements of the
 144 application form; revising the license fees to obtain
 145 or renew such license; providing an effective date.

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146
 147 Be It Enacted by the Legislature of the State of Florida:
 148
 149 Section 1. Subsection (8) of section 288.1175, Florida
 150 Statutes, is amended to read:
 151 288.1175 Agriculture education and promotion facility.-
 152 (8) Applications must be postmarked or electronically
 153 submitted by October 1 of each year. The Department of
 154 Agriculture and Consumer Services may not recommend funding for
 155 less than the requested amount to any applicant certified as an
 156 agriculture education and promotion facility; however, funding
 157 of certified applicants shall be subject to the amount provided
 158 by the Legislature in the General Appropriations Act for this
 159 program.
 160 Section 2. Paragraph (d) is added to subsection (5) of
 161 section 472.003, Florida Statutes, to read:
 162 472.003 Persons not affected by ss. 472.001-472.037.-
 163 Sections 472.001-472.037 do not apply to:
 164 (5)
 165 (d) Persons who are under contract with an individual
 166 registered or legal entity certified under this chapter and who
 167 are under the supervision of and subordinate to a person in
 168 responsible charge registered under this chapter, to the extent
 169 that such supervision meets standards adopted by rule by the
 170 board, if any.
 171 Section 3. Subsections (4) and (10) of section 472.005,
 172 Florida Statutes, are amended to read:
 173 472.005 Definitions.-As used in ss. 472.001-472.037:
 174 (4) (a) "Practice of surveying and mapping" means, among

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175 other things, any professional service or work, the adequate
 176 performance of which involves the application of special
 177 knowledge of the principles of mathematics, the related physical
 178 and applied sciences, and the relevant requirements of law for
 179 adequate evidence of the act of measuring, locating,
 180 establishing, or reestablishing lines, angles, elevations,
 181 natural and manmade features in the air, on the surface and
 182 immediate subsurface of the earth, within underground workings,
 183 and on the beds or surface of bodies of water, for the purpose
 184 of determining, establishing, describing, displaying, or
 185 interpreting the facts of size, volume, shape, topography, tidal
 186 datum planes, and legal or geodetic location or relocation, ~~and~~
 187 ~~orientation of improved or unimproved real property and~~
 188 ~~appurtenances thereto, including acreage and condominiums.~~
 189 (b) The practice of surveying and mapping also includes,
 190 but is not limited to, photogrammetric control; orientation of
 191 improved or unimproved real property and appurtenances and
 192 personal property attached thereto, including acreage and
 193 condominiums; the monumentation and remonumentation of property
 194 boundaries and subdivisions; the measurement of and preparation
 195 of plans showing existing improvements after construction; the
 196 layout of proposed improvements; the preparation of descriptions
 197 for use in legal instruments of conveyance of real property and
 198 property rights; the preparation of subdivision planning maps
 199 and record plats, as provided for in chapter 177; the
 200 determination of, but not the design of, grades and elevations
 201 of roads and land in connection with subdivisions or divisions
 202 of land; and the creation and perpetuation of alignments related
 203 to maps, record plats, field note records, reports, property

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204 descriptions, and plans and drawings that represent them.
 205 (10) "Subordinate" means a person ~~an employee~~ who performs
 206 work under the direction, supervision, and responsible charge of
 207 a person who is registered under this chapter.
 208 Section 4. Subsections (2) and (3) of section 472.013,
 209 Florida Statutes, are amended to read:
 210 472.013 Examinations, prerequisites.—
 211 (2) An applicant shall be entitled to take the licensure
 212 examination to practice in this state as a surveyor and mapper
 213 if the applicant is of good moral character and has satisfied
 214 one of the following requirements:
 215 (a) The applicant has received a bachelor's degree, its
 216 equivalent, or higher in surveying and mapping or a similarly
 217 titled program, including, but not limited to, geomatics,
 218 geomatics engineering, and land surveying, of 4 years or more in
 219 ~~a surveying and mapping degree program~~ from a college or
 220 university recognized by the board and has a specific experience
 221 record of 4 or more years as a subordinate to a professional
 222 surveyor and mapper in the active practice of surveying and
 223 mapping, which experience is of a nature indicating that the
 224 applicant was in responsible charge of the accuracy and
 225 correctness of the surveying and mapping work performed. ~~The~~
 226 ~~completed surveying and mapping degree of 4 years or more in a~~
 227 ~~surveying and mapping degree program must have included not~~
 228 ~~fewer than 32 semester hours of study, or its academic~~
 229 ~~equivalent, in the science of surveying and mapping or in board-~~
 230 ~~approved surveying and mapping related courses.~~ Work experience
 231 acquired as a part of the education requirement may ~~shall~~ not be
 232 construed as experience in responsible charge.

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

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

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

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

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

278
 279 This subsection may not be construed as a substitute for the
 280 degree requirement to take the exams for licensure as outlined
 281 in subsection (2) the person is in the final year, or is a
 282 graduate, of an approved surveying and mapping curriculum in a
 283 school that has been approved by the board.

284 Section 5. Paragraph (a) of subsection (5) and subsection
 285 (12) of section 472.015, Florida Statutes, are amended to read:
 286 472.015 Licensure.—

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

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

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291 territory of the United States; has passed a national, regional,
 292 state, or territorial licensing examination that is
 293 substantially equivalent to the examination required by s.
 294 472.013; and has a specific experience record of at least 8
 295 years as a subordinate to a registered surveyor and mapper in
 296 the active practice of surveying and mapping, 6 years of which
 297 must be of a nature indicating that the applicant was in
 298 responsible charge of the accuracy and correctness of the
 299 surveying and mapping work performed; or

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

305 3. ~~Is a practicing photogrammetrist who holds the Certified~~
 306 ~~Photogrammetrist designation of the American Society for~~
 307 ~~Photogrammetry and Remote Sensing and held such designation on~~
 308 ~~or before July 1, 2005; is a graduate of a 4-year course of~~
 309 ~~study at an accredited college or university; and has a specific~~
 310 ~~experience record of 6 or more years as a subordinate to a~~
 311 ~~Certified Photogrammetrist of the American Society for~~
 312 ~~Photogrammetry and Remote Sensing in the active practice of~~
 313 ~~surveying and mapping, 5 years of which shall be of a nature~~
 314 ~~indicating that the applicant was in responsible charge of the~~
 315 ~~accuracy and correctness of the surveying and mapping work~~
 316 ~~performed. The course of study must have included not fewer than~~
 317 ~~32 semester hours of study or its academic equivalent. The~~
 318 ~~applicant must have completed a minimum of 25 semester hours~~
 319 ~~from a college or university approved by the board in surveying~~

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

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

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

340 472.018 Continuing education.—The department may not renew
 341 a license until the licensee submits proof satisfactory to the
 342 board that the licensee has met the continuing education
 343 requirements for renewal as established by the board and during
 344 the 2 years before her or his application for renewal the
 345 licensee has completed at least 24 hours of continuing education
 346 before license renewal.

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

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

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

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

373 (a) For new licensees:

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

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378 the renewal period remaining; or

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

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

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

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

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

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

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

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

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

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

427 (11) The board may establish, by rule, a fee not to exceed
 428 \$250 for anyone seeking approval to provide continuing education
 429 courses and may establish, by rule, a biennial fee not to exceed
 430 \$250 for the renewal of providership of such courses. Such
 431 postlicensure education courses are subject to the reporting,
 432 monitoring, and compliance provisions of this section.

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

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

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

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

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

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

463 472.025 Seals.—

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

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465 used by all registrants holding valid certificates of
 466 registration, whether the registrants are corporations,
 467 partnerships, or individuals. Each registrant shall obtain ~~a an~~
 468 ~~impression-type metal~~ seal in that form; and all final drawings,
 469 plans, specifications, plats, or reports prepared or issued by
 470 the registrant in accordance with the standards of practice
 471 established by the board shall be signed by the registrant,
 472 dated, and stamped with his or her seal. This signature, date,
 473 and seal shall be evidence of the authenticity of that to which
 474 they are affixed. Each registrant may in addition register his
 475 or her seal electronically in accordance with ss. 668.001-
 476 668.006. Drawings, plans, specifications, reports, or documents
 477 prepared or issued by a registrant may be transmitted
 478 electronically and may be signed by the registrant, dated, and
 479 stamped electronically with such seal in accordance with ss.
 480 668.001-668.006.

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

483 472.0366 Elevation certificates; requirements for surveyors
 484 and mappers.—

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

493 Section 9. Section 487.2041, Florida Statutes, is amended

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494 to read:

495 487.2041 Enforcement of federal worker protection
 496 regulations.—The department shall, to the extent that resources
 497 are available, continue to operate under the United States
 498 Environmental Protection Agency regulations regarding the
 499 Labeling Requirement for Pesticides and Devices, 40 C.F.R. part
 500 156, and the Worker Protection Standard, 40 C.F.R. part 170,
 501 which the department shall adopt ~~adopted~~ by rule ~~during the~~
 502 ~~1995-1996 fiscal year and published in the Florida~~
 503 ~~Administrative Code~~. Any provision of this part not preempted by
 504 federal law shall continue to apply.

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

507 493.6101 Definitions.—

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

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

519 (b) Up to three branch offices.

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

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523 493.6105 Initial application for license.-

524 (3) The application must contain the following information

525 concerning the individual signing the application:

526 (j) A full set of fingerprints, a fingerprint processing

527 fee, and a fingerprint retention fee. The fingerprint processing

528 and retention fees shall be established by rule of the

529 department based upon costs determined by state and federal

530 agency charges and department processing costs, which must

531 include the cost of retaining the fingerprints in the statewide

532 automated biometric identification system established in s.

533 943.05(2)(b) and the cost of enrolling the fingerprints in the

534 national retained print arrest notification program as required

535 under s. 493.6108. An applicant who has, within the immediately

536 preceding 6 months, submitted such fingerprints and fees for

537 licensing purposes under this chapter and who still holds a

538 valid license is not required to submit another set of

539 fingerprints or another fingerprint processing fee. An applicant

540 who holds multiple licenses issued under this chapter is

541 required to pay only a single fingerprint retention fee.

542 Partners and corporate officers who do not possess licenses

543 subject to renewal under s. 493.6113 are exempt from the

544 fingerprint retention requirements of this chapter.

545 (6) In addition to the requirements under subsection (3),

546 an applicant for a Class "K" license must:

547 (a) Submit one of the following:

548 1. The Florida Criminal Justice Standards and Training

549 Commission Instructor Certificate and written confirmation by

550 the commission that the applicant possesses an active firearms

551 certification.

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552 2. A valid ~~The~~ National Rifle Association Private Security

553 Firearm Instructor Certificate issued not more than 3 years

554 before the submission of the applicant's Class "K" application.

555 3. A valid firearms instructor certificate issued by a

556 federal law enforcement agency not more than 3 years before the

557 submission of the applicant's Class "K" application.

558 Section 12. Subsection (1) of section 493.6107, Florida

559 Statutes, is amended to read:

560 493.6107 Fees.-

561 (1) The department shall establish by rule examination and

562 ~~biennial~~ license fees, which shall not to exceed the following:

563 (a) Class "M" license-manager Class "AB" agency: \$75.

564 (b) Class "G" license-statewide firearm license: \$150.

565 (c) Class "K" license-firearms instructor: \$100.

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

567 Section 13. Subsections (3) and (5) of section 493.6108,

568 Florida Statutes, are amended to read:

569 493.6108 Investigation of applicants by Department of

570 Agriculture and Consumer Services.-

571 (3) The department must also investigate the mental history

572 and current mental and emotional fitness of any Class "G" or

573 Class "K" applicant and may deny a Class "G" or Class "K"

574 license to anyone who has a history of mental illness or drug or

575 alcohol abuse. Notwithstanding s. 790.065(2)(a)4.f., the

576 Department of Law Enforcement may, for the limited purpose of

577 determining eligibility of Class "G" or Class "K" applicants and

578 licensees under this chapter, provide the department with mental

579 health and substance abuse data of individuals who are

580 prohibited from purchasing a firearm.

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

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

591 493.6112 Notification to Department of Agriculture and
 592 Consumer Services of changes of partner or officer or
 593 employees.-

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

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

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

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610 493.6113, Florida Statutes, is amended to read:

611 493.6113 Renewal application for licensure.-

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

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

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639 training during the first year of the 2-year term of the
 640 license, the license shall be automatically suspended. The
 641 licensee must complete the minimum number of hours of range and
 642 classroom training required at the time of initial licensure and
 643 submit proof of completion of such training to the department
 644 before the license may be reinstated. If the licensee fails to
 645 complete the required 4 hours of annual training during the
 646 second year of the 2-year term of the license, the licensee must
 647 complete the minimum number of hours of range and classroom
 648 training required at the time of initial licensure and submit
 649 proof of completion of such training to the department before
 650 the license may be renewed. The department may waive the
 651 firearms training requirement if:

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

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

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

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

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

671 493.6115 Weapons and firearms.—

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

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

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

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

694 493.6118 Grounds for disciplinary action.—

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

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697 department against any licensee, agency, or applicant regulated
698 by this chapter, or any unlicensed person engaged in activities
699 regulated under this chapter:-

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

702 (b) Use of any fictitious or assumed name by an agency
703 unless the agency has department approval and qualifies under s.
704 865.09.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

763 (q) Failure of any licensee to have his or her license in
764 his or her possession while on duty, as specified in s.
765 493.6111(1).

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

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

773 (t) Violating any provision of this chapter.

774 (u) For a Class "G" licensee, failing to timely complete
775 requaification ~~recertification~~ training as required in s.
776 493.6113(3)(b).

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

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

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

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

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

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

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

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

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

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

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

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813 8. Falsifying, altering, or failing to maintain any
814 required inventory or records regarding disposal of personal
815 property contained in or on repossessed property pursuant to s.
816 493.6404(1).

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

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

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

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

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

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

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

846 (c) If the criminal case results in a disqualifying
847 disposition, the suspension remains in effect and the department
848 shall proceed with revocation proceedings pursuant to chapter
849 120.

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

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

864 (c) If criminal case results in a disqualifying
865 disposition, the suspension remains in effect and the department
866 shall proceed with revocation proceedings pursuant to chapter
867 120.

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

870 493.6202 Fees.—

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

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871 (1) The department shall establish by rule examination and
 872 ~~biennial~~ license fees, ~~which shall not to~~ exceed the following:
 873 (a) Class "A" license-private investigative agency: \$450.
 874 (b) Class "AA" or "AB" license-branch office: \$125.
 875 (c) Class "MA" license-private investigative agency
 876 manager: \$75.
 877 (d) Class "C" license-private investigator: \$75.
 878 (e) Class "CC" license-private investigator intern: \$60.
 879 Section 19. Subsection (5) and paragraphs (b) and (c) of
 880 subsection (6) of section 493.6203, Florida Statutes, are
 881 amended to read:
 882 493.6203 License requirements.—In addition to the license
 883 requirements set forth elsewhere in this chapter, each
 884 individual or agency shall comply with the following additional
 885 requirements:
 886 (5) ~~Effective January 1, 2008,~~ An applicant for a Class
 887 "MA," Class "M," or Class "C" license must pass an examination
 888 that covers the provisions of this chapter and is administered
 889 by the department or by a provider approved by the department.
 890 The applicant must pass the examination before applying for
 891 licensure and must submit proof with the license application on
 892 a form approved by rule of the department that he or she has
 893 passed the examination. The administrator of the examination
 894 shall verify the identity of each applicant taking the
 895 examination.
 896 (a) The examination requirement in this subsection does not
 897 apply to an individual who holds a valid Class "CC," Class "C,"
 898 Class "MA," or Class "M" license.
 899 (b) Notwithstanding the exemption provided in paragraph

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900 (a), if the license of an applicant for relicensure has been
 901 invalid for more than 1 year, the applicant must take and pass
 902 the examination.
 903 (c) The department shall establish by rule the content of
 904 the examination, the manner and procedure of its administration,
 905 and an examination fee that may not exceed \$100.
 906 (6)
 907 (b) ~~Effective January 1, 2012,~~ Before submission of an
 908 application to the department, the applicant for a Class "CC"
 909 license must have completed a minimum of 40 hours of
 910 professional training pertaining to general investigative
 911 techniques and this chapter, which course is offered by a state
 912 university or by a school, community college, college, or
 913 university under the purview of the Department of Education, and
 914 the applicant must pass an examination. ~~The training must be~~
 915 ~~provided in two parts, one 24-hour course and one 16-hour~~
 916 ~~course.~~ The certificate evidencing satisfactory completion of
 917 the 40 hours of professional training must be submitted with the
 918 application for a Class "CC" license. The training specified in
 919 this paragraph may be provided by face-to-face presentation,
 920 online technology, or a home study course in accordance with
 921 rules and procedures of the Department of Education. The
 922 administrator of the examination must verify the identity of
 923 each applicant taking the examination.
 924 1. Upon an applicant's successful completion of each part
 925 of the approved training and passage of any required
 926 examination, the school, community college, college, or
 927 university shall issue a certificate of completion to the
 928 applicant. The certificates must be on a form established by

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929 rule of the department.

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

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

936 (c) ~~An individual who submits an application for a Class~~
937 ~~"CC" license on or after September 1, 2008, through December 31,~~
938 ~~2011, who has not completed the 16-hour course must submit proof~~
939 ~~of successful completion of the course within 180 days after the~~
940 ~~date the application is submitted. If documentation of~~
941 ~~completion of the required training is not submitted by that~~
942 ~~date, the individual's license shall be automatically suspended~~
943 ~~until proof of the required training is submitted to the~~
944 ~~department. An individual licensed on or before August 31, 2008,~~
945 ~~is not required to complete additional training hours in order~~
946 ~~to renew an active license beyond the total required hours, and~~
947 ~~the timeframe for completion in effect at the time he or she was~~
948 ~~licensed applies.~~

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

951 493.6302 Fees.—

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

- 954 (a) Class "B" license—security agency: \$450.
955 (b) Class "BB" or Class "AB" license—branch office: \$125.
956 (c) Class "MB" license—security agency manager: \$75.
957 (d) Class "D" license—security officer: \$45.

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

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

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

964 493.6303 License requirements.—In addition to the license
965 requirements set forth elsewhere in this chapter, each
966 individual or agency must comply with the following additional
967 requirements:

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

975 (b) ~~An individual who submits an application for a Class~~
976 ~~"D" license on or after January 1, 2007, through December 31,~~
977 ~~2011, who has not completed the 16-hour course must submit proof~~
978 ~~of successful completion of the course within 180 days after the~~
979 ~~date the application is submitted. If documentation of~~
980 ~~completion of the required training is not submitted by that~~
981 ~~date, the individual's license shall be automatically suspended~~
982 ~~until proof of the required training is submitted to the~~
983 ~~department. A person licensed before January 1, 2007, is not~~
984 ~~required to complete additional training hours in order to renew~~
985 ~~an active license beyond the total required hours, and the~~
986 ~~timeframe for completion in effect at the time he or she was~~

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987 ~~licensed applies.~~

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

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

997 493.6304 Security officer school or training facility.—

998 (1) Any school, training facility, or instructor who offers
 999 the training specified ~~outlined~~ in s. 493.6303(4) for Class "D"
 1000 applicants shall, before licensure of such school, training
 1001 facility, or instructor, file with the department an application
 1002 accompanied by an application fee in an amount to be determined
 1003 by rule, not to exceed \$60. The fee is ~~shall~~ not be refundable.

1004 Section 23. Subsection (1) of section 493.6402, Florida
 1005 Statutes, is amended to read:

1006 493.6402 Fees.—

1007 (1) The department shall establish by rule ~~biennial~~ license
 1008 fees, ~~that shall~~ not to exceed the following:

1009 (a) Class "R" license-recovery agency: \$450.

1010 (b) Class "RR" license-branch office: \$125.

1011 (c) Class "MR" license-recovery agency manager: \$75.

1012 (d) Class "E" license-recovery agent: \$75.

1013 (e) Class "EE" license-recovery agent intern: \$60.

1014 (f) Class "RS" license-recovery agent school or training
 1015 facility: \$60.

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1016 (g) Class "RI" license-recovery agent school or training
 1017 facility instructor: \$60.

1018 Section 24. Subsection (2) of section 493.6403, Florida
 1019 Statutes, is amended to read:

1020 493.6403 License requirements.—

1021 (2) ~~Beginning October 1, 1994,~~ An applicant for a Class "E"
 1022 or a Class "EE" license must submit proof of successful
 1023 completion ~~have completed a minimum~~ of 40 hours of professional
 1024 training at a school or training facility licensed by the
 1025 department. The department shall by rule establish the general
 1026 content for the training.

1027 Section 25. Subsection (6) is added to section 501.013,
 1028 Florida Statutes, to read:

1029 501.013 Health studios; exemptions.—The following
 1030 businesses or activities may be declared exempt from the
 1031 provisions of ss. 501.012-501.019 upon the filing of an
 1032 affidavit with the department establishing that the stated
 1033 qualifications are met:

1034 (6) A program or facility offered by an organization for
 1035 the exclusive use of its employees and their family members.

1036 Section 26. Paragraph (a) of subsection (3) of section
 1037 501.059, Florida Statutes, is amended to read:

1038 501.059 Telephone solicitation.—

1039 (3)(a) If any residential, mobile, or telephonic paging
 1040 device telephone subscriber notifies the department of his or
 1041 her desire to be placed on a "no sales solicitation calls"
 1042 listing indicating that the subscriber does not wish to receive
 1043 unsolicited telephonic sales calls, the department shall place
 1044 the subscriber on that listing ~~for 5 years~~.

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1045 Section 27. Paragraph (a) of subsection (1) and subsection
1046 (3) of section 507.04, Florida Statutes, are amended to read:
1047 507.04 Required insurance coverages; liability limitations;
1048 valuation coverage.—

1049 (1) LIABILITY INSURANCE.—

1050 (a)1. Except as provided in paragraph (b), each mover
1051 operating in this state must maintain current and valid
1052 liability insurance coverage of at least \$10,000 per shipment
1053 for the loss or damage of household goods resulting from the
1054 negligence of the mover or its employees or agents.

1055 2. The mover must provide the department with evidence of
1056 liability insurance coverage before the mover is registered with
1057 the department under s. 507.03. All insurance coverage
1058 maintained by a mover must remain in effect throughout the
1059 mover's registration period. A mover's failure to maintain
1060 insurance coverage in accordance with this paragraph constitutes
1061 an immediate threat to the public health, safety, and welfare.
1062 ~~If a mover fails to maintain insurance coverage, the department~~
1063 ~~may immediately suspend the mover's registration or eligibility~~
1064 ~~for registration, and the mover must immediately cease operating~~
1065 ~~as a mover in this state. In addition, and notwithstanding the~~
1066 ~~availability of any administrative relief pursuant to chapter~~
1067 ~~120, the department may seek from the appropriate circuit court~~
1068 ~~an immediate injunction prohibiting the mover from operating in~~
1069 ~~this state until the mover complies with this paragraph, a civil~~
1070 ~~penalty not to exceed \$5,000, and court costs.~~

1071 (3) INSURANCE COVERAGES.—The insurance coverages required
1072 under paragraph (1) (a) and subsection (2) must be issued by an
1073 insurance company or carrier licensed to transact business in

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1074 this state under the Florida Insurance Code as designated in s.
1075 624.01. The department shall require a mover to present a
1076 certificate of insurance of the required coverages before
1077 issuance or renewal of a registration certificate under s.
1078 507.03. The department shall be named as a certificateholder in
1079 the certificate and must be notified at least 10 days before
1080 cancellation of insurance coverage. If a mover fails to maintain
1081 insurance coverage, the department may immediately suspend the
1082 mover's registration or eligibility for registration, and the
1083 mover must immediately cease operating as a mover in this state.
1084 In addition, and notwithstanding the availability of any
1085 administrative relief pursuant to chapter 120, the department
1086 may seek from the appropriate circuit court an immediate
1087 injunction prohibiting the mover from operating in this state
1088 until the mover complies with this section, a civil penalty not
1089 to exceed \$5,000, and court costs.

1090 Section 28. Subsection (1) of section 531.37, Florida
1091 Statutes, is amended to read:

1092 531.37 Definitions.—As used in this chapter:

1093 (1) "Weights and measures" means all weights and measures
1094 of every kind, instruments, and devices for weighing and
1095 measuring, and any appliance and accessories associated with any
1096 or all such instruments and devices, excluding taximeters,
1097 digital networks, and those weights and measures used for the
1098 purpose of inspecting the accuracy of devices used in
1099 conjunction with aviation fuel.

1100 Section 29. Section 531.61, Florida Statutes, is amended to
1101 read:

1102 531.61 Exemptions from permit requirement.—Commercial

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1103 weights or measures instruments or devices are exempt from the
1104 requirements of ss. 531.60-531.66 if:

1105 (1) ~~The device is a taximeter that is licensed, permitted,~~
1106 ~~or registered by a municipality, county, or other local~~
1107 ~~government and is tested for accuracy and compliance with state~~
1108 ~~standards by the local government in cooperation with the state~~
1109 ~~as authorized in s. 531.421.~~

1110 ~~(2)~~ The device is used exclusively for weighing railroad
1111 cars and is tested for accuracy and compliance with state
1112 standards by a private testing agency.

1113 ~~(2)~~~~(3)~~ The device is used exclusively for measuring
1114 aviation fuel or petroleum products inspected under chapter 525.

1115 Section 30. Paragraph (g) of subsection (2) of section
1116 531.63, Florida Statutes, is repealed.

1117 Section 31. Section 534.021, Florida Statutes, is amended
1118 to read:

1119 534.021 Recording of marks or brands.—The department shall
1120 be the recorder of livestock marks or brands, and the marks or
1121 brands may not be recorded elsewhere in the state. Any livestock
1122 owner who uses a mark or brand to identify her or his livestock
1123 must register the mark or brand by applying to the department.
1124 The application must be made on a form prescribed by the
1125 department and must be accompanied by a detailed drawing
1126 ~~facsimile~~ of the brand applied for and a statement identifying
1127 the county in which the applicant has or expects to have
1128 livestock bearing the mark or brand to be recorded. The
1129 department shall, upon its satisfaction that the application
1130 meets the requirements of this chapter, record the mark or brand
1131 for exclusive statewide use by the applicant. If an application

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1132 is made to record a mark or brand previously recorded, the
1133 department shall determine whether the county in which the mark
1134 or brand will be used is near enough to another county in which
1135 the previously recorded mark or brand is used to cause confusion
1136 or to aid theft or dishonesty, and if so, the department must
1137 decline to admit to record the mark or brand. If a conflict
1138 arises between the owner of any recorded mark or brand and
1139 another claiming the right to record the same mark or brand, the
1140 department must give preference to the present owner. The
1141 department shall charge and collect at the time of recording a
1142 fee of \$10 for each mark or brand. A person may not use any mark
1143 or brand to which another has a prior right of record. It is
1144 unlawful to brand any animal with a brand not registered with
1145 the department.

1146 Section 32. Section 534.041, Florida Statutes, is amended
1147 to read:

1148 534.041 Renewal of certificate of mark or brand.—The
1149 registration of a mark or brand entitles the registered owner to
1150 exclusive ownership and use of the mark or brand for a period
1151 ending at midnight on the last day of the month 10 ~~5~~ years from
1152 the date of registration. Upon application, registration may be
1153 renewed, ~~upon application and payment of a renewal fee of \$5,~~
1154 for successive 10-year ~~5-year~~ periods, each ending at midnight
1155 on the last day of the month 10 ~~5~~ years from the date of
1156 renewal. At least 60 days ~~before~~ prior to the expiration of a
1157 registration, the department shall notify by letter the
1158 registered owner of the mark or brand that, upon application for
1159 renewal and payment of the renewal fee, the department will
1160 issue a renewal certificate granting the registered owner

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1161 exclusive ownership and use of the mark or brand for another 10-
 1162 year ~~5-year~~ period ending at midnight on the last day of the
 1163 month ~~10~~ 5 years from the date of renewal. Failure to make
 1164 application for renewal within the month of expiration of a
 1165 registration will cause the department to send a second notice
 1166 to the registered owner by mail at her or his last known
 1167 address. Failure of the registered owner to make application for
 1168 renewal within 30 days after receipt of the second notice will
 1169 cause the owner's mark or brand to be placed on an inactive list
 1170 for a period of 12 months, after which it will be canceled and
 1171 become subject to registration by another person.

1172 Section 33. Section 534.061, Florida Statutes, is repealed.

1173 Section 34. Subsection (45) is added to section 570.07,
 1174 Florida Statutes, to read:

1175 570.07 Department of Agriculture and Consumer Services;
 1176 functions, powers, and duties.—The department shall have and
 1177 exercise the following functions, powers, and duties:

1178 (45) To perform food safety inspection services where raw
 1179 agricultural commodities are grown, produced, harvested, held,
 1180 packed, or repacked.

1181 Section 35. Subsection (1) of section 573.118, Florida
 1182 Statutes, is amended to read:

1183 573.118 Assessment; funds; review of accounts; loans.—

1184 (1) To provide funds to defray the necessary expenses
 1185 incurred by the department in the formulation, issuance,
 1186 administration, and enforcement of any marketing order, every
 1187 person engaged in the production, distributing, or handling of
 1188 agricultural commodities within this state, and directly
 1189 affected by any marketing order, shall pay to the department, at

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1190 such times and in such installments as the department may
 1191 prescribe, such person's pro rata share of necessary expenses.
 1192 Each person's share of expenses shall be that proportion which
 1193 the total volume of agricultural commodities produced,
 1194 distributed, or handled by the person during the current
 1195 marketing season, or part thereof covered by such marketing
 1196 order, is of the total volume of the commodities produced,
 1197 distributed, or handled by all such persons during the same
 1198 current marketing season or part thereof. The department, after
 1199 receiving the recommendations of the advisory council, shall fix
 1200 the rate of assessment on the volume of agricultural commodities
 1201 sold or some other equitable basis. For convenience of
 1202 collection, upon request of the department, handlers of the
 1203 commodities shall pay any producer assessments. Handlers paying
 1204 assessments for and on behalf of any producers may collect the
 1205 producer assessments from any moneys owed by the handlers to the
 1206 producers. The collected assessments shall be deposited into the
 1207 appropriate trust fund and used for the sole purpose of
 1208 implementing the marketing order for which the assessment was
 1209 collected. The department is not subject to s. 287.057 in the
 1210 expenditure of these funds. However, the director of the
 1211 Division of Fruit and Vegetables Marketing and Development shall
 1212 file with the internal auditor of the department a certification
 1213 of conditions and circumstances justifying each contract or
 1214 agreement entered into without competitive bidding.

1215 Section 36. Paragraph (b) of subsection (4) of section
 1216 590.02, Florida Statutes, is amended to read:

1217 590.02 Florida Forest Service; powers, authority, and
 1218 duties; liability; building structures; Withlacoochee Training

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1219 Center.-

1220 (4)

1221 (b) Notwithstanding s. 553.80(1), the department shall
 1222 exclusively enforce the Florida Building Code as it pertains to
 1223 wildfire, ~~and law enforcement, and other Florida Forest Service~~
 1224 facilities under the jurisdiction of the department.

1225 Section 37. Paragraph (a) of subsection (5) of section
 1226 597.004, Florida Statutes, is amended to read:

1227 597.004 Aquaculture certificate of registration.-

1228 (5) SALE OF AQUACULTURE PRODUCTS.-

1229 (a) Aquaculture products, except shellfish, snook, and any
 1230 fish of the genus *Micropterus*, and prohibited and restricted
 1231 freshwater and marine species identified by rules of the Fish
 1232 and Wildlife Conservation Commission, may be sold by an
 1233 aquaculture producer certified pursuant to this section or by a
 1234 dealer licensed pursuant to part VII of chapter 379 without
 1235 restriction so long as the product origin can be identified.

1236 Section 38. Subsection (2) of section 604.16, Florida
 1237 Statutes, is amended to read:

1238 604.16 Exceptions to provisions of ss. 604.15-604.34.-
 1239 Except for s. 604.22(2), the provisions of ss. 604.15-604.34 do
 1240 not apply to:

1241 (2) A dealer in agricultural products who pays at the time
 1242 of purchase with United States cash currency or a cash
 1243 equivalent, such as a money order, cashier's check, wire
 1244 transfer, electronic funds transfer, or PIN-based debit
 1245 transaction, or who pays with a credit card as defined in s.
 1246 658.995(2)(a).

1247 Section 39. Subsections (2) and (4), and paragraph (b) of

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1248 subsection (5) of section 790.06, Florida Statutes, are amended
 1249 to read:

1250 790.06 License to carry concealed weapon or firearm.-

1251 (2) The Department of Agriculture and Consumer Services
 1252 shall issue a license if the applicant:

1253 (a) Is a resident of the United States and a citizen of the
 1254 United States or a permanent resident alien of the United
 1255 States, as determined by the United States Bureau of Citizenship
 1256 and Immigration Services, or is a consular security official of
 1257 a foreign government that maintains diplomatic relations and
 1258 treaties of commerce, friendship, and navigation with the United
 1259 States and is certified as such by the foreign government and by
 1260 the appropriate embassy in this country;

1261 (b) Is 21 years of age or older;

1262 (c) Does not suffer from a physical infirmity which
 1263 prevents the safe handling of a weapon or firearm;

1264 (d) Is not ineligible to possess a firearm pursuant to s.
 1265 790.23 by virtue of having been convicted of a felony;

1266 (e) Has not been: ~~committed for the abuse of a controlled~~
 1267 ~~substance or been~~

1268 1. Found guilty of a crime under the provisions of chapter
 1269 893 or similar laws of any other state relating to controlled
 1270 substances within a 3-year period immediately preceding the date
 1271 on which the application is submitted; or

1272 2. Committed for the abuse of a controlled substance under
 1273 chapter 397 or under the provisions of former chapter 396 or
 1274 similar laws of any other state. An applicant who has been
 1275 granted relief from firearms disabilities pursuant to s.
 1276 790.065(2)(a)4.d. or pursuant to the law of the state where the

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1277 commitment occurred is deemed not to be committed for the abuse
 1278 of a controlled substance under this subparagraph;

1279 (f) Does not chronically and habitually use alcoholic
 1280 beverages or other substances to the extent that his or her
 1281 normal faculties are impaired. It shall be presumed that an
 1282 applicant chronically and habitually uses alcoholic beverages or
 1283 other substances to the extent that his or her normal faculties
 1284 are impaired if the applicant has been ~~committed under chapter~~
 1285 ~~397 or under the provisions of former chapter 396 or has been~~
 1286 convicted under s. 790.151 or has been deemed a habitual
 1287 offender under s. 856.011(3), or has had two or more convictions
 1288 under s. 316.193 or similar laws of any other state, within the
 1289 3-year period immediately preceding the date on which the
 1290 application is submitted;

1291 (g) Desires a legal means to carry a concealed weapon or
 1292 firearm for lawful self-defense;

1293 (h) Demonstrates competence with a firearm by any one of
 1294 the following:

1295 1. Completion of any hunter education or hunter safety
 1296 course approved by the Fish and Wildlife Conservation Commission
 1297 or a similar agency of another state;

1298 2. Completion of any National Rifle Association firearms
 1299 safety or training course;

1300 3. Completion of any firearms safety or training course or
 1301 class available to the general public offered by a law
 1302 enforcement agency, junior college, college, or private or
 1303 public institution or organization or firearms training school,
 1304 using instructors certified by the National Rifle Association,
 1305 Criminal Justice Standards and Training Commission, or the

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1306 Department of Agriculture and Consumer Services;

1307 4. Completion of any law enforcement firearms safety or
 1308 training course or class offered for security guards,
 1309 investigators, special deputies, or any division or subdivision
 1310 of a law enforcement agency or security enforcement;

1311 5. Presents evidence of equivalent experience with a
 1312 firearm through participation in organized shooting competition
 1313 or military service;

1314 6. Is licensed or has been licensed to carry a firearm in
 1315 this state or a county or municipality of this state, unless
 1316 such license has been revoked for cause; or

1317 7. Completion of any firearms training or safety course or
 1318 class conducted by a state-certified or National Rifle
 1319 Association certified firearms instructor;

1320
 1321 A photocopy of a certificate of completion of any of the courses
 1322 or classes; an affidavit from the instructor, school, club,
 1323 organization, or group that conducted or taught such course or
 1324 class attesting to the completion of the course or class by the
 1325 applicant; or a copy of any document that shows completion of
 1326 the course or class or evidences participation in firearms
 1327 competition shall constitute evidence of qualification under
 1328 this paragraph. A person who conducts a course pursuant to
 1329 subparagraph 2., subparagraph 3., or subparagraph 7., or who, as
 1330 an instructor, attests to the completion of such courses, must
 1331 maintain records certifying that he or she observed the student
 1332 safely handle and discharge the firearm in his or her physical
 1333 presence and that the discharge of the firearm included live
 1334 fire using a firearm and ammunition as defined in s. 790.001;

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1335 (i) Has not been adjudicated an incapacitated person under
 1336 s. 744.331, or similar laws of any other state. An applicant who
 1337 has been granted relief from firearms disabilities pursuant to
 1338 s. 790.065(2)(a)4.d. or pursuant to the law of the state where
 1339 the adjudication occurred is deemed not to have been adjudicated
 1340 an incapacitated person under this paragraph, unless 5 years
 1341 have elapsed since the applicant's restoration to capacity by
 1342 court order;

1343 (j) Has not been committed to a mental institution under
 1344 chapter 394, or similar laws of any other state. An applicant
 1345 who has been granted relief from firearms disabilities pursuant
 1346 to s. 790.065(2)(a)4.d. or pursuant to the law of the state
 1347 where the commitment occurred is deemed not to have been
 1348 committed in a mental institution under this paragraph, unless
 1349 the applicant produces a certificate from a licensed
 1350 psychiatrist that he or she has not suffered from disability for
 1351 at least 5 years before the date of submission of the
 1352 application;

1353 (k) Has not had adjudication of guilt withheld or
 1354 imposition of sentence suspended on any felony unless 3 years
 1355 have elapsed since probation or any other conditions set by the
 1356 court have been fulfilled, or expunction has occurred;

1357 (l) Has not had adjudication of guilt withheld or
 1358 imposition of sentence suspended on any misdemeanor crime of
 1359 domestic violence unless 3 years have elapsed since probation or
 1360 any other conditions set by the court have been fulfilled, or
 1361 the record has been expunged;

1362 (m) Has not been issued an injunction that is currently in
 1363 force and effect and that restrains the applicant from

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1364 committing acts of domestic violence or acts of repeat violence;
 1365 and

1366 (n) Is not prohibited from purchasing or possessing a
 1367 firearm by any other provision of Florida or federal law.

1368 (4) The application shall be completed, under oath, on a
 1369 form adopted by the Department of Agriculture and Consumer
 1370 Services and shall include:

1371 (a) The name, address, place of birth, date of birth, and
 1372 race of the applicant;

1373 (b) A statement that the applicant is in compliance with
 1374 criteria contained within subsections (2) and (3);

1375 (c) A statement that the applicant has been furnished a
 1376 copy of or a website link to this chapter and is knowledgeable
 1377 of its provisions;

1378 (d) A conspicuous warning that the application is executed
 1379 under oath and that a false answer to any question, or the
 1380 submission of any false document by the applicant, subjects the
 1381 applicant to criminal prosecution under s. 837.06;

1382 (e) A statement that the applicant desires a concealed
 1383 weapon or firearms license as a means of lawful self-defense;
 1384 and

1385 (f) Directions for an applicant who is a servicemember, as
 1386 defined in s. 250.01, or a veteran, as defined in s. 1.01, to
 1387 request expedited processing of his or her application.

1388 (5) The applicant shall submit to the Department of
 1389 Agriculture and Consumer Services or an approved tax collector
 1390 pursuant to s. 790.0625:

1391 (b) A nonrefundable license fee of up to \$55 ~~\$60~~ if he or
 1392 she has not previously been issued a statewide license or of up

590-02719-17

2017498c2

1393 to \$45 ~~\$50~~ for renewal of a statewide license. The cost of
1394 processing fingerprints as required in paragraph (c) shall be
1395 borne by the applicant. However, an individual holding an active
1396 certification from the Criminal Justice Standards and Training
1397 Commission as a law enforcement officer, correctional officer,
1398 or correctional probation officer as defined in s. 943.10(1),
1399 (2), (3), (6), (7), (8), or (9) is exempt from the licensing
1400 requirements of this section. If such individual wishes to
1401 receive a concealed weapon or firearm license, he or she is
1402 exempt from the background investigation and all background
1403 investigation fees but must pay the current license fees
1404 regularly required to be paid by nonexempt applicants. Further,
1405 a law enforcement officer, a correctional officer, or a
1406 correctional probation officer as defined in s. 943.10(1), (2),
1407 or (3) is exempt from the required fees and background
1408 investigation for 1 year after his or her retirement.

1409 Section 40. This act shall take effect July 1, 2017.

1410

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 MARK AVENUE

Street

Phone 224-5081

TALLAHASSEE

City

FL

State

32301

Zip

Email d.daniel@smithbryant.com

Speaking: [] For [] Against [] Information

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

Representing FLORIDA SURVEYING AND MAPPING SOCIETY

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.

APPEARANCE RECORD

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

42517

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

Phone 850 224 3427

Street

Tallahassee FL 32301

Email Rana@rubaopa.com

City

State

Zip

Speaking: For Against Information

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

Representing Fla Taxicab Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

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

Phone 850 617 7700

Tallahassee FL 32399
City State Zip

E-mail grace.lovett@freshfromflorida.com

Speaking: For Against Information

Representing FL Dept. of Agriculture & Consumer 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.

The Florida Senate
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.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Kraemer</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 512 amends section 550.2415, Florida Statutes, to provide that a positive test result for anabolic steroids¹ 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

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 race¹⁰ 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 steroids³² 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.

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.

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

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

580-03525-17

2017512c1

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

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Paragraph (a) of subsection (1) of section
13 550.2415, Florida Statutes, is amended to read:

14 550.2415 Racing of animals under certain conditions
15 prohibited; penalties; exceptions.—

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

Page 1 of 2

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

580-03525-17

2017512c1

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

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

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25/2017

Meeting Date

Topic _____

Bill Number 568

(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

512

Bill Number (if applicable)

Topic Greyhounds Steroids

Amendment Barcode (if applicable)

Name Kate MacFall

Job Title State Director

Address 1624 Metropolitan Circle

Phone 850 508-1001

Street

Tallahassee

Email kmacfallehmsociety.org

City

State

Zip

Speaking: For Against Information

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

Representing Humane Society of the United States

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

4/25/2017
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.

Phone _____

Street

Hiataeah
City

FL
State

33014
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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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)

Topic STEROIDS IN GREYHOUND RACING

Amendment Barcode (if applicable)

Name JENNIFER HOBGOOD

Job Title STATE LEGISLATIVE DIRECTOR

Address P O BOX 20554

Phone 445 5245

TALLAHASSEE FL 32316
City State Zip

Email jen.hobgood@aspc.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.

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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)

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

Phone 407-365-7283

Street

OVIDO

FL

32765

Email ACTGREYHOUNDS@CFL.RE.CC

City

State

Zip

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.

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)

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

Phone 352-237-1852

Street

Ocala, FL 34482

Email depillbug@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

APPEARANCE RECORD

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

04/25/2017

SB 512

Meeting Date

Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

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 Ganzk1981@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)

Topic Greyhounds

Amendment Barcode (if applicable)

Name Walter Elliott

Job Title Greyhound Farm Manager

Address 7103 NW 21 Street

Phone 352-207-5116

Street

Ocala, FL 34482

Email quinn5.1@juno.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

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

Phone 352 484 7667

Street

Ocala, FL 34482

Email MWAPINSKY@Gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

APPEARANCE RECORD

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

04/25/2017

SB 512

Meeting Date

Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

Name Brittnie Albury

Job Title Greyhound Farm Kennel Helper

Address 7103 NW 21 Street

Phone 352-615-0105

Street

Ocala, FL 34482

Email brittniealbury@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

Duplicate

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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

Phone (772) 200 9538

Street

Ocala, FL 34482

Email David.Barone47@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE

APPEARANCE RECORD

(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

Phone (785) 479-0836

Street

St. Petersburg

FL

33702

City

State

Zip

Email katobartley4@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

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THE FLORIDA SENATE

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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

Phone 785-479-5980

Street

St. Petersburg

City

FL

State

33702

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

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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 & St. Pete Kennel Club

Address 2001 83rd St. North

Phone 785-479-5980

Street

St. Petersburg

City

FL

State

33702

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

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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.

Phone 239-287-5026

Street

City

Bonita Springs FL

State

34134

Zip

Email TBlm@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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THE FLORIDA SENATE

APPEARANCE RECORD

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4/25/17

Meeting Date

512

Bill Number (if applicable)

Topic GREYHOUND RACING

Amendment Barcode (if applicable)

Name RAMON MAURY

Job Title

Address PO BOX 10245

Street

Phone 850 722 1568

TALL FL 32302

City

State

Zip

Email mmggray@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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4-25-17

Meeting Date

SB 512

Bill Number (if applicable)

Topic Greyhound Racing

Amendment Barcode (if applicable)

Name CALVIN J. HOLLAND

Job Title Pres. Tampa Bay Greyhound Assoc.

Address 10926 1st La. N

Phone 727-433-3834

ST. PETERS
City

FLA
State

33716
Zip

Email CHOLL197139@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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 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

Phone 617-501-6276

Street

Arlington

City

MA

State

02476

Zip

Email Carey@grey2kUSA.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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

Steve Schlachter

Job Title

GREYHOUND OWNER

Address

2703 SW 43RD TERR.

Phone

860-608-6374

Street

CAPE CORAL

FL

33914

Email

SLAKUH@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-070 (10/14/06)

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 JEAN Schlachter

Job Title GREYHOUND OWNER

Address 2703 SW 43RD TER.

Phone 239-257-2932

Street

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

City

FL

State

33413

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

SB512

Bill Number (if applicable)

Topic Greyhound hormones

Name Eric Johnson

Job Title DOG owner

Address 2001 83rd St. North

Phone (785) 479-0836

Street

St. Petersburg

FL

33702

City

State

Zip

Email ericj@longmearthur.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)

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 Kim Bartley

Job Title greyhound owner

Address 2001 83rd St. North

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

4-25-17
Meeting Date

SB512
Bill Number (if applicable)

Topic Greyhound hormones

Amendment Barcode (if applicable)

Name Travis Bartley

Job Title owner Bartley Corp at St. Pet Kennel Club

Address 2001 83rd St. North

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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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

512

Bill Number (if applicable)

Topic

Greyhound Hormones

Amendment Barcode (if applicable)

Name

Melissa Evans

Job Title

Dog Owner - Greyhound Trainer

Address

190 6th St.

Phone

239-287-4180

Street

Bonita Springs, FL.

State

34134

Zip

Email

tbmcl@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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The Florida Senate
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 licensees¹ in health care professions² 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 designates 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 sufficient¹⁰ 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 physician²³ 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 AHCA²⁶ 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.

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-compliance³¹ 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 postpartum⁴⁷ 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,



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57 460.413, 461.013, 462.14, 463.016, and 464.018, F.S.;
58 providing that an impaired practitioner may be
59 reported to a consultant rather than the department
60 under certain circumstances; amending s. 464.204,
61 F.S.; conforming provisions to changes made by the
62 act; amending ss. 465.016, 466.028, 467.203, 468.217,
63 and 468.3101, F.S.; providing that an impaired
64 practitioner may be reported to a consultant rather
65 than the department under certain circumstances;
66 amending s. 474.221, F.S.; conforming provisions to
67 changes made by the act; amending s. 483.825, F.S.;
68 providing that certain persons may be reported to a
69 consultant rather than the department under certain
70 circumstances; creating s. 456.0495, F.S.; requiring
71 licensed midwives and health care providers to report
72 adverse incidents to the Department of Health within a
73 certain period; requiring the department to adopt
74 rules establishing guidelines for reporting specified
75 adverse incidents; providing an effective date.

76
77 Be It Enacted by the Legislature of the State of Florida:

78
79 Section 1. Section 456.076, Florida Statutes, is amended to
80 read:

81 456.076 Impaired practitioner programs ~~Treatment programs~~
82 ~~for impaired practitioners.~~

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

84 (a) "Consultant" means the individual or entity who
85 operates an approved impaired practitioner program pursuant to a



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86 contract with the department and who is retained by the
87 department as provided in subsection (2).
88 (b) "Evaluator" means a state-licensed or nationally
89 certified individual who has been approved by a consultant or
90 the department, who has completed an evaluator training program
91 established by the consultant, and who is therefore authorized
92 to evaluate practitioners as part of an impaired practitioner
93 program.
94 (c) "Impaired practitioner" means a practitioner with an
95 impairment.
96 (d) "Impaired practitioner program" means a program
97 established by the department by contract with one or more
98 consultants to serve impaired and potentially impaired
99 practitioners for the protection of the health, safety, and
100 welfare of the public.
101 (e) "Impairment" means a potentially impairing health
102 condition that is the result of the misuse or abuse of alcohol,
103 drugs, or both, or a mental or physical condition that could
104 affect a practitioner's ability to practice with skill and
105 safety.
106 (f) "Inability to progress" means a determination by a
107 consultant based on a participant's response to treatment and
108 prognosis that the participant is unable to safely practice
109 despite compliance with treatment requirements and his or her
110 participant contract.
111 (g) "Material noncompliance" means an act or omission by a
112 participant in violation of his or her participant contract as
113 determined by the department or consultant.
114 (h) "Participant" means a practitioner who is participating



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115 in the impaired practitioner program by having entered into a
116 participant contract. A practitioner ceases to be a participant
117 when the participant contract is successfully completed or is
118 terminated for any reason.

119 (i) "Participant contract" means a formal written document
120 outlining the requirements established by a consultant for a
121 participant to successfully complete the impaired practitioner
122 program, including the participant's monitoring plan.

123 (j) "Practitioner" means a person licensed, registered,
124 certified, or regulated by the department under part III of
125 chapter 401; chapter 457; chapter 458; chapter 459; chapter 460;
126 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;
127 chapter 466; chapter 467; part I, part II, part III, part V,
128 part X, part XIII, or part XIV of chapter 468; chapter 478;
129 chapter 480; part III or part IV of chapter 483; chapter 484;
130 chapter 486; chapter 490; or chapter 491; or an applicant for a
131 license, registration, or certification under the same laws.

132 (k) "Referral" means a practitioner who has been referred,
133 either as a self-referral or otherwise, or reported to a
134 consultant for impaired practitioner program services, but who
135 is not under a participant contract.

136 (l) "Treatment program" means a department- or consultant-
137 approved residential, intensive outpatient, partial
138 hospitalization or other program through which an impaired
139 practitioner is treated based on the impaired practitioner's
140 diagnosis and the treatment plan approved by the consultant.

141 (m) "Treatment provider" means a department- or consultant-
142 approved state-licensed or nationally certified individual who
143 provides treatment to an impaired practitioner based on the



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144 practitioner's individual diagnosis and a treatment plan
145 approved by the consultant ~~For professions that do not have~~
146 ~~impaired practitioner programs provided for in their practice~~
147 ~~acts, the department shall, by rule, designate approved impaired~~
148 ~~practitioner programs under this section. The department may~~
149 ~~adopt rules setting forth appropriate criteria for approval of~~
150 ~~treatment providers. The rules may specify the manner in which~~
151 ~~the consultant, retained as set forth in subsection (2), works~~
152 ~~with the department in intervention, requirements for evaluating~~
153 ~~and treating a professional, requirements for continued care of~~
154 ~~impaired professionals by approved treatment providers,~~
155 ~~continued monitoring by the consultant of the care provided by~~
156 ~~approved treatment providers regarding the professionals under~~
157 ~~their care, and requirements related to the consultant's~~
158 ~~expulsion of professionals from the program.~~

159 (2)(a) The department ~~may~~ shall retain one or more ~~impaired~~
160 ~~practitioner~~ consultants to operate its impaired practitioner
161 ~~program. Each consultant who are each licensees under the~~
162 ~~jurisdiction of the Division of Medical Quality Assurance within~~
163 ~~the department and who must be:~~

164 ~~(a)1-~~ A practitioner ~~or recovered practitioner~~ licensed
165 under chapter 458, chapter 459, or part I of chapter 464; or

166 ~~(b)2-~~ An entity that employs:

167 ~~1.a-~~ A medical director who ~~is~~ ~~must be a practitioner or~~
168 ~~recovered practitioner~~ licensed under chapter 458 or chapter
169 459; or

170 ~~2.b-~~ An executive director who ~~is~~ ~~must be a registered~~
171 ~~nurse or a recovered registered nurse~~ licensed under part I of
172 chapter 464.



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173 (3) The terms and conditions of the impaired practitioner
174 program must be established by the department by contract with a
175 consultant for the protection of the health, safety, and welfare
176 of the public and must provide, at a minimum, that the
177 consultant:

178 (a) Accepts referrals;

179 (b) Arranges for the evaluation and treatment of impaired
180 practitioners by a treatment provider, when the consultant deems
181 the evaluation and treatment necessary;

182 (c) Monitors the recovery progress and status of impaired
183 practitioners to ensure that such practitioners are able to
184 practice their profession with skill and safety. Such monitoring
185 must continue until the consultant or department concludes that
186 monitoring by the consultant is no longer required for the
187 protection of the public or until the practitioner's
188 participation in the program is terminated for material
189 noncompliance or inability to progress; and

190 (d) Does not directly evaluate, treat, or otherwise provide
191 patient care to a practitioner in the operation of the impaired
192 practitioner program.

193 (4) The department shall specify, in its contract with each
194 consultant, the types of licenses, registrations, or
195 certifications of the practitioners to be served by that
196 consultant.

197 (5) A consultant shall enter into a participant contract
198 with an impaired practitioner and shall establish the terms of
199 monitoring and shall include the terms in a participant
200 contract. In establishing the terms of monitoring, the
201 consultant may consider the recommendations of one or more



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202 approved evaluators, treatment programs, or treatment providers.
203 A consultant may modify the terms of monitoring if the
204 consultant concludes, through the course of monitoring, that
205 extended, additional, or amended terms of monitoring are
206 required for the protection of the health, safety, and welfare
207 of the public.

208 ~~(6)(b) A An entity retained as an impaired practitioner~~
209 ~~consultant under this section which employs a medical director~~
210 ~~or an executive director is not required to be licensed as a~~
211 ~~substance abuse provider or mental health treatment provider~~
212 ~~under chapter 394, chapter 395, or chapter 397 for purposes of~~
213 ~~providing services under this program.~~

214 ~~(7)(e)1. Each The consultant shall assist the department~~
215 ~~and licensure boards on matters of impaired practitioners,~~
216 ~~including the determination of probable cause panel and the~~
217 ~~department in carrying out the responsibilities of this section.~~
218 ~~This includes working with department investigators to determine~~
219 ~~whether a practitioner is, in fact, impaired, as specified in~~
220 ~~the consultant's contract with the department.~~

221 ~~2. The consultant may contract with a school or program to~~
222 ~~provide services to a student enrolled for the purpose of~~
223 ~~preparing for licensure as a health care practitioner as defined~~
224 ~~in this chapter or as a veterinarian under chapter 474 if the~~
225 ~~student is allegedly impaired as a result of the misuse or abuse~~
226 ~~of alcohol or drugs, or both, or due to a mental or physical~~
227 ~~condition. The department is not responsible for paying for the~~
228 ~~care provided by approved treatment providers or a consultant.~~

229 ~~(d) A medical school accredited by the Liaison Committee on~~
230 ~~Medical Education or the Commission on Osteopathic College~~



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231 ~~Accreditation, or another school providing for the education of~~
232 ~~students enrolled in preparation for licensure as a health care~~
233 ~~practitioner as defined in this chapter or a veterinarian under~~
234 ~~chapter 474 which is governed by accreditation standards~~
235 ~~requiring notice and the provision of due process procedures to~~
236 ~~students, is not liable in any civil action for referring a~~
237 ~~student to the consultant retained by the department or for~~
238 ~~disciplinary actions that adversely affect the status of a~~
239 ~~student when the disciplinary actions are instituted in~~
240 ~~reasonable reliance on the recommendations, reports, or~~
241 ~~conclusions provided by such consultant, if the school, in~~
242 ~~referring the student or taking disciplinary action, adheres to~~
243 ~~the due process procedures adopted by the applicable~~
244 ~~accreditation entities and if the school committed no~~
245 ~~intentional fraud in carrying out the provisions of this~~
246 ~~section.~~

247 (8)(3) Before issuing an approval of, or intent to deny, an
248 application for licensure, each board and profession within the
249 Division of Medical Quality Assurance may delegate to its chair
250 or other designee its authority to determine, ~~before certifying~~
251 ~~or declining to certify an application for licensure to the~~
252 ~~department,~~ that an applicant for licensure under its
253 jurisdiction may have an impairment be impaired as a result of
254 the misuse or abuse of alcohol or drugs, or both, or due to a
255 mental or physical condition that could affect the applicant's
256 ability to practice with skill and safety. Upon such
257 determination, the chair or other designee may refer the
258 applicant to the consultant to facilitate for an evaluation
259 before the board issues an approval of, certifies or intent to



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260 ~~deny, declines to certify~~ his or her application ~~to the~~
261 ~~department.~~ If the applicant agrees to be evaluated ~~by the~~
262 ~~consultant,~~ the department's deadline for approving or denying
263 the application pursuant to s. 120.60(1) is tolled until the
264 evaluation is completed and the result of the evaluation and
265 recommendation ~~by the consultant~~ is communicated to the board by
266 the consultant. If the applicant declines to be evaluated ~~by the~~
267 ~~consultant,~~ the board shall issue an approval of, or intent to
268 deny, certify or decline to certify the applicant's application
269 to the department notwithstanding the lack of an evaluation and
270 recommendation by the consultant.

271 (9)(a)(4)(a) Except as provided in paragraph (b), when
272 ~~Whenever~~ the department receives a ~~written or oral~~ legally
273 sufficient complaint alleging that a practitioner has an
274 impairment licensee under the jurisdiction of the Division of
275 Medical Quality Assurance within the department is impaired as a
276 result of the misuse or abuse of alcohol or drugs, or both, or
277 due to a mental or physical condition which could affect the
278 licensee's ability to practice with skill and safety, and no
279 complaint exists against the practitioner licensee other than
280 impairment exists, the department shall refer the practitioner
281 to the consultant, along with all information in the
282 department's possession relating to the impairment. The
283 impairment does reporting of such information shall not
284 constitute grounds for discipline pursuant to s. 456.072 or the
285 corresponding grounds for discipline within the applicable
286 practice act if ~~the probable cause panel of the appropriate~~
287 ~~board, or the department when there is no board, finds:~~

288 1. The practitioner licensee has acknowledged the



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289 impairment; ~~problem.~~

290 2. The practitioner becomes a participant licensee ~~has~~
291 ~~voluntarily enrolled in an impaired practitioner program and~~
292 ~~successfully completes a participant contract under terms~~
293 ~~established by the consultant; appropriate, approved treatment~~
294 ~~program.~~

295 3. The practitioner licensee has voluntarily withdrawn from
296 practice or has limited the scope of his or her practice ~~if as~~
297 required by the consultant; ~~, in each case, until such time as~~
298 ~~the panel, or the department when there is no board, is~~
299 ~~satisfied the licensee has successfully completed an approved~~
300 ~~treatment program.~~

301 4. The practitioner licensee has provided to the
302 consultant, or has authorized the consultant to obtain, all
303 records and information relating to the impairment from any
304 source and all other medical records of the practitioner
305 requested by the consultant; ~~and executed releases for medical~~
306 ~~records, authorizing the release of all records of evaluations,~~
307 ~~diagnoses, and treatment of the licensee, including records of~~
308 ~~treatment for emotional or mental conditions, to the consultant.~~
309 ~~The consultant shall make no copies or reports of records that~~
310 ~~do not regard the issue of the licensee's impairment and his or~~
311 ~~her participation in a treatment program.~~

312 5. The practitioner has authorized the consultant, in the
313 event of the practitioner's termination from the impaired
314 practitioner program, to report the termination to the
315 department and provide the department with copies of all
316 information in the consultant's possession relating to the
317 practitioner.



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318 (b) For practitioners who are employed by governmental
319 entities and who are also certified by the department pursuant
320 to part III of chapter 401, the department may not refer the
321 practitioner to the consultant if the practitioner is under a
322 referral by the practitioner's employer to an employee
323 assistance program through the governmental entity. If the
324 practitioner fails to satisfactorily complete the employee
325 assistance program or if his or her employment is terminated,
326 his or her employer must immediately notify the department,
327 which shall then refer the practitioner to the consultant as
328 required in paragraph (a). For purposes of this paragraph, the
329 term "governmental entity" has the same meaning as provided in
330 s. 70.001(3)(c).

331 (c) To encourage practitioners who are or may be impaired
332 to voluntarily self-refer to a consultant, the consultant may
333 not provide information to the department relating to a self-
334 referring participant if the consultant has no knowledge of a
335 pending department investigation, complaint, or disciplinary
336 action against the participant and if the participant is in
337 compliance and making progress with the terms of the impaired
338 practitioner program and contract, unless authorized by the
339 participant If, however, the department has not received a
340 legally sufficient complaint and the licensee agrees to withdraw
341 from practice until such time as the consultant determines the
342 licensee has satisfactorily completed an approved treatment
343 program or evaluation, the probable cause panel, or the
344 department when there is no board, shall not become involved in
345 the licensee's case.

346 ~~(c) Inquiries related to impairment treatment programs~~



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347 ~~designed to provide information to the licensee and others and~~
348 ~~which do not indicate that the licensee presents a danger to the~~
349 ~~public shall not constitute a complaint within the meaning of s.~~
350 ~~456.073 and shall be exempt from the provisions of this~~
351 ~~subsection.~~

352 ~~(d) Whenever the department receives a legally sufficient~~
353 ~~complaint alleging that a licensee is impaired as described in~~
354 ~~paragraph (a) and no complaint against the licensee other than~~
355 ~~impairment exists, the department shall forward all information~~
356 ~~in its possession regarding the impaired licensee to the~~
357 ~~consultant. For the purposes of this section, a suspension from~~
358 ~~hospital staff privileges due to the impairment does not~~
359 ~~constitute a complaint.~~

360 ~~(e) The probable cause panel, or the department when there~~
361 ~~is no board, shall work directly with the consultant, and all~~
362 ~~information concerning a practitioner obtained from the~~
363 ~~consultant by the panel, or the department when there is no~~
364 ~~board, shall remain confidential and exempt from the provisions~~
365 ~~of s. 119.07(1), subject to the provisions of subsections (6)~~
366 ~~and (7).~~

367 ~~(f) A finding of probable cause shall not be made as long~~
368 ~~as the panel, or the department when there is no board, is~~
369 ~~satisfied, based upon information it receives from the~~
370 ~~consultant and the department, that the licensee is progressing~~
371 ~~satisfactorily in an approved impaired practitioner program and~~
372 ~~no other complaint against the licensee exists.~~

373 ~~(10)(5) In any disciplinary action for a violation other~~
374 ~~than impairment in which a practitioner licensee establishes the~~
375 ~~violation for which the practitioner licensee is being~~



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376 prosecuted was due to or connected with impairment and further
377 establishes the practitioner licensee is satisfactorily
378 progressing through or has successfully completed an impaired
379 practitioner program approved treatment program pursuant to this
380 section, such information may be considered by the board, or the
381 department when there is no board, as a mitigating factor in
382 determining the appropriate penalty. This subsection does not
383 limit mitigating factors the board may consider.

384 (11) (a)(6)(a) Upon request by the consultant, and with the
385 authorization of the practitioner when required by law, an
386 approved evaluator, treatment program, or treatment provider
387 shall, upon request, disclose to the consultant all information
388 in its possession regarding a referral or participant the issue
389 of a licensee's impairment and participation in the treatment
390 program. All information obtained by the consultant and
391 department pursuant to this section is confidential and exempt
392 from the provisions of s. 119.07(1), subject to the provisions
393 of this subsection and subsection (7). Failure to provide such
394 information to the consultant is grounds for withdrawal of
395 approval of such evaluator, treatment program, or treatment
396 provider.

397 (b) When a referral or participant is terminated from the
398 impaired practitioner program for material noncompliance with a
399 participant contract, inability to progress, or any other reason
400 than completion, the consultant shall disclose if in the opinion
401 of the consultant, after consultation with the treatment
402 provider, an impaired licensee has not progressed satisfactorily
403 in a treatment program, all information regarding the issue of a
404 licensee's impairment and participation in a treatment program



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405 in the consultant's possession relating to the practitioner
406 ~~shall be disclosed~~ to the department. Such disclosure shall
407 constitute a complaint pursuant to the general provisions of s.
408 456.073. In addition, whenever the consultant concludes that
409 impairment affects a practitioner's licensee's practice and
410 constitutes an immediate, serious danger to the public health,
411 safety, or welfare, the consultant shall immediately communicate
412 such that conclusion shall be communicated to the department and
413 disclose all information in the consultant's possession relating
414 to the practitioner to the department State Surgeon General.

415 (12) All information obtained by the consultant pursuant to
416 this section is confidential and exempt from s. 119.07(1) and s.
417 24(a), Art. I of the State Constitution.

418 (13)(7) A consultant, or a director, officer, employee, or
419 agent of a consultant, may not be held liable financially or may
420 not have a cause of action for damages brought against him or
421 her for making a disclosure pursuant to this section, for any
422 other action or omission relating to the impaired practitioner
423 program, or for the consequences of such disclosure or action or
424 omission, including, without limitation, action by the
425 department against a license, registration, or certification
426 licensee, or approved treatment provider who makes a disclosure
427 pursuant to this section is not subject to civil liability for
428 such disclosure or its consequences.

429 (14) The provisions of s. 766.101 apply to any consultant
430 and the consultant's directors, officers, employees, or agents
431 in regards to providing information relating to a participant to
432 a medical review committee if the participant authorizes such
433 disclosure officer, employee, or agent of the department or the



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434 ~~board and to any officer, employee, or agent of any entity with~~
435 ~~which the department has contracted pursuant to this section.~~

436 (15)(a)(8)(a) A consultant retained pursuant to this
437 section and subsection (2), a consultant's directors, officers,
438 and employees, or agents and those acting at the direction of
439 the consultant for the limited purpose of an emergency
440 intervention on behalf of a licensee or student as described in
441 subsection (2) when the consultant is unable to perform such
442 intervention shall be considered agents of the department for
443 purposes of s. 768.28 while acting within the scope of the
444 consultant's duties under the contract with the department if
445 the contract complies with the requirements of this section. The
446 contract must require that:

447 1. The consultant indemnify the state for any liabilities
448 incurred up to the limits set out in chapter 768.

449 2. The consultant establish a quality assurance program to
450 monitor services delivered under the contract.

451 3. The consultant's quality assurance program, treatment,
452 and monitoring records be evaluated quarterly.

453 4. The consultant's quality assurance program be subject to
454 review and approval by the department.

455 5. The consultant operate under policies and procedures
456 approved by the department.

457 6. The consultant provide to the department for approval a
458 policy and procedure manual that comports with all statutes,
459 rules, and contract provisions approved by the department.

460 7. The department be entitled to review the records
461 relating to the consultant's performance under the contract for
462 the purpose of management audits, financial audits, or program



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463 evaluation.

464 ~~8. All performance measures and standards be subject to~~
465 ~~verification and approval by the department.~~

466 ~~9. The department be entitled to terminate the contract~~
467 ~~with the consultant for noncompliance with the contract.~~

468 (b) In accordance with s. 284.385, the Department of
469 Financial Services shall defend any claim, suit, action, or
470 proceeding, including a claim, suit, action, or proceeding for
471 injunctive, affirmative, or declaratory relief, against the
472 consultant, or the consultant's directors, officers, or
473 employees, and agents brought as the result of any action or
474 omission relating to the impaired practitioner program or those
475 acting at the direction of the consultant for the limited
476 purpose of an emergency intervention on behalf of a licensee or
477 student as described in subsection (2) when the consultant is
478 unable to perform such intervention, which claim, suit, action,
479 or proceeding is brought as a result of an act or omission by
480 any of the consultant's officers and employees and those acting
481 under the direction of the consultant for the limited purpose of
482 an emergency intervention on behalf of the licensee or student
483 when the consultant is unable to perform such intervention, if
484 the act or omission arises out of and is in the scope of the
485 consultant's duties under its contract with the department.

486 (16)(e) If a the consultant retained by the department
487 pursuant to this section subsection (2) is also retained by
488 another any other state agency to operate an impaired
489 practitioner program for that agency, this section also applies
490 to the consultant's operation of an impaired practitioner
491 program for that agency, and if the contract between such state



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492 ~~agency and the consultant complies with the requirements of this~~
493 ~~section, the consultant, the consultant's officers and~~
494 ~~employees, and those acting under the direction of the~~
495 ~~consultant for the limited purpose of an emergency intervention~~
496 ~~on behalf of a licensee or student as described in subsection~~
497 ~~(2) when the consultant is unable to perform such intervention~~
498 ~~shall be considered agents of the state for the purposes of this~~
499 ~~section while acting within the scope of and pursuant to~~
500 ~~guidelines established in the contract between such state agency~~
501 ~~and the consultant.~~

502 (17)(9) A An impaired practitioner consultant is the
503 official custodian of records relating to the referral of an
504 impaired licensee or applicant to that consultant and any other
505 interaction between the licensee or applicant and the
506 consultant. The consultant may disclose to a referral or
507 participant, or to the legal representative of the referral or
508 participant, the documents, records, or other information from
509 the consultant's file, including information received by the
510 consultant from other sources, and information on the terms
511 required for the referral's or participant's monitoring
512 contract, the referral's or participant's progress or inability
513 to progress, the referral's or participant's discharge or
514 termination, information supporting the conclusion of material
515 noncompliance, or any other information required by law the
516 impaired licensee or applicant or his or her designee any
517 information that is disclosed to or obtained by the consultant
518 or that is confidential under paragraph (6)(a), but only to the
519 extent that it is necessary to do so to carry out the
520 consultant's duties under this section. The department, and any



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521 ~~other entity that enters into a contract with the consultant to~~
522 ~~receive the services of the consultant, has direct~~
523 ~~administrative control over the consultant to the extent~~
524 ~~necessary to receive disclosures from the consultant as allowed~~
525 ~~by federal law. If a consultant discloses information to the~~
526 ~~department in accordance with this part, a referral or~~
527 ~~participant, or his or her legal representative, may obtain a~~
528 ~~complete copy of the consultant's file from the consultant or~~
529 ~~disciplinary proceeding is pending, an impaired licensee may~~
530 ~~obtain such information from the department under s. 456.073.~~

531 (18) (a) The consultant may contract with a school or
532 program to provide impaired practitioner program services to a
533 student enrolled for the purpose of preparing for licensure as a
534 health care practitioner as defined in this chapter or as a
535 veterinarian under chapter 474 if the student has or is
536 suspected of having an impairment. The department is not
537 responsible for paying for the care provided by approved
538 treatment providers or approved treatment programs or for the
539 services provided by a consultant to a student.

540 (b) A medical school accredited by the Liaison Committee on
541 Medical Education or the Commission on Osteopathic College
542 Accreditation, or another school providing for the education of
543 students enrolled in preparation for licensure as a health care
544 practitioner as defined in this chapter, or a veterinarian under
545 chapter 474, which is governed by accreditation standards
546 requiring notice and the provision of due process procedures to
547 students, is not liable in any civil action for referring a
548 student to the consultant retained by the department or for
549 disciplinary actions that adversely affect the status of a



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550 student when the disciplinary actions are instituted in
551 reasonable reliance on the recommendations, reports, or
552 conclusions provided by such consultant, if the school, in
553 referring the student or taking disciplinary action, adheres to
554 the due process procedures adopted by the applicable
555 accreditation entities and if the school committed no
556 intentional fraud in carrying out the provisions of this
557 section.

558 Section 2. Paragraph (1) of subsection (1) of section
559 401.411, Florida Statutes, is amended to read:

560 401.411 Disciplinary action; penalties.—

561 (1) The department may deny, suspend, or revoke a license,
562 certificate, or permit or may reprimand or fine any licensee,
563 certificateholder, or other person operating under this part for
564 any of the following grounds:

565 (1) The failure to report to the department any person
566 known to be in violation of this part. However, a professional
567 known to be operating under this part without reasonable skill
568 and without regard for the safety of the public by reason of
569 illness, drunkenness, or the use of drugs, narcotics, chemicals,
570 or any other type of material, or as a result of a mental or
571 physical condition, may be reported to a consultant operating an
572 impaired practitioner program as described in s. 456.076 rather
573 than to the department.

574 Section 3. Paragraph (u) of subsection (1) of section
575 455.227, Florida Statutes, is amended to read:

576 455.227 Grounds for discipline; penalties; enforcement.—

577 (1) The following acts shall constitute grounds for which
578 the disciplinary actions specified in subsection (2) may be



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579 taken:

580 (u) Termination from an impaired practitioner program a
581 ~~treatment program for impaired practitioners~~ as described in s.
582 456.076 for failure to comply, without good cause, with the
583 terms of the monitoring or participant treatment contract
584 entered into by the licensee or failing to successfully complete
585 a drug or alcohol treatment program.

586 Section 4. Subsections (2) and (3) of section 456.0635,
587 Florida Statutes, are amended to read:

588 456.0635 Health care fraud; disqualification for license,
589 certificate, or registration.-

590 (2) Each board within the jurisdiction of the department,
591 or the department if there is no board, shall refuse to admit a
592 candidate to any examination and refuse to issue a license,
593 certificate, or registration to any applicant if the candidate
594 or applicant or any principal, officer, agent, managing
595 employee, or affiliated person of the candidate or applicant:

596 (a) Has been convicted of, or entered a plea of guilty or
597 nolo contendere to, regardless of adjudication, a felony under
598 chapter 409, chapter 817, or chapter 893, or a similar felony
599 offense committed in another state or jurisdiction, unless the
600 candidate or applicant has successfully completed a pretrial
601 diversion or drug court program for that felony and provides
602 proof that the plea has been withdrawn or the charges have been
603 dismissed. Any such conviction or plea shall exclude the
604 applicant or candidate from licensure, examination,
605 certification, or registration unless the sentence and any
606 subsequent period of probation for such conviction or plea
607 ended:



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608 1. For felonies of the first or second degree, more than 15
609 years before the date of application.

610 2. For felonies of the third degree, more than 10 years
611 before the date of application, except for felonies of the third
612 degree under s. 893.13(6) (a).

613 3. For felonies of the third degree under s. 893.13(6) (a),
614 more than 5 years before the date of application;

615 (b) Has been convicted of, or entered a plea of guilty or
616 nolo contendere to, regardless of adjudication, a felony under
617 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the
618 sentence and any subsequent period of probation for such
619 conviction or plea ended more than 15 years before the date of
620 the application;

621 (c) Has been terminated for cause from the Florida Medicaid
622 program pursuant to s. 409.913, unless the candidate or
623 applicant has been in good standing with the Florida Medicaid
624 program for the most recent 5 years;

625 (d) Has been terminated for cause, pursuant to the appeals
626 procedures established by the state, from any other state
627 Medicaid program, unless the candidate or applicant has been in
628 good standing with a state Medicaid program for the most recent
629 5 years and the termination occurred at least 20 years before
630 the date of the application; or

631 (e) Is currently listed on the United States Department of
632 Health and Human Services Office of Inspector General's List of
633 Excluded Individuals and Entities.

634
635 This subsection does not apply to an applicant for initial
636 licensure, certification, or registration who was arrested for



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637 or charged with a felony specified in paragraph (a) or paragraph
638 (b) before July 1, 2009.

639 (3) The department shall refuse to renew a license,
640 certificate, or registration of any applicant if the applicant
641 or any principal, officer, agent, managing employee, or
642 affiliated person of the applicant:

643 (a) Has been convicted of, or entered a plea of guilty or
644 nolo contendere to, regardless of adjudication, a felony under
645 chapter 409, chapter 817, or chapter 893, or a similar felony
646 offense committed in another state or jurisdiction, unless the
647 applicant is currently enrolled in a pretrial diversion or drug
648 court program that allows the withdrawal of the plea for that
649 felony upon successful completion of that program. Any such
650 conviction or plea excludes the applicant from licensure renewal
651 unless the sentence and any subsequent period of probation for
652 such conviction or plea ended:

653 1. For felonies of the first or second degree, more than 15
654 years before the date of application.

655 2. For felonies of the third degree, more than 10 years
656 before the date of application, except for felonies of the third
657 degree under s. 893.13(6) (a).

658 3. For felonies of the third degree under s. 893.13(6) (a),
659 more than 5 years before the date of application.

660 (b) Has been convicted of, or entered a plea of guilty or
661 nolo contendere to, regardless of adjudication, a felony under
662 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1,
663 2009, unless the sentence and any subsequent period of probation
664 for such conviction or plea ended more than 15 years before the
665 date of the application.



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666 (c) Has been terminated for cause from the Florida Medicaid
667 program pursuant to s. 409.913, unless the applicant has been in
668 good standing with the Florida Medicaid program for the most
669 recent 5 years.

670 (d) Has been terminated for cause, pursuant to the appeals
671 procedures established by the state, from any other state
672 Medicaid program, unless the applicant has been in good standing
673 with a state Medicaid program for the most recent 5 years and
674 the termination occurred at least 20 years before the date of
675 the application.

676 (e) Is currently listed on the United States Department of
677 Health and Human Services Office of Inspector General's List of
678 Excluded Individuals and Entities.

679
680 This subsection does not apply to an applicant for renewal of
681 licensure, certification, or registration who was arrested for
682 or charged with a felony specified in paragraph (a) or paragraph
683 (b) before July 1, 2009.

684 Section 5. Paragraphs (i) and (hh) of subsection (1) of
685 section 456.072, Florida Statutes, are amended to read:

686 456.072 Grounds for discipline; penalties; enforcement.—

687 (1) The following acts shall constitute grounds for which
688 the disciplinary actions specified in subsection (2) may be
689 taken:

690 (i) Except as provided in s. 465.016, failing to report to
691 the department any person who the licensee knows is in violation
692 of this chapter, the chapter regulating the alleged violator, or
693 the rules of the department or the board. However, a person who
694 the licensee knows is unable to practice with reasonable skill



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695 and safety to patients by reason of illness or use of alcohol,
696 drugs, narcotics, chemicals, or any other type of material, or
697 as a result of a mental or physical condition, may be reported
698 to a consultant operating an impaired practitioner program as
699 described in s. 456.076 rather than to the department.

700 (hh) Being terminated from an impaired practitioner program
701 that a treatment program for impaired practitioners, which is
702 overseen by a an impaired practitioner consultant as described
703 in s. 456.076, for failure to comply, without good cause, with
704 the terms of the monitoring or participant treatment contract
705 entered into by the licensee, or for not successfully completing
706 any drug treatment or alcohol treatment program.

707 Section 6. Paragraph (f) of subsection (1) of section
708 457.109, Florida Statutes, is amended to read:

709 457.109 Disciplinary actions; grounds; action by the
710 board.-

711 (1) The following acts constitute grounds for denial of a
712 license or disciplinary action, as specified in s. 456.072(2):

713 (f) Failing to report to the department any person who the
714 licensee knows is in violation of this chapter or of the rules
715 of the department. However, a person who the licensee knows is
716 unable to practice acupuncture with reasonable skill and safety
717 to patients by reason of illness or use of alcohol, drugs,
718 narcotics, chemicals, or any other type of material, or as a
719 result of a mental or physical condition, may be reported to a
720 consultant operating an impaired practitioner program as
721 described in s. 456.076 rather than to the department.

722 Section 7. Paragraph (e) of subsection (1) of section
723 458.331, Florida Statutes, is amended to read:



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724 458.331 Grounds for disciplinary action; action by the
725 board and department.-

726 (1) The following acts constitute grounds for denial of a
727 license or disciplinary action, as specified in s. 456.072(2):

728 (e) Failing to report to the department any person who the
729 licensee knows is in violation of this chapter or of the rules
730 of the department or the board. However, a person who the
731 licensee knows is unable to practice medicine with reasonable
732 skill and safety to patients by reason of illness or use of
733 alcohol, drugs, narcotics, chemicals, or any other type of
734 material, or as a result of a mental or physical condition, may
735 be reported to a consultant operating an impaired practitioner
736 program as described in s. 456.076 rather than to the department
737 A treatment provider approved pursuant to s. 456.076 shall
738 provide the department or consultant with information in
739 accordance with the requirements of s. 456.076(4), (5), (6),
740 (7), and (9).

741 Section 8. Paragraph (e) of subsection (1) of section
742 459.015, Florida Statutes, is amended to read:

743 459.015 Grounds for disciplinary action; action by the
744 board and department.-

745 (1) The following acts constitute grounds for denial of a
746 license or disciplinary action, as specified in s. 456.072(2):

747 (e) Failing to report to the department or the department's
748 impaired professional consultant any person who the licensee or
749 certificateholder knows is in violation of this chapter or of
750 the rules of the department or the board. However, a person who
751 the licensee knows is unable to practice osteopathic medicine
752 with reasonable skill and safety to patients by reason of



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753 illness or use of alcohol, drugs, narcotics, chemicals, or any
754 other type of material, or as a result of a mental or physical
755 condition, may be reported to a consultant operating an impaired
756 practitioner program as described in s. 456.076 rather than to
757 the department. A treatment provider, approved pursuant to s.
758 456.076, shall provide the department or consultant with
759 information in accordance with the requirements of s.
760 456.076(4), (5), (6), (7), and (9).

761 Section 9. Paragraph (g) of subsection (1) of section
762 460.413, Florida Statutes, is amended to read:

763 460.413 Grounds for disciplinary action; action by board or
764 department.—

765 (1) The following acts constitute grounds for denial of a
766 license or disciplinary action, as specified in s. 456.072(2):

767 (g) Failing to report to the department any person who the
768 licensee knows is in violation of this chapter or of the rules
769 of the department or the board. However, a person who the
770 licensee knows is unable to practice chiropractic medicine with
771 reasonable skill and safety to patients by reason of illness or
772 use of alcohol, drugs, narcotics, chemicals, or any other type
773 of material, or as a result of a mental or physical condition,
774 may be reported to a consultant operating an impaired
775 practitioner program as described in s. 456.076 rather than to
776 the department.

777 Section 10. Paragraph (f) of subsection (1) of section
778 461.013, Florida Statutes, is amended to read:

779 461.013 Grounds for disciplinary action; action by the
780 board; investigations by department.—

781 (1) The following acts constitute grounds for denial of a



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782 license or disciplinary action, as specified in s. 456.072(2):
783 (f) Failing to report to the department any person who the
784 licensee knows is in violation of this chapter or of the rules
785 of the department or the board. However, a person who the
786 licensee knows is unable to practice podiatric medicine with
787 reasonable skill and safety to patients by reason of illness or
788 use of alcohol, drugs, narcotics, chemicals, or any other type
789 of material, or as a result of a mental or physical condition,
790 may be reported to a consultant operating an impaired
791 practitioner program as described in s. 456.076 rather than to
792 the department.

793 Section 11. Paragraph (f) of subsection (1) of section
794 462.14, Florida Statutes, is amended to read:

795 462.14 Grounds for disciplinary action; action by the
796 department.—

797 (1) The following acts constitute grounds for denial of a
798 license or disciplinary action, as specified in s. 456.072(2):

799 (f) Failing to report to the department any person who the
800 licensee knows is in violation of this chapter or of the rules
801 of the department. However, a person who the licensee knows is
802 unable to practice naturopathic medicine with reasonable skill
803 and safety to patients by reason of illness or use of alcohol,
804 drugs, narcotics, chemicals, or any other type of material, or
805 as a result of a mental or physical condition, may be reported
806 to a consultant operating an impaired practitioner program as
807 described in s. 456.076 rather than to the department.

808 Section 12. Paragraph (1) of subsection (1) of section
809 463.016, Florida Statutes, is amended to read:

810 463.016 Grounds for disciplinary action; action by the



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811 board.-

812 (1) The following acts constitute grounds for denial of a
813 license or disciplinary action, as specified in s. 456.072(2):

814 (1) Willfully failing to report any person who the licensee
815 knows is in violation of this chapter or of rules of the
816 department or the board. However, a person who the licensee
817 knows is unable to practice optometry with reasonable skill and
818 safety to patients by reason of illness or use of alcohol,
819 drugs, narcotics, chemicals, or any other type of material, or
820 as a result of a mental or physical condition, may be reported
821 to a consultant operating an impaired practitioner program as
822 described in s. 456.076 rather than to the department.

823 Section 13. Paragraph (k) of subsection (1) of section
824 464.018, Florida Statutes, is amended to read:

825 464.018 Disciplinary actions.-

826 (1) The following acts constitute grounds for denial of a
827 license or disciplinary action, as specified in s. 456.072(2):

828 (k) Failing to report to the department any person who the
829 licensee knows is in violation of this part or of the rules of
830 the department or the board. However, a person who the licensee
831 knows is unable to practice nursing with reasonable skill and
832 safety to patients by reason of illness or use of alcohol,
833 drugs, narcotics, chemicals, or any other type of material, or
834 as a result of a mental or physical condition, may be reported
835 to a consultant operating an impaired practitioner program as
836 described in s. 456.076 rather than to the department; however,
837 if the licensee verifies that such person is actively
838 participating in a board-approved program for the treatment of a
839 physical or mental condition, the licensee is required to report



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840 ~~such person only to an impaired professionals consultant.~~

841 Section 14. Paragraph (c) of subsection (2) of section
842 464.204, Florida Statutes, is amended to read:

843 464.204 Denial, suspension, or revocation of certification;
844 disciplinary actions.-

845 (2) When the board finds any person guilty of any of the
846 grounds set forth in subsection (1), it may enter an order
847 imposing one or more of the following penalties:

848 (c) Imposition of probation or restriction of
849 certification, including conditions such as corrective actions
850 as retraining or compliance with the department's impaired
851 practitioner program operated by a consultant as described in s.
852 456.076 an approved treatment program for impaired
853 practitioners.

854 Section 15. Paragraph (o) of subsection (1) of section
855 465.016, Florida Statutes, is amended to read:

856 465.016 Disciplinary actions.-

857 (1) The following acts constitute grounds for denial of a
858 license or disciplinary action, as specified in s. 456.072(2):

859 (o) Failing to report to the department any licensee under
860 chapter 458 or under chapter 459 who the pharmacist knows has
861 violated the grounds for disciplinary action set out in the law
862 under which that person is licensed and who provides health care
863 services in a facility licensed under chapter 395, or a health
864 maintenance organization certificated under part I of chapter
865 641, in which the pharmacist also provides services. However, a
866 person who the licensee knows is unable to practice medicine or
867 osteopathic medicine with reasonable skill and safety to
868 patients by reason of illness or use of alcohol, drugs,



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869 narcotics, chemicals, or any other type of material, or as a
870 result of a mental or physical condition, may be reported to a
871 consultant operating an impaired practitioner program as
872 described in s. 456.076 rather than to the department.

873 Section 16. Paragraph (f) of subsection (1) of section
874 466.028, Florida Statutes, is amended to read:

875 466.028 Grounds for disciplinary action; action by the
876 board.—

877 (1) The following acts constitute grounds for denial of a
878 license or disciplinary action, as specified in s. 456.072(2):

879 (f) Failing to report to the department any person who the
880 licensee knows, or has reason to believe, is clearly in
881 violation of this chapter or of the rules of the department or
882 the board. However, a person who the licensee knows, or has
883 reason to believe, is clearly unable to practice her or his
884 profession with reasonable skill and safety to patients by
885 reason of illness or use of alcohol, drugs, narcotics,
886 chemicals, or any other type of material, or as a result of a
887 mental or physical condition, may be reported to a consultant
888 operating an impaired practitioner program as described in s.
889 456.076 rather than to the department.

890 Section 17. Paragraph (h) of subsection (1) of section
891 467.203, Florida Statutes, is amended to read:

892 467.203 Disciplinary actions; penalties.—

893 (1) The following acts constitute grounds for denial of a
894 license or disciplinary action, as specified in s. 456.072(2):

895 (h) Failing to report to the department any person who the
896 licensee knows is in violation of this chapter or of the rules
897 of the department. However, a person who the licensee knows is



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898 unable to practice midwifery with reasonable skill and safety to
899 patients by reason of illness or use of alcohol, drugs,
900 narcotics, chemicals, or any other type of material, or as a
901 result of a mental or physical condition, may be reported to a
902 consultant operating an impaired practitioner program as
903 described in s. 456.076 rather than to the department.

904 Section 18. Paragraph (f) of subsection (1) of section
905 468.217, Florida Statutes, is amended to read:

906 468.217 Denial of or refusal to renew license; suspension
907 and revocation of license and other disciplinary measures.—

908 (1) The following acts constitute grounds for denial of a
909 license or disciplinary action, as specified in s. 456.072(2):

910 (f) Failing to report to the department any person who the
911 licensee knows is in violation of this part or of the rules of
912 the department or of the board. However, a person who the
913 licensee knows is unable to practice occupational therapy with
914 reasonable skill and safety to patients by reason of illness or
915 use of alcohol, drugs, narcotics, chemicals, or any other type
916 of material, or as a result of a mental or physical condition,
917 may be reported to a consultant operating an impaired
918 practitioner program as described in s. 456.076 rather than to
919 the department.

920 Section 19. Paragraph (n) of subsection (1) of section
921 468.3101, Florida Statutes, is amended to read:

922 468.3101 Disciplinary grounds and actions.—

923 (1) The department may make or require to be made any
924 investigations, inspections, evaluations, and tests, and require
925 the submission of any documents and statements, which it
926 considers necessary to determine whether a violation of this



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927 part has occurred. The following acts shall be grounds for
928 disciplinary action as set forth in this section:

929 (n) Being terminated from an impaired practitioner program
930 operated by a consultant as described in s. 456.076 for failure
931 to comply, without good cause, with the terms of monitoring or a
932 participant contract entered into by the licensee, or for not
933 successfully completing a drug treatment or alcohol treatment
934 program Failing to comply with the recommendations of the
935 department's impaired practitioner program for treatment,
936 evaluation, or monitoring. A letter from the director of the
937 impaired practitioner program that the certificateholder is not
938 in compliance shall be considered conclusive proof under this
939 part.

940 Section 20. Section 474.221, Florida Statutes, is amended
941 to read:

942 474.221 Impaired practitioner provisions; applicability.-
943 Notwithstanding the transfer of the Division of Medical Quality
944 Assurance to the Department of Health or any other provision of
945 law to the contrary, veterinarians licensed under this chapter
946 shall be governed by the ~~treatment of~~ impaired practitioner
947 program provisions of s. 456.076 as if they were under the
948 jurisdiction of the Division of Medical Quality Assurance,
949 except that for veterinarians the Department of Business and
950 Professional Regulation shall, at its option, exercise any of
951 the powers granted to the Department of Health by that section,
952 and "board" shall mean board as defined in this chapter.

953 Section 21. Paragraph (o) of subsection (1) of section
954 483.825, Florida Statutes, is amended to read:

955 483.825 Grounds for disciplinary action.-



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956 (1) The following acts constitute grounds for denial of a
957 license or disciplinary action, as specified in s. 456.072(2):

958 (o) Failing to report to the department a person or other
959 licensee who the licensee knows is in violation of this chapter
960 or the rules of the department or board adopted hereunder.
961 However, a person or other licensee who the licensee knows is
962 unable to perform or report on clinical laboratory examinations
963 with reasonable skill and safety to patients by reason of
964 illness or use of alcohol, drugs, narcotics, chemicals, or any
965 other type of material, or as a result of a mental or physical
966 condition, may be reported to a consultant operating an impaired
967 practitioner program as described in s. 456.076 rather than to
968 the department.

969 Section 22. Section 456.0495, Florida Statutes, is created
970 to read:

971 456.0495 Reporting adverse incidents occurring in out-of-
972 hospital births.-

973 (1) A midwife licensed under chapter 467 or health care
974 provider, as applicable, shall report any adverse incident, as
975 defined by department rule, occurring as a result of an
976 attempted or completed, planned birthing center or out-of-
977 hospital birth, along with a medical summary of events, to the
978 department within 15 days after the adverse incident occurs.

979 (2) The department shall adopt rules establishing
980 guidelines for reporting adverse incidents, including, but not
981 limited to:

982 (a) Maternal deaths that occur during delivery or within 42
983 days after delivery.

984 (b) Transfers of maternal patients to a hospital intensive



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985 care unit.

986 (c) Maternal patients who experience hemorrhagic shock or
987 who require a transfusion of more than 4 units of blood or blood
988 products.

989 (d) Fetal or infant deaths, including stillbirths,
990 associated with obstetrical deliveries.

991 (e) Transfers of infants to a neonatal intensive care unit
992 due to a traumatic physical or neurological birth injury,
993 including any degree of a brachial plexus injury.

994 (f) Transfers of infants to a neonatal intensive care unit
995 within the first 72 hours after birth if the infant remains in
996 such unit for more than 72 hours.

997 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 licensees¹ in health care professions² 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 designates 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 sufficient¹⁰ 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 physician²³ 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 AHCA²⁶ 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.

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-compliance³¹ 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 postpartum⁴⁷ 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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1 A bill to be entitled
 2 An act relating to programs for impaired health care
 3 practitioners; amending s. 456.076, F.S.; revising
 4 provisions related to impaired practitioner programs;
 5 providing definitions; deleting a requirement that the
 6 Department of Health designate approved programs by
 7 rule; deleting a requirement authorizing the
 8 department to adopt by rule the manner in which
 9 consultants work with the department in intervention,
 10 in evaluating and treating professionals, in providing
 11 and monitoring continued care of impaired
 12 professionals, and in expelling professionals from the
 13 program; authorizing, instead of requiring, the
 14 department to retain one or more consultants to
 15 operate its impaired practitioner program; requiring
 16 the department to establish the terms and conditions
 17 of the program by contract; providing contract terms;
 18 requiring consultants to establish the terms of
 19 monitoring impaired practitioners; authorizing
 20 consultants to consider the recommendations of certain
 21 persons in establishing the terms of monitoring;
 22 authorizing consultants to modify monitoring terms to
 23 protect the health, safety, and welfare of the public;
 24 requiring consultants to assist the department and
 25 licensure boards on matters relating to impaired
 26 practitioners; making technical changes; requiring the
 27 department to refer practitioners to consultants under
 28 certain circumstances; authorizing consultants to
 29 withhold certain information about self-reporting

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30 participants from the department under certain
 31 circumstances to encourage self-reporting; requiring
 32 consultants to disclose all information relating to
 33 practitioners who are terminated from the program for
 34 material noncompliance; providing that all information
 35 obtained by a consultant retains its confidential or
 36 exempt status; providing that consultants, and certain
 37 agents of consultants, may not be held liable
 38 financially or have a cause of action for damages
 39 brought against them for disclosing certain
 40 information or for any other act or omission relating
 41 to the program; authorizing consultants to contract
 42 with a school or program to provide services to
 43 certain students; amending s. 401.411, F.S.; providing
 44 that an impaired practitioner may be reported to a
 45 consultant rather than the department under certain
 46 circumstances; amending s. 455.227, F.S.; conforming
 47 provisions to changes made by the act; amending s.
 48 456.0635, F.S.; providing that, under certain
 49 circumstances, a board or, if there is no board, the
 50 department, is not required to refuse to admit certain
 51 candidates to an examination, to issue a license,
 52 certificate, or registration to certain applicants, or
 53 to renew a license, certificate, or registration of
 54 certain applicants if they have successfully completed
 55 a pretrial diversion program; providing applicability;
 56 amending ss. 456.072, 457.109, 458.331, 459.015,
 57 460.413, 461.013, 462.14, 463.016, and 464.018, F.S.;
 58 providing that an impaired practitioner may be

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59 reported to a consultant rather than the department
60 under certain circumstances; amending s. 464.204,
61 F.S.; conforming provisions to changes made by the
62 act; amending ss. 465.016, 466.028, 467.203, 468.217,
63 and 468.3101, F.S.; providing that an impaired
64 practitioner may be reported to a consultant rather
65 than the department under certain circumstances;
66 amending s. 474.221, F.S.; conforming provisions to
67 changes made by the act; amending s. 483.825, F.S.;
68 providing that certain persons may be reported to a
69 consultant rather than the department under certain
70 circumstances; providing an effective date.

71
72 Be It Enacted by the Legislature of the State of Florida:

73
74 Section 1. Section 456.076, Florida Statutes, is amended to
75 read:

76 456.076 Impaired practitioner programs ~~Treatment programs~~
77 ~~for impaired practitioners.-~~

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

79 (a) "Consultant" means the individual or entity who
80 operates an approved impaired practitioner program pursuant to a
81 contract with the department and who is retained by the
82 department as provided in subsection (2).

83 (b) "Evaluator" means a state-licensed or nationally
84 certified individual who has been approved by a consultant or
85 the department, who has completed an evaluator training program
86 established by the consultant, and who is therefore authorized
87 to evaluate practitioners as part of an impaired practitioner

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88 program.

89 (c) "Impaired practitioner" means a practitioner with an
90 impairment.

91 (d) "Impaired practitioner program" means a program
92 established by the department by contract with one or more
93 consultants to serve impaired and potentially impaired
94 practitioners for the protection of the health, safety, and
95 welfare of the public.

96 (e) "Impairment" means a potentially impairing health
97 condition that is the result of the misuse or abuse of alcohol,
98 drugs, or both, or a mental or physical condition that could
99 affect a practitioner's ability to practice with skill and
100 safety.

101 (f) "Inability to progress" means a determination by a
102 consultant based on a participant's response to treatment and
103 prognosis that the participant is unable to safely practice
104 despite compliance with treatment requirements and his or her
105 participant contract.

106 (g) "Material noncompliance" means an act or omission by a
107 participant in violation of his or her participant contract as
108 determined by the department or consultant.

109 (h) "Participant" means a practitioner who is participating
110 in the impaired practitioner program by having entered into a
111 participant contract. A practitioner ceases to be a participant
112 when the participant contract is successfully completed or is
113 terminated for any reason.

114 (i) "Participant contract" means a formal written document
115 outlining the requirements established by a consultant for a
116 participant to successfully complete the impaired practitioner

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117 program, including the participant's monitoring plan.

118 (j) "Practitioner" means a person licensed, registered,
 119 certified, or regulated by the department under part III of
 120 chapter 401; chapter 457; chapter 458; chapter 459; chapter 460;
 121 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;
 122 chapter 466; chapter 467; part I, part II, part III, part V,
 123 part X, part XIII, or part XIV of chapter 468; chapter 478;
 124 chapter 480; part III or part IV of chapter 483; chapter 484;
 125 chapter 486; chapter 490; or chapter 491; or an applicant for a
 126 license, registration, or certification under the same laws.

127 (k) "Referral" means a practitioner who has been referred,
 128 either as a self-referral or otherwise, or reported to a
 129 consultant for impaired practitioner program services, but who
 130 is not under a participant contract.

131 (l) "Treatment program" means a department- or consultant-
 132 approved residential, intensive outpatient, partial
 133 hospitalization or other program through which an impaired
 134 practitioner is treated based on the impaired practitioner's
 135 diagnosis and the treatment plan approved by the consultant.

136 (m) "Treatment provider" means a department- or consultant-
 137 approved state-licensed or nationally certified individual who
 138 provides treatment to an impaired practitioner based on the
 139 practitioner's individual diagnosis and a treatment plan
 140 approved by the consultant. ~~For professions that do not have~~
 141 ~~impaired practitioner programs provided for in their practice~~
 142 ~~acts, the department shall, by rule, designate approved impaired~~
 143 ~~practitioner programs under this section. The department may~~
 144 ~~adopt rules setting forth appropriate criteria for approval of~~
 145 ~~treatment providers. The rules may specify the manner in which~~

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146 ~~the consultant, retained as set forth in subsection (2), works~~
 147 ~~with the department in intervention, requirements for evaluating~~
 148 ~~and treating a professional, requirements for continued care of~~
 149 ~~impaired professionals by approved treatment providers,~~
 150 ~~continued monitoring by the consultant of the care provided by~~
 151 ~~approved treatment providers regarding the professionals under~~
 152 ~~their care, and requirements related to the consultant's~~
 153 ~~expulsion of professionals from the program.~~

154 (2)(a) The department ~~may~~ shall retain one or more impaired
 155 practitioner consultants to operate its impaired practitioner
 156 program. Each consultant who are each licensees under the
 157 jurisdiction of the Division of Medical Quality Assurance within
 158 the department and who must be:

159 (a)1- A practitioner ~~or recovered practitioner~~ licensed
 160 under chapter 458, chapter 459, or part I of chapter 464; or

161 (b)2- An entity that employs:

162 1.a- A medical director who ~~is~~ is must be a practitioner ~~or~~
 163 ~~recovered practitioner~~ licensed under chapter 458 or chapter
 164 459; or

165 2.b- An executive director who ~~is~~ is must be a registered
 166 ~~nurse or a recovered registered nurse~~ licensed under part I of
 167 chapter 464.

168 (3) The terms and conditions of the impaired practitioner
 169 program must be established by the department by contract with a
 170 consultant for the protection of the health, safety, and welfare
 171 of the public and must provide, at a minimum, that the
 172 consultant:

173 (a) Accepts referrals;

174 (b) Arranges for the evaluation and treatment of impaired

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175 practitioners by a treatment provider, when the consultant deems
 176 the evaluation and treatment necessary;

177 (c) Monitors the recovery progress and status of impaired
 178 practitioners to ensure that such practitioners are able to
 179 practice their profession with skill and safety. Such monitoring
 180 must continue until the consultant or department concludes that
 181 monitoring by the consultant is no longer required for the
 182 protection of the public or until the practitioner's
 183 participation in the program is terminated for material
 184 noncompliance or inability to progress; and

185 (d) Does not directly evaluate, treat, or otherwise provide
 186 patient care to a practitioner in the operation of the impaired
 187 practitioner program.

188 (4) The department shall specify, in its contract with each
 189 consultant, the types of licenses, registrations, or
 190 certifications of the practitioners to be served by that
 191 consultant.

192 (5) A consultant shall enter into a participant contract
 193 with an impaired practitioner and shall establish the terms of
 194 monitoring and shall include the terms in a participant
 195 contract. In establishing the terms of monitoring, the
 196 consultant may consider the recommendations of one or more
 197 approved evaluators, treatment programs, or treatment providers.
 198 A consultant may modify the terms of monitoring if the
 199 consultant concludes, through the course of monitoring, that
 200 extended, additional, or amended terms of monitoring are
 201 required for the protection of the health, safety, and welfare
 202 of the public.

203 (6)(b) A An entity retained as an impaired practitioner

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204 ~~consultant under this section which employs a medical director~~
 205 ~~or an executive director~~ is not required to be licensed as a
 206 substance abuse provider or mental health treatment provider
 207 under chapter 394, chapter 395, or chapter 397 for purposes of
 208 providing services under this program.

209 ~~(7)(e)1. Each~~ The consultant shall assist the department
 210 and licensure boards on matters of impaired practitioners,
 211 including the determination of probable cause panel and the
 212 department in carrying out the responsibilities of this section.
 213 This includes working with department investigators to determine
 214 whether a practitioner is, in fact, impaired, as specified in
 215 the consultant's contract with the department.

216 2. The consultant may contract with a school or program to
 217 provide services to a student enrolled for the purpose of
 218 preparing for licensure as a health care practitioner as defined
 219 in this chapter or as a veterinarian under chapter 474 if the
 220 student is allegedly impaired as a result of the misuse or abuse
 221 of alcohol or drugs, or both, or due to a mental or physical
 222 condition. The department is not responsible for paying for the
 223 care provided by approved treatment providers or a consultant.

224 ~~(d) A medical school accredited by the Liaison Committee on~~
 225 ~~Medical Education or the Commission on Osteopathic College~~
 226 ~~Accreditation, or another school providing for the education of~~
 227 ~~students enrolled in preparation for licensure as a health care~~
 228 ~~practitioner as defined in this chapter or a veterinarian under~~
 229 ~~chapter 474 which is governed by accreditation standards~~
 230 ~~requiring notice and the provision of due process procedures to~~
 231 ~~students, is not liable in any civil action for referring a~~
 232 ~~student to the consultant retained by the department or for~~

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233 ~~disciplinary actions that adversely affect the status of a~~
 234 ~~student when the disciplinary actions are instituted in~~
 235 ~~reasonable reliance on the recommendations, reports, or~~
 236 ~~conclusions provided by such consultant, if the school, in~~
 237 ~~referring the student or taking disciplinary action, adheres to~~
 238 ~~the due process procedures adopted by the applicable~~
 239 ~~accreditation entities and if the school committed no~~
 240 ~~intentional fraud in carrying out the provisions of this~~
 241 ~~section.~~

242 (8)(3) Before issuing an approval of, or intent to deny, an
 243 application for licensure, each board and profession within the
 244 Division of Medical Quality Assurance may delegate to its chair
 245 or other designee its authority to determine, ~~before certifying~~
 246 ~~or declining to certify an application for licensure to the~~
 247 ~~department,~~ that an applicant for licensure under its
 248 jurisdiction may have an impairment ~~be impaired as a result of~~
 249 ~~the misuse or abuse of alcohol or drugs, or both, or due to a~~
 250 ~~mental or physical condition that could affect the applicant's~~
 251 ~~ability to practice with skill and safety.~~ Upon such
 252 determination, the chair or other designee may refer the
 253 applicant to the consultant to facilitate ~~for~~ an evaluation
 254 before the board issues an approval of, certifies or intent to
 255 deny, declines to certify his or her application to the
 256 ~~department.~~ If the applicant agrees to be evaluated ~~by the~~
 257 ~~consultant,~~ the department's deadline for approving or denying
 258 the application pursuant to s. 120.60(1) is tolled until the
 259 evaluation is completed and the result of the evaluation and
 260 recommendation ~~by the consultant~~ is communicated to the board by
 261 the consultant. If the applicant declines to be evaluated ~~by the~~

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262 ~~consultant,~~ the board shall issue an approval of, or intent to
 263 deny, certify or decline to certify the applicant's application
 264 to the department notwithstanding the lack of an evaluation and
 265 recommendation by the consultant.

266 (9) (a) (4) (a) When ~~Whenever~~ the department receives a
 267 ~~written or oral~~ legally sufficient complaint alleging that a
 268 practitioner has an impairment ~~licensee under the jurisdiction~~
 269 ~~of the Division of Medical Quality Assurance within the~~
 270 ~~department is impaired as a result of the misuse or abuse of~~
 271 ~~alcohol or drugs, or both, or due to a mental or physical~~
 272 ~~condition which could affect the licensee's ability to practice~~
 273 ~~with skill and safety,~~ and no complaint exists against the
 274 practitioner licensee other than impairment exists, the
 275 department shall refer the practitioner to the consultant, along
 276 with all information in the department's possession relating to
 277 the impairment. ~~The impairment does~~ reporting of such
 278 ~~information shall not constitute grounds for discipline pursuant~~
 279 ~~to s. 456.072 or the corresponding grounds for discipline within~~
 280 ~~the applicable practice act if the probable cause panel of the~~
 281 ~~appropriate board, or the department when there is no board,~~
 282 ~~finds:~~

- 283 1. The practitioner licensee has acknowledged the
 284 impairment; ~~problem.~~
- 285 2. The practitioner becomes a participant licensee has
 286 voluntarily enrolled in an impaired practitioner program and
 287 successfully completes a participant contract under terms
 288 established by the consultant; ~~appropriate, approved treatment~~
 289 ~~program.~~
- 290 3. The practitioner licensee has voluntarily withdrawn from

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291 practice or has limited the scope of his or her practice if as
 292 required by the consultant; ~~in each case, until such time as~~
 293 ~~the panel, or the department when there is no board, is~~
 294 ~~satisfied the licensee has successfully completed an approved~~
 295 ~~treatment program.~~

296 4. The practitioner licensee has provided to the
 297 consultant, or has authorized the consultant to obtain, all
 298 records and information relating to the impairment from any
 299 source and all other medical records of the practitioner
 300 requested by the consultant; and executed releases for medical
 301 records, authorizing the release of all records of evaluations,
 302 diagnoses, and treatment of the licensee, including records of
 303 treatment for emotional or mental conditions, to the consultant.
 304 The consultant shall make no copies or reports of records that
 305 do not regard the issue of the licensee's impairment and his or
 306 her participation in a treatment program.

307 5. The practitioner has authorized the consultant, in the
 308 event of the practitioner's termination from the impaired
 309 practitioner program, to report the termination to the
 310 department and provide the department with copies of all
 311 information in the consultant's possession relating to the
 312 practitioner.

313 (b) To encourage practitioners who are or may be impaired
 314 to voluntarily self-refer to a consultant, the consultant may
 315 not provide information to the department relating to a self-
 316 referring participant if the consultant has no knowledge of a
 317 pending department investigation, complaint, or disciplinary
 318 action against the participant and if the participant is in
 319 compliance and making progress with the terms of the impaired

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320 practitioner program and contract, unless authorized by the
 321 participant ~~If, however, the department has not received a~~
 322 ~~legally sufficient complaint and the licensee agrees to withdraw~~
 323 ~~from practice until such time as the consultant determines the~~
 324 ~~licensee has satisfactorily completed an approved treatment~~
 325 ~~program or evaluation, the probable cause panel, or the~~
 326 ~~department when there is no board, shall not become involved in~~
 327 ~~the licensee's case.~~

328 ~~(c) Inquiries related to impairment treatment programs~~
 329 ~~designed to provide information to the licensee and others and~~
 330 ~~which do not indicate that the licensee presents a danger to the~~
 331 ~~public shall not constitute a complaint within the meaning of s.~~
 332 ~~456.073 and shall be exempt from the provisions of this~~
 333 ~~subsection.~~

334 (d) Whenever the department receives a legally sufficient
 335 complaint alleging that a licensee is impaired as described in
 336 paragraph (a) and no complaint against the licensee other than
 337 impairment exists, the department shall forward all information
 338 in its possession regarding the impaired licensee to the
 339 consultant. For the purposes of this section, a suspension from
 340 hospital staff privileges due to the impairment does not
 341 constitute a complaint.

342 ~~(e) The probable cause panel, or the department when there~~
 343 ~~is no board, shall work directly with the consultant, and all~~
 344 ~~information concerning a practitioner obtained from the~~
 345 ~~consultant by the panel, or the department when there is no~~
 346 ~~board, shall remain confidential and exempt from the provisions~~
 347 ~~of s. 119.07(1), subject to the provisions of subsections (6)~~
 348 ~~and (7).~~

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349 ~~(f) A finding of probable cause shall not be made as long~~
 350 ~~as the panel, or the department when there is no board, is~~
 351 ~~satisfied, based upon information it receives from the~~
 352 ~~consultant and the department, that the licensee is progressing~~
 353 ~~satisfactorily in an approved impaired practitioner program and~~
 354 ~~no other complaint against the licensee exists.~~

355 ~~(10)(5)~~ In any disciplinary action for a violation other
 356 than impairment in which a practitioner licensee establishes the
 357 violation for which the practitioner licensee is being
 358 prosecuted was due to or connected with impairment and further
 359 establishes the practitioner licensee is satisfactorily
 360 progressing through or has successfully completed an impaired
 361 practitioner program approved treatment program pursuant to this
 362 section, such information may be considered by the board, or the
 363 department when there is no board, as a mitigating factor in
 364 determining the appropriate penalty. This subsection does not
 365 limit mitigating factors the board may consider.

366 ~~(11)(a)(6)(a)~~ Upon request by the consultant, and with the
 367 authorization of the practitioner when required by law, an
 368 approved evaluator, treatment program, or treatment provider
 369 shall, ~~upon request,~~ disclose to the consultant all information
 370 in its possession regarding a referral or participant ~~the issue~~
 371 ~~of a licensee's impairment and participation in the treatment~~
 372 ~~program. All information obtained by the consultant and~~
 373 ~~department pursuant to this section is confidential and exempt~~
 374 ~~from the provisions of s. 119.07(1), subject to the provisions~~
 375 ~~of this subsection and subsection (7).~~ Failure to provide such
 376 information to the consultant is grounds for withdrawal of
 377 approval of such evaluator, treatment program, or treatment

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378 provider.

379 (b) When a referral or participant is terminated from the
 380 impaired practitioner program for material noncompliance with a
 381 participant contract, inability to progress, or any other reason
 382 than completion, the consultant shall disclose ~~if in the opinion~~
 383 ~~of the consultant, after consultation with the treatment~~
 384 ~~provider, an impaired licensee has not progressed satisfactorily~~
 385 ~~in a treatment program, all information regarding the issue of a~~
 386 ~~licensee's impairment and participation in a treatment program~~
 387 ~~in the consultant's possession relating to the practitioner~~
 388 ~~shall be disclosed to the department. Such disclosure shall~~
 389 constitute a complaint pursuant to the general provisions of s.
 390 456.073. In addition, whenever the consultant concludes that
 391 impairment affects a practitioner's licensee's practice and
 392 constitutes an immediate, serious danger to the public health,
 393 safety, or welfare, the consultant shall immediately communicate
 394 such that conclusion shall be communicated to the department and
 395 disclose all information in the consultant's possession relating
 396 to the practitioner to the department State Surgeon General.

397 (12) All information obtained by the consultant pursuant to
 398 this section is confidential and exempt from s. 119.07(1) and s.
 399 24(a), Art. I of the State Constitution.

400 ~~(13)(7)~~ A consultant, or a director, officer, employee, or
 401 agent of a consultant, may not be held liable financially or may
 402 not have a cause of action for damages brought against him or
 403 her for making a disclosure pursuant to this section, for any
 404 other action or omission relating to the impaired practitioner
 405 program, or for the consequences of such disclosure or action or
 406 omission, including, without limitation, action by the

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407 ~~department against a license, registration, or certification~~
 408 ~~licensee, or approved treatment provider who makes a disclosure~~
 409 ~~pursuant to this section is not subject to civil liability for~~
 410 ~~such disclosure or its consequences.~~

411 (14) The provisions of s. 766.101 apply to any consultant
 412 and the consultant's directors, officers, employees, or agents
 413 in regards to providing information relating to a participant to
 414 a medical review committee if the participant authorizes such
 415 disclosure officer, employee, or agent of the department or the
 416 board and to any officer, employee, or agent of any entity with
 417 which the department has contracted pursuant to this section.

418 (15) (a) (8) (a) A consultant retained pursuant to this
 419 section and subsection (2), a consultant's directors, officers,
 420 and employees, or agents and those acting at the direction of
 421 the consultant for the limited purpose of an emergency
 422 intervention on behalf of a licensee or student as described in
 423 subsection (2) when the consultant is unable to perform such
 424 intervention shall be considered agents of the department for
 425 purposes of s. 768.28 while acting within the scope of the
 426 consultant's duties under the contract with the department ~~if~~
 427 the contract complies with the requirements of this section. The
 428 contract must require that:

- 429 ~~1. The consultant indemnify the state for any liabilities~~
 430 ~~incurred up to the limits set out in chapter 768.~~
- 431 ~~2. The consultant establish a quality assurance program to~~
 432 ~~monitor services delivered under the contract.~~
- 433 ~~3. The consultant's quality assurance program, treatment,~~
 434 ~~and monitoring records be evaluated quarterly.~~
- 435 ~~4. The consultant's quality assurance program be subject to~~

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436 ~~review and approval by the department.~~

437 ~~5. The consultant operate under policies and procedures~~
 438 ~~approved by the department.~~

439 ~~6. The consultant provide to the department for approval a~~
 440 ~~policy and procedure manual that comports with all statutes,~~
 441 ~~rules, and contract provisions approved by the department.~~

442 ~~7. The department be entitled to review the records~~
 443 ~~relating to the consultant's performance under the contract for~~
 444 ~~the purpose of management audits, financial audits, or program~~
 445 ~~evaluation.~~

446 ~~8. All performance measures and standards be subject to~~
 447 ~~verification and approval by the department.~~

448 ~~9. The department be entitled to terminate the contract~~
 449 ~~with the consultant for noncompliance with the contract.~~

450 (b) In accordance with s. 284.385, the Department of
 451 Financial Services shall defend any claim, suit, action, or
 452 proceeding, including a claim, suit, action, or proceeding for
 453 injunctive, affirmative, or declaratory relief, against the
 454 consultant, or the consultant's directors, officers, ~~or~~
 455 employees, and agents brought as the result of any action or
 456 omission relating to the impaired practitioner program ~~or those~~
 457 acting at the direction of the consultant for the limited
 458 purpose of an emergency intervention on behalf of a licensee or
 459 student as described in subsection (2) when the consultant is
 460 unable to perform such intervention, which claim, suit, action,
 461 or proceeding is brought as a result of an act or omission by
 462 any of the consultant's officers and employees and those acting
 463 under the direction of the consultant for the limited purpose of
 464 an emergency intervention on behalf of the licensee or student

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465 when the consultant is unable to perform such intervention, if
 466 the act or omission arises out of and is in the scope of the
 467 consultant's duties under its contract with the department.

468 (16)(e) If a the consultant retained by the department
 469 pursuant to this section subsection (2) is also retained by
 470 another any other state agency to operate an impaired
 471 practitioner program for that agency, this section also applies
 472 to the consultant's operation of an impaired practitioner
 473 program for that agency, and if the contract between such state
 474 agency and the consultant complies with the requirements of this
 475 section, the consultant, the consultant's officers and
 476 employees, and those acting under the direction of the
 477 consultant for the limited purpose of an emergency intervention
 478 on behalf of a licensee or student as described in subsection
 479 (2) when the consultant is unable to perform such intervention
 480 shall be considered agents of the state for the purposes of this
 481 section while acting within the scope of and pursuant to
 482 guidelines established in the contract between such state agency
 483 and the consultant.

484 (17)(9) A An impaired practitioner consultant is the
 485 official custodian of records relating to the referral of an
 486 impaired licensee or applicant to that consultant and any other
 487 interaction between the licensee or applicant and the
 488 consultant. The consultant may disclose to a referral or
 489 participant, or to the legal representative of the referral or
 490 participant, the documents, records, or other information from
 491 the consultant's file, including information received by the
 492 consultant from other sources, and information on the terms
 493 required for the referral's or participant's monitoring

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494 contract, the referral's or participant's progress or inability
 495 to progress, the referral's or participant's discharge or
 496 termination, information supporting the conclusion of material
 497 noncompliance, or any other information required by law the
 498 impaired licensee or applicant or his or her designee any
 499 information that is disclosed to or obtained by the consultant
 500 or that is confidential under paragraph (6)(a), but only to the
 501 extent that it is necessary to do so to carry out the
 502 consultant's duties under this section. The department, and any
 503 other entity that enters into a contract with the consultant to
 504 receive the services of the consultant, has direct
 505 administrative control over the consultant to the extent
 506 necessary to receive disclosures from the consultant as allowed
 507 by federal law. If a consultant discloses information to the
 508 department in accordance with this part, a referral or
 509 participant, or his or her legal representative, may obtain a
 510 complete copy of the consultant's file from the consultant or
 511 disciplinary proceeding is pending, an impaired licensee may
 512 obtain such information from the department under s. 456.073.

513 (18) (a) The consultant may contract with a school or
 514 program to provide impaired practitioner program services to a
 515 student enrolled for the purpose of preparing for licensure as a
 516 health care practitioner as defined in this chapter or as a
 517 veterinarian under chapter 474 if the student has or is
 518 suspected of having an impairment. The department is not
 519 responsible for paying for the care provided by approved
 520 treatment providers or approved treatment programs or for the
 521 services provided by a consultant to a student.

522 (b) A medical school accredited by the Liaison Committee on

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523 Medical Education or the Commission on Osteopathic College
 524 Accreditation, or another school providing for the education of
 525 students enrolled in preparation for licensure as a health care
 526 practitioner as defined in this chapter, or a veterinarian under
 527 chapter 474, which is governed by accreditation standards
 528 requiring notice and the provision of due process procedures to
 529 students, is not liable in any civil action for referring a
 530 student to the consultant retained by the department or for
 531 disciplinary actions that adversely affect the status of a
 532 student when the disciplinary actions are instituted in
 533 reasonable reliance on the recommendations, reports, or
 534 conclusions provided by such consultant, if the school, in
 535 referring the student or taking disciplinary action, adheres to
 536 the due process procedures adopted by the applicable
 537 accreditation entities and if the school committed no
 538 intentional fraud in carrying out the provisions of this
 539 section.

540 Section 2. Paragraph (1) of subsection (1) of section
 541 401.411, Florida Statutes, is amended to read:

542 401.411 Disciplinary action; penalties.-

543 (1) The department may deny, suspend, or revoke a license,
 544 certificate, or permit or may reprimand or fine any licensee,
 545 certificateholder, or other person operating under this part for
 546 any of the following grounds:

547 (1) The failure to report to the department any person
 548 known to be in violation of this part. However, a professional
 549 known to be operating under this part without reasonable skill
 550 and without regard for the safety of the public by reason of
 551 illness, drunkenness, or the use of drugs, narcotics, chemicals,

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552 or any other type of material, or as a result of a mental or
 553 physical condition, may be reported to a consultant operating an
 554 impaired practitioner program as described in s. 456.076 rather
 555 than to the department.

556 Section 3. Paragraph (u) of subsection (1) of section
 557 455.227, Florida Statutes, is amended to read:

558 455.227 Grounds for discipline; penalties; enforcement.-

559 (1) The following acts shall constitute grounds for which
 560 the disciplinary actions specified in subsection (2) may be
 561 taken:

562 (u) Termination from an impaired practitioner program a
 563 treatment program for impaired practitioners as described in s.
 564 456.076 for failure to comply, without good cause, with the
 565 terms of the monitoring or participant ~~treatment~~ contract
 566 entered into by the licensee or failing to successfully complete
 567 a drug or alcohol treatment program.

568 Section 4. Subsections (2) and (3) of section 456.0635,
 569 Florida Statutes, are amended to read:

570 456.0635 Health care fraud; disqualification for license,
 571 certificate, or registration.-

572 (2) Each board within the jurisdiction of the department,
 573 or the department if there is no board, shall refuse to admit a
 574 candidate to any examination and refuse to issue a license,
 575 certificate, or registration to any applicant if the candidate
 576 or applicant or any principal, officer, agent, managing
 577 employee, or affiliated person of the candidate or applicant:

578 (a) Has been convicted of, or entered a plea of guilty or
 579 nolo contendere to, regardless of adjudication, a felony under
 580 chapter 409, chapter 817, or chapter 893, or a similar felony

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581 offense committed in another state or jurisdiction, unless the
 582 candidate or applicant has successfully completed a pretrial
 583 diversion or drug court program for that felony and provides
 584 proof that the plea has been withdrawn or the charges have been
 585 dismissed. Any such conviction or plea shall exclude the
 586 applicant or candidate from licensure, examination,
 587 certification, or registration unless the sentence and any
 588 subsequent period of probation for such conviction or plea
 589 ended:

590 1. For felonies of the first or second degree, more than 15
 591 years before the date of application.

592 2. For felonies of the third degree, more than 10 years
 593 before the date of application, except for felonies of the third
 594 degree under s. 893.13(6)(a).

595 3. For felonies of the third degree under s. 893.13(6)(a),
 596 more than 5 years before the date of application;

597 (b) Has been convicted of, or entered a plea of guilty or
 598 nolo contendere to, regardless of adjudication, a felony under
 599 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the
 600 sentence and any subsequent period of probation for such
 601 conviction or plea ended more than 15 years before the date of
 602 the application;

603 (c) Has been terminated for cause from the Florida Medicaid
 604 program pursuant to s. 409.913, unless the candidate or
 605 applicant has been in good standing with the Florida Medicaid
 606 program for the most recent 5 years;

607 (d) Has been terminated for cause, pursuant to the appeals
 608 procedures established by the state, from any other state
 609 Medicaid program, unless the candidate or applicant has been in

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610 good standing with a state Medicaid program for the most recent
 611 5 years and the termination occurred at least 20 years before
 612 the date of the application; or

613 (e) Is currently listed on the United States Department of
 614 Health and Human Services Office of Inspector General's List of
 615 Excluded Individuals and Entities.

616

617 This subsection does not apply to an applicant for initial
 618 licensure, certification, or registration who was enrolled on or
 619 before July 1, 2009, in an educational or training program that
 620 was recognized by a board or, if there was no board, recognized
 621 by the department, and was arrested or charged with a felony
 622 specified in paragraph (a) or paragraph (b) before July 1, 2009.

623 (3) The department shall refuse to renew a license,
 624 certificate, or registration of any applicant if the applicant
 625 or any principal, officer, agent, managing employee, or
 626 affiliated person of the applicant:

627 (a) Has been convicted of, or entered a plea of guilty or
 628 nolo contendere to, regardless of adjudication, a felony under
 629 chapter 409, chapter 817, or chapter 893, or a similar felony
 630 offense committed in another state or jurisdiction, unless the
 631 applicant is currently enrolled in a pretrial diversion or drug
 632 court program that allows the withdrawal of the plea for that
 633 felony upon successful completion of that program. Any such
 634 conviction or plea excludes the applicant from licensure renewal
 635 unless the sentence and any subsequent period of probation for
 636 such conviction or plea ended:

637 1. For felonies of the first or second degree, more than 15
 638 years before the date of application.

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639 2. For felonies of the third degree, more than 10 years
640 before the date of application, except for felonies of the third
641 degree under s. 893.13(6) (a).

642 3. For felonies of the third degree under s. 893.13(6) (a),
643 more than 5 years before the date of application.

644 (b) Has been convicted of, or entered a plea of guilty or
645 nolo contendere to, regardless of adjudication, a felony under
646 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1,
647 2009, unless the sentence and any subsequent period of probation
648 for such conviction or plea ended more than 15 years before the
649 date of the application. However, if the applicant was arrested
650 or charged with such felony before July 1, 2009, he or she is
651 not excluded from licensure renewal under this paragraph.

652 (c) Has been terminated for cause from the Florida Medicaid
653 program pursuant to s. 409.913, unless the applicant has been in
654 good standing with the Florida Medicaid program for the most
655 recent 5 years.

656 (d) Has been terminated for cause, pursuant to the appeals
657 procedures established by the state, from any other state
658 Medicaid program, unless the applicant has been in good standing
659 with a state Medicaid program for the most recent 5 years and
660 the termination occurred at least 20 years before the date of
661 the application.

662 (e) Is currently listed on the United States Department of
663 Health and Human Services Office of Inspector General's List of
664 Excluded Individuals and Entities.

665 Section 5. Paragraphs (i) and (hh) of subsection (1) of
666 section 456.072, Florida Statutes, are amended to read:

667 456.072 Grounds for discipline; penalties; enforcement.-

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668 (1) The following acts shall constitute grounds for which
669 the disciplinary actions specified in subsection (2) may be
670 taken:

671 (i) Except as provided in s. 465.016, failing to report to
672 the department any person who the licensee knows is in violation
673 of this chapter, the chapter regulating the alleged violator, or
674 the rules of the department or the board. However, a person who
675 the licensee knows is unable to practice with reasonable skill
676 and safety to patients by reason of illness or use of alcohol,
677 drugs, narcotics, chemicals, or any other type of material, or
678 as a result of a mental or physical condition, may be reported
679 to a consultant operating an impaired practitioner program as
680 described in s. 456.076 rather than to the department.

681 (hh) Being terminated from an impaired practitioner program
682 that a treatment program for impaired practitioners, which is
683 overseen by a ~~an impaired practitioner~~ consultant as described
684 in s. 456.076, for failure to comply, without good cause, with
685 the terms of the monitoring or participant treatment contract
686 entered into by the licensee, or for not successfully completing
687 any drug treatment or alcohol treatment program.

688 Section 6. Paragraph (f) of subsection (1) of section
689 457.109, Florida Statutes, is amended to read:

690 457.109 Disciplinary actions; grounds; action by the
691 board.-

692 (1) The following acts constitute grounds for denial of a
693 license or disciplinary action, as specified in s. 456.072(2):

694 (f) Failing to report to the department any person who the
695 licensee knows is in violation of this chapter or of the rules
696 of the department. However, a person who the licensee knows is

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697 unable to practice acupuncture with reasonable skill and safety
 698 to patients by reason of illness or use of alcohol, drugs,
 699 narcotics, chemicals, or any other type of material, or as a
 700 result of a mental or physical condition, may be reported to a
 701 consultant operating an impaired practitioner program as
 702 described in s. 456.076 rather than to the department.

703 Section 7. Paragraph (e) of subsection (1) of section
 704 458.331, Florida Statutes, is amended to read:

705 458.331 Grounds for disciplinary action; action by the
 706 board and department.—

707 (1) The following acts constitute grounds for denial of a
 708 license or disciplinary action, as specified in s. 456.072(2):

709 (e) Failing to report to the department any person who the
 710 licensee knows is in violation of this chapter or of the rules
 711 of the department or the board. However, a person who the
 712 licensee knows is unable to practice medicine with reasonable
 713 skill and safety to patients by reason of illness or use of
 714 alcohol, drugs, narcotics, chemicals, or any other type of
 715 material, or as a result of a mental or physical condition, may
 716 be reported to a consultant operating an impaired practitioner
 717 program as described in s. 456.076 rather than to the department
 718 ~~A treatment provider approved pursuant to s. 456.076 shall~~
 719 ~~provide the department or consultant with information in~~
 720 ~~accordance with the requirements of s. 456.076(4), (5), (6),~~
 721 ~~(7), and (9).~~

722 Section 8. Paragraph (e) of subsection (1) of section
 723 459.015, Florida Statutes, is amended to read:

724 459.015 Grounds for disciplinary action; action by the
 725 board and department.—

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726 (1) The following acts constitute grounds for denial of a
 727 license or disciplinary action, as specified in s. 456.072(2):

728 (e) Failing to report to the department or the department's
 729 impaired professional consultant any person who the licensee or
 730 certificateholder knows is in violation of this chapter or of
 731 the rules of the department or the board. However, a person who
 732 the licensee knows is unable to practice osteopathic medicine
 733 with reasonable skill and safety to patients by reason of
 734 illness or use of alcohol, drugs, narcotics, chemicals, or any
 735 other type of material, or as a result of a mental or physical
 736 condition, may be reported to a consultant operating an impaired
 737 practitioner program as described in s. 456.076 rather than to
 738 the department ~~A treatment provider, approved pursuant to s.~~
 739 ~~456.076, shall provide the department or consultant with~~
 740 ~~information in accordance with the requirements of s.~~
 741 ~~456.076(4), (5), (6), (7), and (9).~~

742 Section 9. Paragraph (g) of subsection (1) of section
 743 460.413, Florida Statutes, is amended to read:

744 460.413 Grounds for disciplinary action; action by board or
 745 department.—

746 (1) The following acts constitute grounds for denial of a
 747 license or disciplinary action, as specified in s. 456.072(2):

748 (g) Failing to report to the department any person who the
 749 licensee knows is in violation of this chapter or of the rules
 750 of the department or the board. However, a person who the
 751 licensee knows is unable to practice chiropractic medicine with
 752 reasonable skill and safety to patients by reason of illness or
 753 use of alcohol, drugs, narcotics, chemicals, or any other type
 754 of material, or as a result of a mental or physical condition,

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755 may be reported to a consultant operating an impaired
 756 practitioner program as described in s. 456.076 rather than to
 757 the department.

758 Section 10. Paragraph (f) of subsection (1) of section
 759 461.013, Florida Statutes, is amended to read:

760 461.013 Grounds for disciplinary action; action by the
 761 board; investigations by department.-

762 (1) The following acts constitute grounds for denial of a
 763 license or disciplinary action, as specified in s. 456.072(2):

764 (f) Failing to report to the department any person who the
 765 licensee knows is in violation of this chapter or of the rules
 766 of the department or the board. However, a person who the
 767 licensee knows is unable to practice podiatric medicine with
 768 reasonable skill and safety to patients by reason of illness or
 769 use of alcohol, drugs, narcotics, chemicals, or any other type
 770 of material, or as a result of a mental or physical condition,
 771 may be reported to a consultant operating an impaired
 772 practitioner program as described in s. 456.076 rather than to
 773 the department.

774 Section 11. Paragraph (f) of subsection (1) of section
 775 462.14, Florida Statutes, is amended to read:

776 462.14 Grounds for disciplinary action; action by the
 777 department.-

778 (1) The following acts constitute grounds for denial of a
 779 license or disciplinary action, as specified in s. 456.072(2):

780 (f) Failing to report to the department any person who the
 781 licensee knows is in violation of this chapter or of the rules
 782 of the department. However, a person who the licensee knows is
 783 unable to practice naturopathic medicine with reasonable skill

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784 and safety to patients by reason of illness or use of alcohol,
 785 drugs, narcotics, chemicals, or any other type of material, or
 786 as a result of a mental or physical condition, may be reported
 787 to a consultant operating an impaired practitioner program as
 788 described in s. 456.076 rather than to the department.

789 Section 12. Paragraph (1) of subsection (1) of section
 790 463.016, Florida Statutes, is amended to read:

791 463.016 Grounds for disciplinary action; action by the
 792 board.-

793 (1) The following acts constitute grounds for denial of a
 794 license or disciplinary action, as specified in s. 456.072(2):

795 (1) Willfully failing to report any person who the licensee
 796 knows is in violation of this chapter or of rules of the
 797 department or the board. However, a person who the licensee
 798 knows is unable to practice optometry with reasonable skill and
 799 safety to patients by reason of illness or use of alcohol,
 800 drugs, narcotics, chemicals, or any other type of material, or
 801 as a result of a mental or physical condition, may be reported
 802 to a consultant operating an impaired practitioner program as
 803 described in s. 456.076 rather than to the department.

804 Section 13. Paragraph (k) of subsection (1) of section
 805 464.018, Florida Statutes, is amended to read:

806 464.018 Disciplinary actions.-

807 (1) The following acts constitute grounds for denial of a
 808 license or disciplinary action, as specified in s. 456.072(2):

809 (k) Failing to report to the department any person who the
 810 licensee knows is in violation of this part or of the rules of
 811 the department or the board. However, a person who the licensee
 812 knows is unable to practice nursing with reasonable skill and

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813 safety to patients by reason of illness or use of alcohol,
 814 drugs, narcotics, chemicals, or any other type of material, or
 815 as a result of a mental or physical condition, may be reported
 816 to a consultant operating an impaired practitioner program as
 817 described in s. 456.076 rather than to the department, however,
 818 if the licensee verifies that such person is actively
 819 participating in a board-approved program for the treatment of a
 820 physical or mental condition, the licensee is required to report
 821 such person only to an impaired professionals consultant.

822 Section 14. Paragraph (c) of subsection (2) of section
 823 464.204, Florida Statutes, is amended to read:

824 464.204 Denial, suspension, or revocation of certification;
 825 disciplinary actions.-

826 (2) When the board finds any person guilty of any of the
 827 grounds set forth in subsection (1), it may enter an order
 828 imposing one or more of the following penalties:

829 (c) Imposition of probation or restriction of
 830 certification, including conditions such as corrective actions
 831 as retraining or compliance with the department's impaired
 832 practitioner program operated by a consultant as described in s.
 833 456.076 an approved treatment program for impaired
 834 practitioners.

835 Section 15. Paragraph (o) of subsection (1) of section
 836 465.016, Florida Statutes, is amended to read:

837 465.016 Disciplinary actions.-

838 (1) The following acts constitute grounds for denial of a
 839 license or disciplinary action, as specified in s. 456.072(2):

840 (o) Failing to report to the department any licensee under
 841 chapter 458 or under chapter 459 who the pharmacist knows has

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842 violated the grounds for disciplinary action set out in the law
 843 under which that person is licensed and who provides health care
 844 services in a facility licensed under chapter 395, or a health
 845 maintenance organization certificated under part I of chapter
 846 641, in which the pharmacist also provides services. However, a
 847 person who the licensee knows is unable to practice medicine or
 848 osteopathic medicine with reasonable skill and safety to
 849 patients by reason of illness or use of alcohol, drugs,
 850 narcotics, chemicals, or any other type of material, or as a
 851 result of a mental or physical condition, may be reported to a
 852 consultant operating an impaired practitioner program as
 853 described in s. 456.076 rather than to the department.

854 Section 16. Paragraph (f) of subsection (1) of section
 855 466.028, Florida Statutes, is amended to read:

856 466.028 Grounds for disciplinary action; action by the
 857 board.-

858 (1) The following acts constitute grounds for denial of a
 859 license or disciplinary action, as specified in s. 456.072(2):

860 (f) Failing to report to the department any person who the
 861 licensee knows, or has reason to believe, is clearly in
 862 violation of this chapter or of the rules of the department or
 863 the board. However, a person who the licensee knows, or has
 864 reason to believe, is clearly unable to practice her or his
 865 profession with reasonable skill and safety to patients by
 866 reason of illness or use of alcohol, drugs, narcotics,
 867 chemicals, or any other type of material, or as a result of a
 868 mental or physical condition, may be reported to a consultant
 869 operating an impaired practitioner program as described in s.
 870 456.076 rather than to the department.

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871 Section 17. Paragraph (h) of subsection (1) of section
 872 467.203, Florida Statutes, is amended to read:
 873 467.203 Disciplinary actions; penalties.—
 874 (1) The following acts constitute grounds for denial of a
 875 license or disciplinary action, as specified in s. 456.072(2):
 876 (h) Failing to report to the department any person who the
 877 licensee knows is in violation of this chapter or of the rules
 878 of the department. However, a person who the licensee knows is
 879 unable to practice midwifery with reasonable skill and safety to
 880 patients by reason of illness or use of alcohol, drugs,
 881 narcotics, chemicals, or any other type of material, or as a
 882 result of a mental or physical condition, may be reported to a
 883 consultant operating an impaired practitioner program as
 884 described in s. 456.076 rather than to the department.
 885 Section 18. Paragraph (f) of subsection (1) of section
 886 468.217, Florida Statutes, is amended to read:
 887 468.217 Denial of or refusal to renew license; suspension
 888 and revocation of license and other disciplinary measures.—
 889 (1) The following acts constitute grounds for denial of a
 890 license or disciplinary action, as specified in s. 456.072(2):
 891 (f) Failing to report to the department any person who the
 892 licensee knows is in violation of this part or of the rules of
 893 the department or of the board. However, a person who the
 894 licensee knows is unable to practice occupational therapy with
 895 reasonable skill and safety to patients by reason of illness or
 896 use of alcohol, drugs, narcotics, chemicals, or any other type
 897 of material, or as a result of a mental or physical condition,
 898 may be reported to a consultant operating an impaired
 899 practitioner program as described in s. 456.076 rather than to

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

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900 the department.
 901 Section 19. Paragraph (n) of subsection (1) of section
 902 468.3101, Florida Statutes, is amended to read:
 903 468.3101 Disciplinary grounds and actions.—
 904 (1) The department may make or require to be made any
 905 investigations, inspections, evaluations, and tests, and require
 906 the submission of any documents and statements, which it
 907 considers necessary to determine whether a violation of this
 908 part has occurred. The following acts shall be grounds for
 909 disciplinary action as set forth in this section:
 910 (n) Being terminated from an impaired practitioner program
 911 operated by a consultant as described in s. 456.076 for failure
 912 to comply, without good cause, with the terms of monitoring or a
 913 participant contract entered into by the licensee, or for not
 914 successfully completing a drug treatment or alcohol treatment
 915 program ~~Failing to comply with the recommendations of the~~
 916 ~~department's impaired practitioner program for treatment,~~
 917 ~~evaluation, or monitoring. A letter from the director of the~~
 918 ~~impaired practitioner program that the certificateholder is not~~
 919 ~~in compliance shall be considered conclusive proof under this~~
 920 ~~part.~~
 921 Section 20. Section 474.221, Florida Statutes, is amended
 922 to read:
 923 474.221 Impaired practitioner provisions; applicability.—
 924 Notwithstanding the transfer of the Division of Medical Quality
 925 Assurance to the Department of Health or any other provision of
 926 law to the contrary, veterinarians licensed under this chapter
 927 shall be governed by the ~~treatment~~ of impaired practitioner
 928 program provisions of s. 456.076 as if they were under the

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929 jurisdiction of the Division of Medical Quality Assurance,
930 except that for veterinarians the Department of Business and
931 Professional Regulation shall, at its option, exercise any of
932 the powers granted to the Department of Health by that section,
933 and "board" shall mean board as defined in this chapter.

934 Section 21. Paragraph (o) of subsection (1) of section
935 483.825, Florida Statutes, is amended to read:

936 483.825 Grounds for disciplinary action.—

937 (1) The following acts constitute grounds for denial of a
938 license or disciplinary action, as specified in s. 456.072(2):

939 (o) Failing to report to the department a person or other
940 licensee who the licensee knows is in violation of this chapter
941 or the rules of the department or board adopted hereunder.
942 However, a person or other licensee who the licensee knows is
943 unable to perform or report on clinical laboratory examinations
944 with reasonable skill and safety to patients by reason of
945 illness or use of alcohol, drugs, narcotics, chemicals, or any
946 other type of material, or as a result of a mental or physical
947 condition, may be reported to a consultant operating an impaired
948 practitioner program as described in s. 456.076 rather than to
949 the department.

950 Section 22. This act shall take effect upon becoming a law.

951

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

Phone 850 224 6496

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)

4/25/17
Meeting Date

876
Bill Number (if applicable)

Topic Impaired Practitioners

Amendment Barcode (if applicable)

Name Alisa LaPort

Job Title Lobbyist

Address PO Box 9~~4~~ 1344

Phone 850-443-1319

Street
City TCH State FL 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 Impaired practitioners

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address PO Box 1344

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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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 876

Bill Number (if applicable)

Topic PRN

Amendment Barcode (if applicable)

Name Amy Young

Job Title Lobbyist

Address 3609 Washington Road

Phone 561-655-7166

Street

West Palm Beach, FL 33415

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing American Congress of OO-69N'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.

Phone 878-7364

Street

Tallahassee

FL

32301

Email winnsr@earthlink.net

City

State

Zip

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 Murdon Way

Phone 850 567-1202

Street

Tallahassee

FL

State

32309

Zip

Email watson.strategies@concentric.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 12 8 / 2017

Meeting Date

Topic _____

Bill Number 878
(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.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	Recommend: Fav/CS
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	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

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;

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, *ADA 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, *ADA 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.

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

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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- 10 (a) "Commerce" means travel, trade, traffic, commerce,
11 transportation, or communication:
- 12 1. Among the several states;
13 2. Between any foreign country or any territory or
14 possession and any state; or
15 3. Between points in the same state but through another
16 state or foreign country.
- 17 (b) "Department" means the Department of Business and
18 Professional Regulation.
- 19 (c) "Facility" means all or any portion of buildings,
20 structures, sites, complexes, equipment, rolling stock or other
21 conveyances, roads, walks, passageways, parking lots, or other
22 real or personal property, including the site where the
23 building, property, structure, or equipment is located.
- 24 (d) "Qualified expert" means:
- 25 1. An engineer licensed pursuant to chapter 471.
26 2. A certified general contractor licensed pursuant to
27 chapter 489.
28 3. A certified building contractor licensed pursuant to
29 chapter 489.
30 4. A building code administrator licensed pursuant to
31 chapter 468.
32 5. A building inspector licensed pursuant to chapter 468.
33 6. A plans examiner licensed pursuant to chapter 468.
34 7. An interior designer licensed pursuant to chapter 481.
35 8. An architect licensed pursuant to chapter 481.
36 9. A landscape architect licensed pursuant to chapter 481.
37 10. Any person who has had a remediation plan related to a
38 claim under Title III of the Americans with Disabilities Act, 42



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39 U.S.C. s. 12182, accepted by a federal court in a settlement
40 agreement or court proceeding, or who has been qualified as an
41 expert in Title III of the Americans with Disabilities Act, 42
42 U.S.C. s. 12182, by a federal court.

43 (e) "Place of public accommodation" means a facility
44 operated by a private entity whose operations affect commerce
45 and is a private entity as described in 42 U.S.C. s. 12181(7).

46 (f) "Private entity" means any nongovernmental entity, such
47 as a corporation, partnership, company or nonprofit
48 organization, any other legal entity, or any natural person.

49 (g) "Registry" means the registry of certifications of
50 competency and remediation plans filed by places of public
51 accommodation and maintained by the department.

52 (2) (a) An owner of a place of public accommodation who
53 requests that the owner's facility be inspected by a qualified
54 expert may submit a certification of conformity with the
55 department which indicates that such place of public
56 accommodation conforms to Title III of the Americans with
57 Disabilities Act; such certification of conformity shall be
58 valid for 3 years after the date of issuance. Any certification
59 of conformity filed with the department must include:

60 1. The date that the place of public accommodation was
61 inspected.

62 2. The name of the qualified expert or any other person who
63 inspected the place of public accommodation.

64 3. Proof of qualification as an expert in accordance with
65 paragraph (1) (d), including a license number or a sworn
66 statement indicating the person has at least one order by a
67 federal court accepting a remediation plan of the qualified



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68 expert in a settlement agreement or at least one order by a
69 federal court accepting the qualified expert's testimony related
70 to Title III of the Americans with Disabilities Act, 42 U.S.C.
71 s. 12182.

72 4. A statement in writing by the qualified expert attesting
73 that the information contained in the certification of
74 conformity is complete and accurate.

75 (b) An owner of a place of public accommodation who
76 requests that the owner's facility be inspected by a qualified
77 expert may submit a remediation plan with the department that
78 indicates that such place of public accommodation plans to
79 conform to Title III of the Americans with Disabilities Act
80 within a specified time period. Any remediation plan submitted
81 to the department which indicates that a place of public
82 accommodation does not conform to Title III of the Americans
83 with Disabilities Act must include a remediation plan to remedy
84 the deficiencies, which includes a reasonable amount of time,
85 not to exceed 10 years, in which the plan must be completed. The
86 plan must include:

87 1. The date that the place of public of accommodation was
88 inspected.

89 2. The name of the qualified expert or any other person who
90 inspected the place of public accommodation.

91 3. Identification of specific remedial measures that the
92 place of public accommodation will undertake.

93 4. The anticipated date of initiation and completion for
94 each remedial measure that the place of public accommodation has
95 agreed to undertake.

96 5. Proof of qualification as an expert in accordance with



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97 paragraph (1) (d), including a license number or a sworn
98 statement indicating the qualified expert has at least one order
99 by a federal court accepting a remediation plan prepared by the
100 qualified expert in a settlement agreement or at least one order
101 by a federal court accepting the qualified expert's testimony
102 related to Title III of the Americans with Disabilities Act, 42
103 U.S.C. s. 12182.

104 6. A statement in writing by the qualified expert attesting
105 that the information contained in the remediation plan is
106 complete and accurate.

107 (3) An owner of a place of public accommodation may file a
108 certification of conformity or a remediation plan with the
109 department. Such filing serves as notice to the public that the
110 place of public accommodation is in compliance with Title III of
111 the Americans with Disabilities Act or that such place of public
112 accommodation is making reasonable efforts to come into
113 compliance with the act.

114 (4) The department shall develop and maintain a website,
115 accessible to the public, which provides an electronic registry
116 of certifications of conformity and remediation plans.

117 (5) In any action brought in this state alleging a
118 violation of Title III of the Americans with Disabilities Act,
119 42 U.S.C. s. 12182, the court shall consider any remediation
120 plan or certification of conformity filed in accordance with
121 this section by a place of public accommodation with the
122 department before the filing of the plaintiff's complaint when
123 the court considers and determines whether the plaintiff's
124 complaint was filed in good faith and whether the plaintiff is
125 entitled to attorney fees and costs.



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126 Section 2. For the 2017-2018 fiscal year, the sums of
127 \$5,000 in recurring funds and \$155,000 in nonrecurring funds
128 from the Professional Regulation Trust Fund are appropriated to
129 the Department of Business and Professional Regulation for the
130 purpose of implementing this act.

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

132
133 ===== T I T L E A M E N D M E N T =====

134 And the title is amended as follows:

135 Delete everything before the enacting clause
136 and insert:

137 A bill to be entitled
138 An act relating to the accessibility of places of
139 public accommodation; creating s. 553.5141, F.S.;
140 providing definitions; authorizing qualified experts
141 to advise and provide certain inspections for places
142 of public accommodation relating to the Americans with
143 Disabilities Act; authorizing an owner of a place of
144 public accommodation to request that his or her
145 facility be inspected for specified purposes;
146 authorizing an owner of a place of public
147 accommodation to file a certification of conformity or
148 remediation plan with the Department of Business and
149 Professional Regulation; requiring a court to consider
150 certain information in specified actions; requiring
151 the department to develop and maintain a website for
152 specified purposes; providing an appropriation;
153 providing an effective date.



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



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



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57 as a company or nonprofit organization, corporation,
58 partnership, any other legal entity, or any natural person.

59 (g) "Registry" means the registry of certified experts and
60 of remediation plans filed by places of public accommodation and
61 maintained by the department.

62 (2) (a) The department shall establish a program to provide
63 certification for experts who have sufficient experience,
64 knowledge, or training to advise places of public accommodation
65 regarding the compliance guidelines applicable to places of
66 public accommodation under subchapter III of the Americans with
67 Disabilities Act, 42 U.S.C. s. 12182. The certified experts may
68 provide inspections of places of public accommodation to
69 determine if barriers to access are present in the facility
70 within the meaning of 42 U.S.C. s. 12182 and the applicable
71 regulations interpreting that chapter.

72 (b) The department shall establish requirements for experts
73 to qualify for certification under this section.

74 (3) (a) An owner of a place of public accommodation may
75 request that a facility be inspected by a certified expert.
76 However, use of an expert certified under this section is not
77 required.

78 (b) If a place of public accommodation conforms to
79 subchapter III of the Americans with Disabilities Act, the
80 certified expert must provide the owner with a certification of
81 conformity which is valid for 3 years after the date of
82 issuance.

83 (c) If a place of public accommodation does not conform to
84 subchapter III of the Americans with Disabilities Act, the owner
85 may submit a remediation plan to the department which includes:



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86 1. The date the place of public accommodation was
87 inspected.

88 2. The name of the certified expert or other person who
89 inspected the place of public accommodation.

90 3. Identification of specific remedial measures that the
91 place of public accommodation will undertake.

92 4. The anticipated dates of initiation and completion for
93 each remedial measure that the place of public accommodation has
94 agreed to undertake.

95 (d) A remediation plan submitted under paragraph (c) is
96 only valid for 10 years after its submission to the department.

97 (e) In any action brought in this state alleging a
98 violation of subchapter III of the Americans with Disabilities
99 Act, 42 U.S.C. s. 12182, the courts shall consider any
100 remediation plan filed by the place of public accommodation
101 before the filing of the plaintiff's complaint in determining if
102 the plaintiff's complaint was filed in good faith and if the
103 plaintiff is entitled to attorney fees and costs.

104 (4) The department shall develop and maintain on its
105 website, accessible to the public, an electronic registry of
106 certifications of conformity and remediation plans.

107 (5) The department shall adopt rules to administer this
108 section.

109 Section 2. For the 2017-2018 fiscal year, the sums of
110 \$5,000 in recurring funds and \$155,000 in nonrecurring funds
111 from the Professional Regulation Trust Fund are appropriated to
112 the Department of Business and Professional Regulation for the
113 purpose of implementing this act.

114 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.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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

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;

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, *ADA 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 Aphorpe, *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, *ADA 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.

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

By Senator Stewart

13-01016D-17

20171398__

1 A bill to be entitled
 2 An act relating to the accessibility of places of
 3 public accommodation; creating s. 553.5141, F.S.;
 4 providing definitions; requiring the Department of
 5 Business and Professional Regulation to establish a
 6 program to provide for the certification of certain
 7 experts; authorizing such experts to advise and
 8 provide certain inspections for places of public
 9 accommodation relating to the Americans with
 10 Disabilities Act; requiring the department to
 11 establish certification requirements; authorizing an
 12 owner of a place of public accommodation to request a
 13 facility to be inspected for specified purposes;
 14 requiring a certified expert to provide the owner of a
 15 place of public accommodation a certification of
 16 conformity if the facility conforms to specified
 17 provisions of the Americans with Disabilities Act;
 18 specifying that such certificate is valid for 3 years;
 19 specifying that an owner of a place of public
 20 accommodation may submit a remediation plan to the
 21 department under certain circumstances; providing that
 22 a remediation plan is only valid for a certain period
 23 of time; requiring a court to consider certain
 24 information in specified actions; requiring the
 25 department to develop and maintain a website for
 26 specified purposes; requiring the department to adopt
 27 rules; providing an effective date.
 28
 29 Be It Enacted by the Legislature of the State of Florida:

Page 1 of 4

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

13-01016D-17

20171398__

30
 31 Section 1. Section 553.5141, Florida Statutes, is created
 32 to read:
 33 553.5141 Americans with Disabilities Act; certification of
 34 experts.—
 35 (1) For purposes of this section:
 36 (a) "Certified expert" means a person certified by the
 37 department under subsection (2).
 38 (b) "Commerce" means communication, trade, traffic,
 39 transportation, or travel:
 40 1. Among the several states;
 41 2. Between any foreign country or any territory or
 42 possession and any state; or
 43 3. Between points in the same state but through another
 44 state or foreign country.
 45 (c) "Department" means the Department of Business and
 46 Professional Regulation.
 47 (d) "Facility" means all or any portion of buildings,
 48 complexes, equipment, parking lots, passageways, roads, rolling
 49 stock or other conveyances, sites, structures, walks, or other
 50 real or personal property, including the site where the
 51 building, equipment, property, or structure is located.
 52 (e) "Place of public accommodation" means a facility
 53 operated by a private entity whose operations affect commerce
 54 and is a private entity as described in 42 U.S.C. s. 12181(7).
 55 (f) "Private entity" means any nongovernmental entity, such
 56 as a company or nonprofit organization, corporation,
 57 partnership, any other legal entity, or any natural person.
 58 (g) "Registry" means the registry of certified experts and

Page 2 of 4

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

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59 of remediation plans filed by places of public accommodation and
60 maintained by the department.

61 (2) (a) The department shall establish a program to provide
62 certification for experts who have sufficient experience,
63 knowledge, or training to advise places of public accommodation
64 regarding the compliance guidelines applicable to places of
65 public accommodation under subchapter III of the Americans with
66 Disabilities Act, 42 U.S.C. s. 12182. The certified experts may
67 provide inspections of places of public accommodation to
68 determine if barriers to access are present in the facility
69 within the meaning of 42 U.S.C. s. 12182 and the applicable
70 regulations interpreting that chapter.

71 (b) The department shall establish requirements for experts
72 to qualify for certification under this section.

73 (3) (a) An owner of a place of public accommodation may
74 request that a facility be inspected by a certified expert.
75 However, use of an expert certified under this section is not
76 required.

77 (b) If a place of public accommodation conforms to
78 subchapter III of the Americans with Disabilities Act, the
79 certified expert must provide the owner with a certification of
80 conformity which is valid for 3 years after the date of
81 issuance.

82 (c) If a place of public accommodation does not conform to
83 subchapter III of the Americans with Disabilities Act, the owner
84 may submit a remediation plan to the department which includes:

85 1. The date the place of public accommodation was
86 inspected.

87 2. The name of the certified expert or other person who

13-01016D-17 20171398__

88 inspected the place of public accommodation.

89 3. Identification of specific remedial measures that the
90 place of public accommodation will undertake.

91 4. The anticipated dates of initiation and completion for
92 each remedial measure that the place of public accommodation has
93 agreed to undertake.

94 (d) A remediation plan submitted under paragraph (c) is
95 only valid for 10 years after its submission to the department.

96 (e) In any action brought in this state alleging a
97 violation of subchapter III of the Americans with Disabilities
98 Act, 42 U.S.C. s. 12182, the courts shall consider any
99 remediation plan filed by the place of public accommodation
100 before the filing of the plaintiff's complaint in determining if
101 the plaintiff's complaint was filed in good faith and if the
102 plaintiff is entitled to attorney fees and costs.

103 (4) The department shall develop and maintain on its
104 website, accessible to the public, an electronic registry of
105 certifications of conformity and remediation plans.

106 (5) The department shall adopt rules to administer this
107 section.

108 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 Accommodation, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

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.

Phone 677-4082

Street

Tallahassee FL 32301

City

State

Zip

Email samantha@fuf.org

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

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

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25/17

Meeting Date

1398

Bill Number (if applicable)

Topic ADA

Amendment Barcode (if applicable)

Name Carayn Johnson

Job Title Policy Director

Address 134 S Bronough St

Phone 521-1200

Street

Tallahassee

City

State

Zip

Email cjohnson@

flchamber.com

Speaking: For Against Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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.

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 Accommodations

Amendment Barcode (if applicable)

Name Michael Daniels

Job Title Executive Director

Address 3333 W Pensacola Street

Phone 850-487-3278

Tallahassee FL 32304
City State Zip

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.

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 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.

The Florida Senate
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.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/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 felonies⁵ 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 analogs⁷ or derivatives⁸, such as alfentanil,⁹ carfentanil,¹⁰ and sufentanil¹¹ 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 submissions¹⁹ 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

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 agonist²⁵ 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 rule²⁹ 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 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)cyclohexyl)-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 Carfentanyl 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 responders³³ 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

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 distributor 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 substance⁴⁸ and an isomer⁴⁹ 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

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.

felony⁵⁴ 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 44⁶⁵ 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	.	
	.	
	.	
	.	

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,



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11 and administer emergency opioid antagonists as clinically
12 indicated:

13 (a) Emergency responders, including, but not limited to,
14 law enforcement officers, paramedics, and emergency medical
15 technicians.

16 (b) Crime laboratory personnel for the statewide criminal
17 analysis laboratory system as described in s. 943.32, including,
18 but not limited to, analysts, evidence intake personnel, and
19 their supervisors.

20 Section 2. Paragraph (a) of subsection (1) of section
21 782.04, Florida Statutes, is amended to read:

22 782.04 Murder.—

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

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

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

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

29 b. Arson,

30 c. Sexual battery,

31 d. Robbery,

32 e. Burglary,

33 f. Kidnapping,

34 g. Escape,

35 h. Aggravated child abuse,

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

37 j. Aircraft piracy,

38 k. Unlawful throwing, placing, or discharging of a

39 destructive device or bomb,



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- 40 1. Carjacking,
41 m. Home-invasion robbery,
42 n. Aggravated stalking,
43 o. Murder of another human being,
44 p. Resisting an officer with violence to his or her person,
45 q. Aggravated fleeing or eluding with serious bodily injury
46 or death,
47 r. Felony that is an act of terrorism or is in furtherance
48 of an act of terrorism,
49 s. Human trafficking; or
50 3. Which resulted from the unlawful distribution by a
51 person 18 years of age or older of any of the following
52 substances, or mixture containing any of the following
53 substances ~~substance controlled under s. 893.03(1), cocaine as~~
54 ~~described in s. 893.03(2)(a)4., opium or any synthetic or~~
55 ~~natural salt, compound, derivative, or preparation of opium, or~~
56 ~~methadone by a person 18 years of age or older, when such~~
57 substance or mixture ~~drug~~ is proven to be the proximate cause of
58 the death of the user:
59 a. A substance controlled under s. 893.03(1);
60 b. Cocaine as described in s. 893.03(2)(a)4.;
61 c. Opium or any synthetic or natural salt, compound,
62 derivative, or preparation of opium;
63 d. Methadone;
64 e. Alfentanil, as described in s. 893.03(2)(b)1.;
65 f. Carfentanil, as described in s. 893.03(2)(b)6.;
66 g. Fentanyl, as described in s. 893.03(2)(b)9.;
67 h. Sufentanil, as described in s. 893.03(2)(b)29.; or
68 i. A controlled substance analog, as described in s.



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69 893.0356, of any substance specified in sub-subparagraphs a.-h.,
70
71 is murder in the first degree and constitutes a capital felony,
72 punishable as provided in s. 775.082.

73 Section 3. Section 893.015, Florida Statutes, is created to
74 read:

75 893.015 Statutory references.—The purpose of this chapter
76 is to comprehensively address drug abuse prevention and control
77 in this state. To this end, unless expressly provided otherwise,
78 a reference in any section of the Florida Statutes to chapter
79 893 or to any section or portion of a section of chapter 893
80 includes all subsequent amendments to chapter 893 or to the
81 referenced section or portion of a section.

82 Section 4. Paragraphs (a) and (c) of subsection (1) of
83 section 893.03, Florida Statutes, are amended to read:

84 893.03 Standards and schedules.—The substances enumerated
85 in this section are controlled by this chapter. The controlled
86 substances listed or to be listed in Schedules I, II, III, IV,
87 and V are included by whatever official, common, usual,
88 chemical, trade name, or class designated. The provisions of
89 this section shall not be construed to include within any of the
90 schedules contained in this section any excluded drugs listed
91 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
92 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
93 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
94 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
95 Anabolic Steroid Products."

96 (1) SCHEDULE I.—A substance in Schedule I has a high
97 potential for abuse and has no currently accepted medical use in



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98 treatment in the United States and in its use under medical
99 supervision does not meet accepted safety standards. The
100 following substances are controlled in Schedule I:

101 (a) Unless specifically excepted or unless listed in
102 another schedule, any of the following substances, including
103 their isomers, esters, ethers, salts, and salts of isomers,
104 esters, and ethers, whenever the existence of such isomers,
105 esters, ethers, and salts is possible within the specific
106 chemical designation:

- 107 1. Acetyl-alpha-methylfentanyl.
- 108 2. Acetylmethadol.
- 109 3. Allylprodine.
- 110 4. Alphacetylmethadol (except levo-alphacetylmethadol, also
111 known as levo-alpha-acetylmethadol, levomethadyl acetate, or
112 LAAM).
- 113 5. Alphamethadol.
- 114 6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
115 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
116 (N-propanilido) piperidine).
- 117 7. Alpha-methylthiofentanyl.
- 118 8. Alphameprodine.
- 119 9. Benzethidine.
- 120 10. Benzylfentanyl.
- 121 11. Betacetylmethadol.
- 122 12. Beta-hydroxyfentanyl.
- 123 13. Beta-hydroxy-3-methylfentanyl.
- 124 14. Betameprodine.
- 125 15. Betamethadol.
- 126 16. Betaprodine.



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- 127 17. Clonitazene.
- 128 18. Dextromoramide.
- 129 19. Diampromide.
- 130 20. Diethylthiambutene.
- 131 21. Difenoxin.
- 132 22. Dimenoxadol.
- 133 23. Dimepheptanol.
- 134 24. Dimethylthiambutene.
- 135 25. Dioxaphetyl butyrate.
- 136 26. Dipipanone.
- 137 27. Ethylmethylthiambutene.
- 138 28. Etonitazene.
- 139 29. Etoxeridine.
- 140 30. Flunitrazepam.
- 141 31. Furethidine.
- 142 32. Hydroxypethidine.
- 143 33. Ketobemidone.
- 144 34. Levomoramide.
- 145 35. Levophenacymorphan.
- 146 36. Desmethylprodine (1-Methyl-4-Phenyl-4-
- 147 Propionoxypiperidine).
- 148 37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
- 149 piperidyl]-N-phenylpropanamide).
- 150 38. 3-Methylthiofentanyl.
- 151 39. Morpheridine.
- 152 40. Noracymethadol.
- 153 41. Norlevorphanol.
- 154 42. Normethadone.
- 155 43. Norpipanone.



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- 156 44. Para-Fluorofentanyl.
157 45. Phenadoxone.
158 46. Phenampromide.
159 47. Phenomorphan.
160 48. Phenoperidine.
161 49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-
162 Acetyloxypiperidine).
163 50. Piritramide.
164 51. Proheptazine.
165 52. Properidine.
166 53. Propiram.
167 54. Racemoramide.
168 55. Thenylfentanyl.
169 56. Thiofentanyl.
170 57. Tilidine.
171 58. Trimeperidine.
172 59. Acetylfentanyl.
173 60. Butyrylfentanyl.
174 61. Beta-Hydroxythiofentanyl.
175 62. Fentanyl Derivatives. Unless specifically excepted,
176 listed in another schedule, or contained within a pharmaceutical
177 product approved by the United States Food and Drug
178 Administration, any material, compound, mixture, or preparation,
179 including its salts, isomers, esters, or ethers, and salts of
180 isomers, esters, or ethers, whenever the existence of such salts
181 is possible within any of the following specific chemical
182 designations containing a 4-anilidopiperidine structure:
183 a. With or without substitution at the carbonyl of the
184 aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl,



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185 methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl,
186 dihydrofuranyl, benzyl moiety, or rings containing heteroatoms
187 sulfur, oxygen, or nitrogen;

188 b. With or without substitution at the piperidine amino
189 moiety with a phenethyl, benzyl, alkylaryl (including
190 heteroaromatics), alkyltetrazolyl ring, or an alkyl or
191 carbomethoxy group, whether or not further substituted in the
192 ring or group;

193 c. With or without substitution or addition to the
194 piperidine ring to any extent with one or more methyl,
195 carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester
196 groups;

197 d. With or without substitution of one or more hydrogen
198 atoms for halogens, or methyl, alkyl, or methoxy groups, in the
199 aromatic ring of the anilide moiety;

200 e. With or without substitution at the alpha or beta
201 position of the piperidine ring with alkyl, hydroxyl, or methoxy
202 groups;

203 f. With or without substitution of the benzene ring of the
204 anilide moiety for an aromatic heterocycle; and

205 g. With or without substitution of the piperidine ring for
206 a pyrrolidine ring, perhydroazepine ring, or azepine ring;

207
208 excluding, alfentanil, carfentanil, fentanyl, and sufentanil;
209 including, but not limited to:

210 (I) Acetyl-alpha-methylfentanyl.

211 (II) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)
212 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
213 (N-propanilido) piperidine).



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- 214 (III) Alpha-methylthiofentanyl.
- 215 (IV) Benzylfentanyl.
- 216 (V) Beta-hydroxyfentanyl.
- 217 (VI) Beta-hydroxy-3-methylfentanyl.
- 218 (VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
- 219 piperidyl]-N-phenylpropanamide).
- 220 (VIII) 3-Methylthiofentanyl.
- 221 (IX) Para-Fluorofentanyl.
- 222 (X) Thenylfentanyl or Thienyl fentanyl.
- 223 (XI) Thiofentanyl.
- 224 (XII) Acetylfentanyl.
- 225 (XIII) Butyrylfentanyl.
- 226 (XIV) Beta-Hydroxythiofentanyl.
- 227 (XV) Lofentanil.
- 228 (XVI) Ocfentanil.
- 229 (XVII) Ohmfentanyl.
- 230 (XVIII) Benzodioxolefentanyl.
- 231 (XIX) Furanyl fentanyl.
- 232 (XX) Pentanoyl fentanyl.
- 233 (XXI) Cyclopentyl fentanyl.
- 234 (XXII) Isobutyryl fentanyl.
- 235 (XXIII) Remifentanil.
- 236 (c) Unless specifically excepted or unless listed in
- 237 another schedule, any material, compound, mixture, or
- 238 preparation that contains any quantity of the following
- 239 hallucinogenic substances or that contains any of their salts,
- 240 isomers, including optical, positional, or geometric isomers,
- 241 homologues, nitrogen-heterocyclic analogs, esters, ethers, and
- 242 salts of isomers, homologues, nitrogen-heterocyclic analogs,



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- 243 esters, or ethers, if the existence of such salts, isomers, and
244 salts of isomers is possible within the specific chemical
245 designation or class description:
- 246 1. Alpha-Ethyltryptamine.
 - 247 2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-
248 oxazoline).
 - 249 3. Aminorex (2-Amino-5-phenyl-2-oxazoline).
 - 250 4. DOB (4-Bromo-2,5-dimethoxyamphetamine).
 - 251 5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
 - 252 6. Bufotenine.
 - 253 7. Cannabis.
 - 254 8. Cathinone.
 - 255 9. DET (Diethyltryptamine).
 - 256 10. 2,5-Dimethoxyamphetamine.
 - 257 11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).
 - 258 12. DMT (Dimethyltryptamine).
 - 259 13. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog
260 of phencyclidine).
 - 261 14. JB-318 (N-Ethyl-3-piperidyl benzilate).
 - 262 15. N-Ethylamphetamine.
 - 263 16. Fenethylamine.
 - 264 17. 3,4-Methylenedioxy-N-hydroxyamphetamine.
 - 265 18. Ibogaine.
 - 266 19. LSD (Lysergic acid diethylamide).
 - 267 20. Mescaline.
 - 268 21. Methcathinone.
 - 269 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
 - 270 23. PMA (4-Methoxyamphetamine).
 - 271 24. PMMA (4-Methoxymethamphetamine).



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- 272 25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
273 26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
274 27. MDA (3,4-Methylenedioxyamphetamine).
275 28. JB-336 (N-Methyl-3-piperidyl benzilate).
276 29. N,N-Dimethylamphetamine.
277 30. Parahexyl.
278 31. Peyote.
279 32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine
280 analog of phencyclidine).
281 33. Psilocybin.
282 34. Psilocyn.
283 35. *Salvia divinorum*, except for any drug product approved
284 by the United States Food and Drug Administration which contains
285 *Salvia divinorum* or its isomers, esters, ethers, salts, and
286 salts of isomers, esters, and ethers, if the existence of such
287 isomers, esters, ethers, and salts is possible within the
288 specific chemical designation.
289 36. Salvinorin A, except for any drug product approved by
290 the United States Food and Drug Administration which contains
291 Salvinorin A or its isomers, esters, ethers, salts, and salts of
292 isomers, esters, and ethers, if the existence of such isomers,
293 esters, ethers, and salts is possible within the specific
294 chemical designation.
295 37. Xylazine.
296 38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)
297 (Thiophene analog of phencyclidine).
298 39. 3,4,5-Trimethoxyamphetamine.
299 40. Methylone (3,4-Methylenedioxymethcathinone).
300 41. MDPV (3,4-Methylenedioxypropylvalerone).



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- 301 42. Methyldmethcathinone.
- 302 43. Methoxymethcathinone.
- 303 44. Fluoromethcathinone.
- 304 45. Methylethcathinone.
- 305 46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-
- 306 yl)phenol) and its dimethyloctyl (C8) homologue.
- 307 47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-
- 308 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol].
- 309 48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).
- 310 49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
- 311 50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
- 312 naphthoyl)indole).
- 313 51. BZP (Benzylpiperazine).
- 314 52. Fluorophenylpiperazine.
- 315 53. Methylphenylpiperazine.
- 316 54. Chlorophenylpiperazine.
- 317 55. Methoxyphenylpiperazine.
- 318 56. DBZP (1,4-Dibenzylpiperazine).
- 319 57. TFMPP (Trifluoromethylphenylpiperazine).
- 320 58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
- 321 Methylenedioxy-N-methylbutanamine).
- 322 59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
- 323 60. 5-Hydroxy-N-methyltryptamine.
- 324 61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
- 325 62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
- 326 63. Methyltryptamine.
- 327 64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
- 328 65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
- 329 66. Tyramine (4-Hydroxyphenethylamine).



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- 330 67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
- 331 68. DiPT (N,N-Diisopropyltryptamine).
- 332 69. DPT (N,N-Dipropyltryptamine).
- 333 70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
- 334 71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
- 335 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 336 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 337 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 338 75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
- 339 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 340 77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
- 341 78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
- 342 79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
- 343 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 344 81. Butylone (3,4-Methylenedioxy-alpha-
- 345 methylaminobutyrophenone).
- 346 82. Ethcathinone.
- 347 83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
- 348 84. Naphyrone (Naphthylpyrovalerone).
- 349 85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).
- 350 86. 3,4-Methylenedioxy-N,N-diethylcathinone.
- 351 87. 3,4-Methylenedioxy-propiofenone.
- 352 88. 3,4-Methylenedioxy-alpha-bromopropiofenone.
- 353 89. 3,4-Methylenedioxy-propiofenone-2-oxime.
- 354 90. 3,4-Methylenedioxy-N-acetylcathinone.
- 355 91. 3,4-Methylenedioxy-N-acetylmethcathinone.
- 356 92. 3,4-Methylenedioxy-N-acetylethcathinone.
- 357 93. Bromomethcathinone.
- 358 94. Buphedrone (alpha-Methylamino-butyrophenone).



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- 359 95. Eutylone (3,4-Methylenedioxy-alpha-
360 ethylaminobutyrophenone).
361 96. Dimethylcathinone.
362 97. Dimethylmethcathinone.
363 98. Pentylone (3,4-Methylenedioxy-alpha-
364 methylaminovalerophenone).
365 99. MDPBP (3,4-Methylenedioxy-alpha-
366 pyrrolidinopropiophenone).
367 100. MDPBP (3,4-Methylenedioxy-alpha-
368 pyrrolidinobutyrophenone).
369 101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
370 102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).
371 103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
372 (Benocyclidine).
373 104. F-MABP (Fluoromethylaminobutyrophenone).
374 105. MeO-PBP (Methoxypyrrolidinobutyrophenone).
375 106. Et-PBP (Ethylpyrrolidinobutyrophenone).
376 107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
377 108. Me-EABP (Methylethylaminobutyrophenone).
378 109. Etizolam.
379 110. PPP (Pyrrolidinopropiophenone).
380 111. PBP (Pyrrolidinobutyrophenone).
381 112. PVP (Pyrrolidinovalerophenone) or
382 (Pyrrolidinopentiophenone).
383 113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).
384 114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).
385 115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).
386 116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).
387 117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).



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- 388 118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
- 389 119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
- 390 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
- 391 121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-
- 392 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
- 393 122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
- 394 123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
- 395 124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
- 396 125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
- 397 126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
- 398 127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
- 399 128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
- 400 129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
- 401 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
- 402 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
- 403 ol).
- 404 131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-
- 405 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]
- 406 methanol).
- 407 132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-
- 408 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
- 409 1,4-dione).
- 410 133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
- 411 134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
- 412 undecanamide).
- 413 135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
- 414 undecanamide).
- 415 136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-
- 416 methyloctan-2-yl)phenol).



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- 417 137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
418 138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).
419 139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
420 140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-
421 methoxyphenylacetyl)indole).
422 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
423 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
424 naphthalenylmethanone).
425 142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-
426 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
427 naphthalenylmethanone).
428 143. Pentedrone (alpha-Methylaminovalerophenone).
429 144. Fluoroamphetamine.
430 145. Fluoromethamphetamine.
431 146. Methoxetamine.
432 147. Methiopropamine.
433 148. Methylbuphedrone (Methyl-alpha-
434 methylaminobutyrophenone).
435 149. APB ((2-Aminopropyl)benzofuran).
436 150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).
437 151. UR-144 (1-Pentyl-3-(2,2,3,3-
438 tetramethylcyclopropanoyl)indole).
439 152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-
440 tetramethylcyclopropanoyl)indole).
441 153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-
442 tetramethylcyclopropanoyl)indole).
443 154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).
444 155. AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
445 iodobenzoyl)indole).



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- 446 156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-
447 carboxamide).
- 448 157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-
449 cyclohexylcarbamate).
- 450 158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid,
451 cyclohexyl ester).
- 452 159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-
453 benzoxazin-4-one).
- 454 160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
- 455 161. 2C-H (2,5-Dimethoxyphenethylamine).
- 456 162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
- 457 163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
- 458 164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-
459 methoxybenzyl)]phenethylamine).
- 460 165. MDMA (3,4-Methylenedioxymethamphetamine).
- 461 166. PB-22 (8-Quinolinyll 1-pentylindole-3-carboxylate).
- 462 167. Fluoro PB-22 (8-Quinolinyll 1-(fluoropentyl)indole-3-
463 carboxylate).
- 464 168. BB-22 (8-Quinolinyll 1-(cyclohexylmethyl)indole-3-
465 carboxylate).
- 466 169. Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-
467 3-carboxamide).
- 468 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
469 pentylindazole-3-carboxamide).
- 470 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
471 (4-fluorobenzyl)indazole-3-carboxamide).
- 472 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-
473 1-pentylindazole-3-carboxamide).
- 474 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-



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475 yl)-1-(fluoropentyl)indole-3-carboxamide).
476 174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-
477 methoxybenzyl)]phenethylamine).
478 175. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-
479 methoxybenzyl)]phenethylamine).
480 176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
481 (cyclohexylmethyl)indazole-3-carboxamide).
482 177. FUB-PB-22 (8-Quinolinyll 1-(4-fluorobenzyl)indole-3-
483 carboxylate).
484 178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-
485 3-carboxamide).
486 179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
487 (fluoropentyl)indazole-3-carboxamide).
488 180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).
489 181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-
490 1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).
491 182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-
492 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
493 hexahydrobenzo[c]chromen-1-ol).
494 183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-
495 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
496 hexahydrobenzo[c]chromen-1-ol).
497 184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-
498 6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9
499 diol).
500 185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-
501 dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-
502 tetrahydro-6aH-benzo[c]chromen-1-ol).
503 186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-



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504 6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).
505 187. MAPB ((2-Methylaminopropyl)benzofuran).
506 188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).
507 189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).
508 190. Synthetic Cannabinoids.—Unless specifically excepted
509 or unless listed in another schedule or contained within a
510 pharmaceutical product approved by the United States Food and
511 Drug Administration, any material, compound, mixture, or
512 preparation that contains any quantity of a synthetic
513 cannabinoid found to be in any of the following chemical class
514 descriptions, or homologues, nitrogen-heterocyclic analogs,
515 isomers (including optical, positional, or geometric), esters,
516 ethers, salts, and salts of homologues, nitrogen-heterocyclic
517 analogs, isomers, esters, or ethers, whenever the existence of
518 such homologues, nitrogen-heterocyclic analogs, isomers, esters,
519 ethers, salts, and salts of isomers, esters, or ethers is
520 possible within the specific chemical class or designation.
521 Since nomenclature of these synthetically produced cannabinoids
522 is not internationally standardized and may continually evolve,
523 these structures or the compounds of these structures shall be
524 included under this subparagraph, regardless of their specific
525 numerical designation of atomic positions covered, if it can be
526 determined through a recognized method of scientific testing or
527 analysis that the substance contains properties that fit within
528 one or more of the following categories:
529 a. Tetrahydrocannabinols.—Any tetrahydrocannabinols
530 naturally contained in a plant of the genus *Cannabis*, the
531 synthetic equivalents of the substances contained in the plant
532 or in the resinous extracts of the genus *Cannabis*, or synthetic



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533 substances, derivatives, and their isomers with similar chemical
534 structure and pharmacological activity, including, but not
535 limited to, Delta 9 tetrahydrocannabinols and their optical
536 isomers, Delta 8 tetrahydrocannabinols and their optical
537 isomers, Delta 6a,10a tetrahydrocannabinols and their optical
538 isomers, or any compound containing a tetrahydrobenzo[c]chromene
539 structure with substitution at either or both the 3-position or
540 9-position, with or without substitution at the 1-position with
541 hydroxyl or alkoxy groups, including, but not limited to:

542 (I) Tetrahydrocannabinol.

543 (II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-
544 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
545 ol).

546 (III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
547 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
548 ol).

549 (IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-
550 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

551 (V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-
552 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

553 (VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-
554 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

555 (VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-
556 dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

557 (VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-
558 6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

559 (IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-
560 6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

561 (X) Parahexyl.



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562 b. Naphthoylindoles, Naphthoylindazoles,
563 Naphthoylcarbazoles, Naphthylmethylindoles,
564 Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any
565 compound containing a naphthoylindole, naphthoylindazole,
566 naphthoylcarbazole, naphthylmethylindole,
567 naphthylmethylindazole, or naphthylmethylcarbazole structure,
568 with or without substitution on the indole, indazole, or
569 carbazole ring to any extent, whether or not substituted on the
570 naphthyl ring to any extent, including, but not limited to:
571 (I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).
572 (II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-
573 naphthoyl)indole).
574 (III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).
575 (IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).
576 (V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).
577 (VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).
578 (VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).
579 (VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).
580 (IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).
581 (X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
582 (XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
583 (XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).
584 (XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
585 (XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-
586 naphthoyl)indole).
587 (XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).
588 (XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
589 (XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-
590 naphthoyl)indole).



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- 591 (XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).
592 (XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
593 (XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).
594 (XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).
595 (XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-
596 naphthylmethyl]indole).
597 (XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-
598 naphthoyl)indole).
599 (XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-
600 naphthoyl)indole).
601 (XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
602 naphthoyl)indole).
603 (XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
604 (XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).
605 (XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
606 (XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).
607 (XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).
608 (XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-
609 naphthoyl)indole).
610 (XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-
611 naphthoyl)indole).
612 (XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-
613 naphthoyl)indole).
614 (XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-
615 naphthoyl)indole).
616 (XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-
617 naphthoyl)indole).
618 (XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).
619 (XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-



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620 naphthoyl)indazole).

621 (XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-

622 naphthoyl)indole).

623 (XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-

624 naphthoyl)indole).

625 (XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).

626 (XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-

627 naphthoyl)carbazole).

628 c. Naphthoylpyrroles.—Any compound containing a

629 naphthoylpyrrole structure, with or without substitution on the

630 pyrrole ring to any extent, whether or not substituted on the

631 naphthyl ring to any extent, including, but not limited to:

632 (I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).

633 (II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).

634 (III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).

635 (IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).

636 (V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).

637 (VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-

638 naphthoyl)pyrrole).

639 (VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-

640 naphthoyl)pyrrole).

641 (VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-

642 naphthoyl)pyrrole).

643 (IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-

644 naphthoyl)pyrrole).

645 (X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-

646 naphthoyl)pyrrole).

647 d. Naphthylmethylenindenes.—Any compound containing a

648 naphthylmethylenindene structure, with or without substitution



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649 at the 3-position of the indene ring to any extent, whether or
650 not substituted on the naphthyl ring to any extent, including,
651 but not limited to, JWH-176 (3-Pentyl-1-
652 (naphthylmethylene)indene).

653 e. Phenylacetylindoles and Phenylacetylindazoles.—Any
654 compound containing a phenylacetylindole or phenylacetylindazole
655 structure, with or without substitution on the indole or
656 indazole ring to any extent, whether or not substituted on the
657 phenyl ring to any extent, including, but not limited to:

- 658 (I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).
- 659 (II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
- 660 (III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
- 661 (IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
- 662 (V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
- 663 (VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
- 664 (VII) Cannabipiperidiethanone.
- 665 (VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-
666 methoxyphenylacetyl)indole).

667 f. Cyclohexylphenols.—Any compound containing a
668 cyclohexylphenol structure, with or without substitution at the
669 5-position of the phenolic ring to any extent, whether or not
670 substituted on the cyclohexyl ring to any extent, including, but
671 not limited to:

- 672 (I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-
673 yl)phenol).
- 674 (II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8)
675 homologue).
- 676 (III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-
677 methyloctan-2-yl)phenol).



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678 g. Benzoylindoles and Benzoylindazoles.—Any compound
679 containing a benzoylindole or benzoylindazole structure, with or
680 without substitution on the indole or indazole ring to any
681 extent, whether or not substituted on the phenyl ring to any
682 extent, including, but not limited to:

683 (I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

684 (II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

685 (III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
686 iodo-5-nitrobenzoyl)indole).

687 (IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-
688 methoxybenzoyl)indole).

689 (V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
690 iodobenzoyl)indole).

691 (VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

692 (VII) RCS-4 C4 homologue (1-Butyl-3-(4-
693 methoxybenzoyl)indole).

694 (VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-
695 3-(4-methoxybenzoyl)indole).

696 h. Tetramethylcyclopropanoylindoles and
697 Tetramethylcyclopropanoylindazoles.—Any compound containing a
698 tetramethylcyclopropanoylindole or
699 tetramethylcyclopropanoylindazole structure, with or without
700 substitution on the indole or indazole ring to any extent,
701 whether or not substituted on the tetramethylcyclopropyl group
702 to any extent, including, but not limited to:

703 (I) UR-144 (1-Pentyl-3-(2,2,3,3-
704 tetramethylcyclopropanoyl)indole).

705 (II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-
706 tetramethylcyclopropanoyl)indole).



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- 707 (III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-
708 tetramethylcyclopropanoyl)indole).
- 709 (IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-
710 tetramethylcyclopropanoyl)indole).
- 711 (V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-
712 tetramethylcyclopropanoyl)indole).
- 713 (VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-
714 tetramethylcyclopropanoyl)indole).
- 715 (VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-
716 tetramethylcyclopropanoyl)indole).
- 717 (VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-
718 tetramethylcyclopropanoyl)indazole).
- 719 (IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-
720 tetramethylcyclopropanoyl)indole).
- 721 (X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-
722 tetramethylcyclopropanoyl)indole).
- 723 i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole
724 carboxamides, and Adamantylindazole carboxamides.—Any compound
725 containing an adamantoyl indole, adamantoyl indazole, adamantyl
726 indole carboxamide, or adamantyl indazole carboxamide structure,
727 with or without substitution on the indole or indazole ring to
728 any extent, whether or not substituted on the adamantyl ring to
729 any extent, including, but not limited to:
- 730 (I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).
731 (II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-
732 3-carboxamide).
- 733 (III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-
734 carboxamide).
- 735 (IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-



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736 adamantoyl)indole).

737 (V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).

738 (VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).

739 (VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-

740 adamantoyl)indole).

741 j. Quinolinyndolecarboxylates,

742 Quinolinyndazolecarboxylates, Quinolinyndolecarboxamides,

743 and Quinolinyndazolecarboxamides.—Any compound containing a

744 quinolinyndole carboxylate, quinolinyndazole carboxylate,

745 isoquinolinyndole carboxylate, isoquinolinyndazole

746 carboxylate, quinolinyndole carboxamide, quinolinyndazole

747 carboxamide, isoquinolinyndole carboxamide, or

748 isoquinolinyndazole carboxamide structure, with or without

749 substitution on the indole or indazole ring to any extent,

750 whether or not substituted on the quinoline or isoquinoline ring

751 to any extent, including, but not limited to:

752 (I) PB-22 (8-Quinolinyndyl 1-pentylindole-3-carboxylate).

753 (II) Fluoro PB-22 (8-Quinolinyndyl 1-(fluoropentyl)indole-3-

754 carboxylate).

755 (III) BB-22 (8-Quinolinyndyl 1-(cyclohexylmethyl)indole-3-

756 carboxylate).

757 (IV) FUB-PB-22 (8-Quinolinyndyl 1-(4-fluorobenzyl)indole-3-

758 carboxylate).

759 (V) NPB-22 (8-Quinolinyndyl 1-pentylindazole-3-carboxylate).

760 (VI) Fluoro NPB-22 (8-Quinolinyndyl 1-(fluoropentyl)indazole-

761 3-carboxylate).

762 (VII) FUB-NPB-22 (8-Quinolinyndyl 1-(4-fluorobenzyl)indazole-

763 3-carboxylate).

764 (VIII) THJ (8-Quinolinyndyl 1-pentylindazole-3-carboxamide).



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765 (IX) Fluoro THJ (8-Quinoliny 1-(fluoropentyl)indazole-3-
766 carboxamide).

767 k. Naphthylindolecarboxylates and
768 Naphthylindazolecarboxylates.—Any compound containing a
769 naphthylindole carboxylate or naphthylindazole carboxylate
770 structure, with or without substitution on the indole or
771 indazole ring to any extent, whether or not substituted on the
772 naphthyl ring to any extent, including, but not limited to:

773 (I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-
774 carboxylate).

775 (II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-
776 carboxylate).

777 (III) Fluoro SDB-005 (1-Naphthalenyl 1-
778 (fluoropentyl)indazole-3-carboxylate).

779 (IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-
780 carboxylate).

781 (V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-
782 carboxylate).

783 1. Naphthylindole carboxamides and Naphthylindazole
784 carboxamides.—Any compound containing a naphthylindole
785 carboxamide or naphthylindazole carboxamide structure, with or
786 without substitution on the indole or indazole ring to any
787 extent, whether or not substituted on the naphthyl ring to any
788 extent, including, but not limited to:

789 (I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

790 (II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-
791 3-carboxamide).

792 (III) Chloro-NNEI (N-Naphthalen-1-yl 1-
793 (chloropentyl)indole-3-carboxamide).



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794 (IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-
795 carboxamide).

796 (V) Fluoro MN-18 (N-Naphthalen-1-yl 1-
797 (fluoropentyl)indazole-3-carboxamide).

798 m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl
799 indazole carboxamides, Alkylcarbonyl indole carboxylates, and
800 Alkylcarbonyl indazole carboxylates.-Any compound containing an
801 alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl,
802 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-
803 phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an
804 indole carboxamide, indazole carboxamide, indole carboxylate, or
805 indazole carboxylate, with or without substitution on the indole
806 or indazole ring to any extent, whether or not substituted on
807 the alkylcarbonyl group to any extent, including, but not
808 limited to:

809 (I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-
810 pentylindole-3-carboxamide).

811 (II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
812 yl)-1-(fluoropentyl)indole-3-carboxamide).

813 (III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
814 (fluoropentyl)indole-3-carboxamide).

815 (IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
816 pentylindazole-3-carboxamide).

817 (V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-
818 1-(fluoropentyl)indazole-3-carboxamide).

819 (VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-
820 1-pentylindazole-3-carboxamide).

821 (VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-
822 oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).



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- 823 (VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
824 (4-fluorobenzyl)indazole-3-carboxamide).
- 825 (IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
826 yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).
- 827 (X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
828 (cyclohexylmethyl)indazole-3-carboxamide).
- 829 (XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
830 (cyclohexylmethyl)indazole-3-carboxamide).
- 831 (XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
832 yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).
- 833 (XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
834 pentylindazole-3-carboxamide).
- 835 (XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
836 (fluoropentyl)indazole-3-carboxamide).
- 837 (XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-
838 fluorobenzyl)indazole-3-carboxamide).
- 839 (XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
840 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).
- 841 (XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
842 2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).
- 843 (XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
844 2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).
- 845 (XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-
846 fluoropentyl)indole-3-carboxamide).
- 847 (XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-
848 fluoropentyl)indazole-3-carboxamide).
- 849 (XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-
850 (cyclohexylmethyl)indazole-3-carboxamide).
- 851 (XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-



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852 fluorobenzyl)indazole-3-carboxamide).

853 (XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-

854 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

855 n. Cumylindolecarboxamides and Cumylindazolecarboxamides.-

856 Any compound containing a N-(2-phenylpropan-2-yl) indole

857 carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide

858 structure, with or without substitution on the indole or

859 indazole ring to any extent, whether or not substituted on the

860 phenyl ring of the cumyl group to any extent, including, but not

861 limited to:

862 (I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-

863 carboxamide).

864 (II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-

865 (fluoropentyl)indole-3-carboxamide).

866 o. Other Synthetic Cannabinoids.-Any material, compound,

867 mixture, or preparation that contains any quantity of a

868 Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

869 (I) With or without modification or replacement of a

870 carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage

871 between either two core rings, or linkage between a core ring

872 and group structure, with or without the addition of a carbon or

873 replacement of a carbon;

874 (II) With or without replacement of a core ring or group

875 structure, whether or not substituted on the ring or group

876 structures to any extent; and

877 (III) Is a cannabinoid receptor agonist, unless

878 specifically excepted or unless listed in another schedule or

879 contained within a pharmaceutical product approved by the United

880 States Food and Drug Administration.



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881 191. Substituted Cathinones.—Unless specifically excepted,
882 listed in another schedule, or contained within a pharmaceutical
883 product approved by the United States Food and Drug
884 Administration, any material, compound, mixture, or preparation,
885 including its salts, isomers, esters, or ethers, and salts of
886 isomers, esters, or ethers, whenever the existence of such salts
887 is possible within any of the following specific chemical
888 designations:

889 a. Any compound containing a 2-amino-1-phenyl-1-propanone
890 structure;

891 b. Any compound containing a 2-amino-1-naphthyl-1-propanone
892 structure; or

893 c. Any compound containing a 2-amino-1-thiophenyl-1-
894 propanone structure,
895 whether or not the compound is further modified:

896 (I) With or without substitution on the ring system to any
897 extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy,
898 haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused
899 dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide
900 substituents;

901 (II) With or without substitution at the 3-propanone
902 position with an alkyl substituent or removal of the methyl
903 group at the 3-propanone position;

904 (III) With or without substitution at the 2-amino nitrogen
905 atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or
906 not further substituted in the ring system; or

907 (IV) With or without inclusion of the 2-amino nitrogen atom
908 in a cyclic structure, including, but not limited to:

909 (A) Methcathinone.



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- 910 (B) Ethcathinone.
- 911 (C) Methylone (3,4-Methylenedioxy-methcathinone).
- 912 (D) 2,3-Methylenedioxy-methcathinone.
- 913 (E) MDPV (3,4-Methylenedioxy-pyrovalerone).
- 914 (F) Methylmethcathinone.
- 915 (G) Methoxymethcathinone.
- 916 (H) Fluoromethcathinone.
- 917 (I) Methylethcathinone.
- 918 (J) Butylone (3,4-Methylenedioxy-alpha-
- 919 methylaminobutyrophenone).
- 920 (K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
- 921 (L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).
- 922 (M) Naphyrone (Naphthylpyrovalerone).
- 923 (N) Bromomethcathinone.
- 924 (O) Buphedrone (alpha-Methylaminobutyrophenone).
- 925 (P) Eutylone (3,4-Methylenedioxy-alpha-
- 926 ethylaminobutyrophenone).
- 927 (Q) Dimethylcathinone.
- 928 (R) Dimethylmethcathinone.
- 929 (S) Pentylone (3,4-Methylenedioxy-alpha-
- 930 methylaminovalerophenone).
- 931 (T) Pentedrone (alpha-Methylaminovalerophenone).
- 932 (U) MDPPP (3,4-Methylenedioxy-alpha-
- 933 pyrrolidinopropiophenone).
- 934 (V) MDPBP (3,4-Methylenedioxy-alpha-
- 935 pyrrolidinobutyrophenone).
- 936 (W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).
- 937 (X) PPP (Pyrrolidinopropiophenone).
- 938 (Y) PVP (Pyrrolidinovalerophenone) or



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939 (Pyrrolidinopentiophenone).
940 (Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
941 (AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).
942 (BB) F-MABP (Fluoromethylaminobutyrophenone).
943 (CC) Me-EABP (Methylethylaminobutyrophenone).
944 (DD) PBP (Pyrrolidinobutyrophenone).
945 (EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).
946 (FF) Et-PBP (Ethylpyrrolidinobutyrophenone).
947 (GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
948 (HH) Dimethylone (3,4-Methylenedioxy-N,N-
949 dimethylcathinone).
950 (II) 3,4-Methylenedioxy-N,N-diethylcathinone.
951 (JJ) 3,4-Methylenedioxy-N-acetylcathinone.
952 (KK) 3,4-Methylenedioxy-N-acetylmethcathinone.
953 (LL) 3,4-Methylenedioxy-N-acetylethcathinone.
954 (MM) Methylbuphedrone (Methyl-alpha-
955 methylaminobutyrophenone).
956 (NN) Methyl-alpha-methylaminohexanophenone.
957 (OO) N-Ethyl-N-methylcathinone.
958 (PP) PHP (Pyrrolidinohexanophenone).
959 (QQ) PV8 (Pyrrolidinoheptanophenone).
960 (RR) Chloromethcathinone.
961 (SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.
962 192. Substituted Phenethylamines.—Unless specifically
963 excepted or unless listed in another schedule, or contained
964 within a pharmaceutical product approved by the United States
965 Food and Drug Administration, any material, compound, mixture,
966 or preparation, including its salts, isomers, esters, or ethers,
967 and salts of isomers, esters, or ethers, whenever the existence



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968 of such salts is possible within any of the following specific
969 chemical designations, any compound containing a phenethylamine
970 structure, without a beta-keto group, and without a benzyl group
971 attached to the amine group, whether or not the compound is
972 further modified with or without substitution on the phenyl ring
973 to any extent with alkyl, alkylthio, nitro, alkoxy, thio,
974 halide, fused alkylenedioxy, fused furan, fused benzofuran,
975 fused dihydrofuran, or fused tetrahydropyran substituents,
976 whether or not further substituted on a ring to any extent, with
977 or without substitution at the alpha or beta position by any
978 alkyl substituent, with or without substitution at the nitrogen
979 atom, and with or without inclusion of the 2-amino nitrogen atom
980 in a cyclic structure, including, but not limited to:

- 981 a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
- 982 b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 983 c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
- 984 d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 985 e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
- 986 f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
- 987 g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
- 988 h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 989 i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
- 990 j. 2C-H (2,5-Dimethoxyphenethylamine).
- 991 k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
- 992 l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
- 993 m. MDMA (3,4-Methylenedioxyamphetamine).
- 994 n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
995 Methylenedioxy-N-methylbutanamine).
- 996 o. MDA (3,4-Methylenedioxyamphetamine).



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- 997 p. 2,5-Dimethoxyamphetamine.
- 998 q. Fluoroamphetamine.
- 999 r. Fluoromethamphetamine.
- 1000 s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
- 1001 t. DOB (4-Bromo-2,5-dimethoxyamphetamine).
- 1002 u. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 1003 v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).
- 1004 w. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 1005 x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
- 1006 y. PMA (4-Methoxyamphetamine).
- 1007 z. N-Ethylamphetamine.
- 1008 aa. 3,4-Methylenedioxy-N-hydroxyamphetamine.
- 1009 bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 1010 cc. PMMA (4-Methoxymethamphetamine).
- 1011 dd. N,N-Dimethylamphetamine.
- 1012 ee. 3,4,5-Trimethoxyamphetamine.
- 1013 ff. 4-APB (4-(2-Aminopropyl)benzofuran).
- 1014 gg. 5-APB (5-(2-Aminopropyl)benzofuran).
- 1015 hh. 6-APB (6-(2-Aminopropyl)benzofuran).
- 1016 ii. 7-APB (7-(2-Aminopropyl)benzofuran).
- 1017 jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1018 kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1019 ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1020 mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1021 nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
- 1022 oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
- 1023 pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
- 1024 qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).
- 1025 rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).



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1026 ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-
1027 dihydrobenzofuran),

1028
1029 which does not include phenethylamine, mescaline as described in
1030 subparagraph 20., substituted cathinones as described in
1031 subparagraph 191., N-Benzyl phenethylamine compounds as
1032 described in subparagraph 193., or methamphetamine as described
1033 in subparagraph (2)(c)4.

1034 193. N-Benzyl Phenethylamine Compounds.—Unless specifically
1035 excepted or unless listed in another schedule, or contained
1036 within a pharmaceutical product approved by the United States
1037 Food and Drug Administration, any material, compound, mixture,
1038 or preparation, including its salts, isomers, esters, or ethers,
1039 and salts of isomers, esters, or ethers, whenever the existence
1040 of such salts is possible within any of the following specific
1041 chemical designations, any compound containing a phenethylamine
1042 structure without a beta-keto group, with substitution on the
1043 nitrogen atom of the amino group with a benzyl substituent, with
1044 or without substitution on the phenyl or benzyl ring to any
1045 extent with alkyl, alkoxy, thio, alkylthio, halide, fused
1046 alkylenedioxy, fused furan, fused benzofuran, or fused
1047 tetrahydropyran substituents, whether or not further substituted
1048 on a ring to any extent, with or without substitution at the
1049 alpha position by any alkyl substituent, including, but not
1050 limited to:

1051 a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-
1052 methoxybenzyl)]phenethylamine).

1053 b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-
1054 hydroxybenzyl)]phenethylamine).



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- 1055 c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-
1056 fluorobenzyl)]phenethylamine) .
- 1057 d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-
1058 methylenedioxybenzyl)]phenethylamine) .
- 1059 e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-
1060 methoxybenzyl)]phenethylamine) .
- 1061 f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-
1062 hydroxybenzyl)]phenethylamine) .
- 1063 g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-
1064 fluorobenzyl)]phenethylamine) .
- 1065 h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-
1066 methylenedioxybenzyl)]phenethylamine) .
- 1067 i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-
1068 methoxybenzyl)]phenethylamine) .
- 1069 j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-
1070 methoxybenzyl)]phenethylamine) .
- 1071 k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-
1072 methoxybenzyl)]phenethylamine) .
- 1073 l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-
1074 methoxybenzyl)]phenethylamine) .
- 1075 m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-
1076 hydroxybenzyl)]phenethylamine) .
- 1077 n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-
1078 fluorobenzyl)]phenethylamine) .
- 1079 o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-
1080 methylenedioxybenzyl)]phenethylamine) .
- 1081 p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-
1082 methoxybenzyl)]phenethylamine) .
- 1083 q. 25H-NBOH (2,5-Dimethoxy-[N-(2-



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1084 hydroxybenzyl)]phenethylamine).

1085 r. 25H-NBF (2,5-Dimethoxy-[N-(2-
1086 fluorobenzyl)]phenethylamine).

1087 s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-
1088 methoxybenzyl)]phenethylamine),

1089

1090 which does not include substituted cathinones as described in
1091 subparagraph 191.

1092 194. Substituted Tryptamines.—Unless specifically excepted
1093 or unless listed in another schedule, or contained within a
1094 pharmaceutical product approved by the United States Food and
1095 Drug Administration, any material, compound, mixture, or
1096 preparation containing a 2-(1H-indol-3-yl)ethanamine, for
1097 example tryptamine, structure with or without mono- or di-
1098 substitution of the amine nitrogen with alkyl or alkenyl groups,
1099 or by inclusion of the amino nitrogen atom in a cyclic
1100 structure, whether or not substituted at the alpha position with
1101 an alkyl group, whether or not substituted on the indole ring to
1102 any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy
1103 groups, including, but not limited to:

1104 a. Alpha-Ethyltryptamine.

1105 b. Bufotenine.

1106 c. DET (Diethyltryptamine).

1107 d. DMT (Dimethyltryptamine).

1108 e. MET (N-Methyl-N-ethyltryptamine).

1109 f. DALT (N,N-Diallyltryptamine).

1110 g. EiPT (N-Ethyl-N-isopropyltryptamine).

1111 h. MiPT (N-Methyl-N-isopropyltryptamine).

1112 i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).



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- 1113 j. 5-Hydroxy-N-methyltryptamine.
- 1114 k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
- 1115 l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
- 1116 m. Methyltryptamine.
- 1117 n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
- 1118 o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
- 1119 p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
- 1120 q. DiPT (N,N-Diisopropyltryptamine).
- 1121 r. DPT (N,N-Dipropyltryptamine).
- 1122 s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
- 1123 t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
- 1124 u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
- 1125 v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
- 1126 w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
- 1127 x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
- 1128 y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-
- 1129 isopropyltryptamine).
- 1130 z. Methyl-alpha-ethyltryptamine.
- 1131 aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),
- 1132

1133 which does not include tryptamine, psilocyn as described in
1134 subparagraph 34., or psilocybin as described in subparagraph 33.

1135 195. Substituted Phenylcyclohexylamines.—Unless
1136 specifically excepted or unless listed in another schedule, or
1137 contained within a pharmaceutical product approved by the United
1138 States Food and Drug Administration, any material, compound,
1139 mixture, or preparation containing a phenylcyclohexylamine
1140 structure, with or without any substitution on the phenyl ring,
1141 any substitution on the cyclohexyl ring, any replacement of the



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1142 phenyl ring with a thiophenyl or benzothiophenyl ring, with or
1143 without substitution on the amine with alkyl, dialkyl, or alkoxy
1144 substituents, inclusion of the nitrogen in a cyclic structure,
1145 or any combination of the above, including, but not limited to:

- 1146 a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
1147 (Benocyclidine).
- 1148 b. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog
1149 of phencyclidine).
- 1150 c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine
1151 analog of phencyclidine).
- 1152 d. PCPr (Phenylcyclohexylpropylamine).
- 1153 e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene
1154 analog of phencyclidine).
- 1155 f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).
- 1156 g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).
- 1157 h. Methoxetamine.
- 1158 i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).
- 1159 j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).
- 1160 k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).
- 1161 l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).
- 1162 m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).
- 1163 n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).
- 1164 o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).
- 1165 p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).
- 1166 q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).
- 1167 r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).
- 1168 196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-
1169 piperidinylidene]-benzenesulfonamide.
- 1170 197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-



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1171 piperidinylidene]-benzenesulfonamide.

1172 198. AH-7921, 3,4-dichloro-N-[[1-
1173 (dimethylamino)cyclohexyl]methyl]-benzamide.

1174 199. U47700, trans-3,4-dichloro-N-[2-
1175 (dimethylamino)cyclohexyl]-N-methyl-benzamide.

1176 200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine,
1177 dihydrochloride.

1178 Section 5. Paragraph (c) of subsection (6) of section
1179 893.13, Florida Statutes, is amended to read:

1180 893.13 Prohibited acts; penalties.—

1181 (6)

1182 (c) Except as provided in this chapter, a person may not
1183 possess more than 10 grams of any substance named or described
1184 in s. 893.03(1)(a), ~~or~~ (1)(b), or (2)(b), or any combination
1185 thereof, or any mixture containing any such substance. A person
1186 who violates this paragraph commits a felony of the first
1187 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1188 775.084.

1189 Section 6. Paragraphs (c), (d), and (k) of subsection (1)
1190 of section 893.135, Florida Statutes, are amended, and
1191 paragraphs (m) and (n) are added to that subsection, to read:

1192 893.135 Trafficking; mandatory sentences; suspension or
1193 reduction of sentences; conspiracy to engage in trafficking.—

1194 (1) Except as authorized in this chapter or in chapter 499
1195 and notwithstanding the provisions of s. 893.13:

1196 (c)1. A person who knowingly sells, purchases,
1197 manufactures, delivers, or brings into this state, or who is
1198 knowingly in actual or constructive possession of, 4 grams or
1199 more of any morphine, opium, hydromorphone, or any salt,



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1200 derivative, isomer, or salt of an isomer thereof, including
1201 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
1202 (3)(c)4., or 4 grams or more of any mixture containing any such
1203 substance, but less than 30 kilograms of such substance or
1204 mixture, commits a felony of the first degree, which felony
1205 shall be known as "trafficking in illegal drugs," punishable as
1206 provided in s. 775.082, s. 775.083, or s. 775.084. If the
1207 quantity involved:

1208 a. Is 4 grams or more, but less than 14 grams, such person
1209 shall be sentenced to a mandatory minimum term of imprisonment
1210 of 3 years and shall be ordered to pay a fine of \$50,000.

1211 b. Is 14 grams or more, but less than 28 grams, such person
1212 shall be sentenced to a mandatory minimum term of imprisonment
1213 of 15 years and shall be ordered to pay a fine of \$100,000.

1214 c. Is 28 grams or more, but less than 30 kilograms, such
1215 person shall be sentenced to a mandatory minimum term of
1216 imprisonment of 25 years and shall be ordered to pay a fine of
1217 \$500,000.

1218 2. A person who knowingly sells, purchases, manufactures,
1219 delivers, or brings into this state, or who is knowingly in
1220 actual or constructive possession of, 14 grams or more of
1221 hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as
1222 described in s. 893.03(2)(a)1.g., or any salt, ~~derivative,~~
1223 ~~isomer, or salt of an isomer~~ thereof, or 14 grams or more of any
1224 mixture containing any such substance, commits a felony of the
1225 first degree, which felony shall be known as "trafficking in
1226 hydrocodone," punishable as provided in s. 775.082, s. 775.083,
1227 or s. 775.084. If the quantity involved:

1228 a. Is 14 grams or more, but less than 28 grams, such person



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1229 shall be sentenced to a mandatory minimum term of imprisonment
1230 of 3 years and shall be ordered to pay a fine of \$50,000.

1231 b. Is 28 grams or more, but less than 50 grams, such person
1232 shall be sentenced to a mandatory minimum term of imprisonment
1233 of 7 years and shall be ordered to pay a fine of \$100,000.

1234 c. Is 50 grams or more, but less than 200 grams, such
1235 person shall be sentenced to a mandatory minimum term of
1236 imprisonment of 15 years and shall be ordered to pay a fine of
1237 \$500,000.

1238 d. Is 200 grams or more, but less than 30 kilograms, such
1239 person shall be sentenced to a mandatory minimum term of
1240 imprisonment of 25 years and shall be ordered to pay a fine of
1241 \$750,000.

1242 3. A person who knowingly sells, purchases, manufactures,
1243 delivers, or brings into this state, or who is knowingly in
1244 actual or constructive possession of, 7 grams or more of
1245 oxycodone, as described in s. 893.03(2)(a)1.o., or any salt,
1246 ~~derivative, isomer, or salt of an isomer~~ thereof, or 7 grams or
1247 more of any mixture containing any such substance, commits a
1248 felony of the first degree, which felony shall be known as
1249 "trafficking in oxycodone," punishable as provided in s.
1250 775.082, s. 775.083, or s. 775.084. If the quantity involved:

1251 a. Is 7 grams or more, but less than 14 grams, such person
1252 shall be sentenced to a mandatory minimum term of imprisonment
1253 of 3 years and shall be ordered to pay a fine of \$50,000.

1254 b. Is 14 grams or more, but less than 25 grams, such person
1255 shall be sentenced to a mandatory minimum term of imprisonment
1256 of 7 years and shall be ordered to pay a fine of \$100,000.

1257 c. Is 25 grams or more, but less than 100 grams, such



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1258 person shall be sentenced to a mandatory minimum term of
1259 imprisonment of 15 years and shall be ordered to pay a fine of
1260 \$500,000.

1261 d. Is 100 grams or more, but less than 30 kilograms, such
1262 person shall be sentenced to a mandatory minimum term of
1263 imprisonment of 25 years and shall be ordered to pay a fine of
1264 \$750,000.

1265 4.a. A person who knowingly sells, purchases, manufactures,
1266 delivers, or brings into this state, or who is knowingly in
1267 actual or constructive possession of, 4 grams or more of:

1268 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

1269 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

1270 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

1271 (IV) Sufentanil, as described in s. 893.03(2)(b)29.;

1272 (V) A fentanyl derivative, as described in s.

1273 893.03(1)(a)62.;

1274 (VI) A controlled substance analog, as described in s.

1275 893.0356, of any substance described in sub-sub-subparagraphs

1276 (I)-(V); or

1277 (VII) A mixture containing any substance described in sub-
1278 sub-subparagraphs (I)-(VI),

1279
1280 commits a felony of the first degree, which felony shall be
1281 known as "trafficking in fentanyl," punishable as provided in s.
1282 775.082, s. 775.083, or s. 775.084.

1283 b. If the quantity involved under sub-subparagraph a.:

1284 (I) Is 4 grams or more, but less than 14 grams, such person
1285 shall be sentenced to a mandatory minimum term of imprisonment
1286 of 3 years, and shall be ordered to pay a fine of \$50,000.



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1287 (II) Is 14 grams or more, but less than 28 grams, such
1288 person shall be sentenced to a mandatory minimum term of
1289 imprisonment of 15 years, and shall be ordered to pay a fine of
1290 \$100,000.

1291 (III) Is 28 grams or more, such person shall be sentenced
1292 to a mandatory minimum term of imprisonment of 25 years, and
1293 shall be ordered to pay a fine of \$500,000.

1294 ~~5.4.~~ A person who knowingly sells, purchases, manufactures,
1295 delivers, or brings into this state, or who is knowingly in
1296 actual or constructive possession of, 30 kilograms or more of
1297 any morphine, opium, oxycodone, hydrocodone, codeine,
1298 hydromorphone, or any salt, derivative, isomer, or salt of an
1299 isomer thereof, including heroin, as described in s.
1300 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
1301 more of any mixture containing any such substance, commits the
1302 first degree felony of trafficking in illegal drugs. A person
1303 who has been convicted of the first degree felony of trafficking
1304 in illegal drugs under this subparagraph shall be punished by
1305 life imprisonment and is ineligible for any form of
1306 discretionary early release except pardon or executive clemency
1307 or conditional medical release under s. 947.149. However, if the
1308 court determines that, in addition to committing any act
1309 specified in this paragraph:

1310 a. The person intentionally killed an individual or
1311 counseled, commanded, induced, procured, or caused the
1312 intentional killing of an individual and such killing was the
1313 result; or

1314 b. The person's conduct in committing that act led to a
1315 natural, though not inevitable, lethal result,



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1316
1317 such person commits the capital felony of trafficking in illegal
1318 drugs, punishable as provided in ss. 775.082 and 921.142. A
1319 person sentenced for a capital felony under this paragraph shall
1320 also be sentenced to pay the maximum fine provided under
1321 subparagraph 1.

1322 ~~6.5.~~ A person who knowingly brings into this state 60
1323 kilograms or more of any morphine, opium, oxycodone,
1324 hydrocodone, codeine, hydromorphone, or any salt, derivative,
1325 isomer, or salt of an isomer thereof, including heroin, as
1326 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
1327 60 kilograms or more of any mixture containing any such
1328 substance, and who knows that the probable result of such
1329 importation would be the death of a person, commits capital
1330 importation of illegal drugs, a capital felony punishable as
1331 provided in ss. 775.082 and 921.142. A person sentenced for a
1332 capital felony under this paragraph shall also be sentenced to
1333 pay the maximum fine provided under subparagraph 1.

1334 (d)1. Any person who knowingly sells, purchases,
1335 manufactures, delivers, or brings into this state, or who is
1336 knowingly in actual or constructive possession of, 28 grams or
1337 more of phencyclidine, as described in s. 893.03(2)(b)23., a
1338 substituted phenylcyclohexylamine, as described in s.
1339 893.03(1)(c)195., or a substance described in s.
1340 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
1341 containing phencyclidine, as described in s. 893.03(2)(b)23.
1342 ~~893.03(2)(b),~~ a substituted phenylcyclohexylamine, as described
1343 in s. 893.03(1)(c)195., or a substance described in s.
1344 893.03(1)(c)13., 32., 38., 103., or 146.,



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1345 commits a felony of the first degree, which felony shall be
1346 known as "trafficking in phencyclidine," punishable as provided
1347 in s. 775.082, s. 775.083, or s. 775.084. If the quantity
1348 involved:

1349 a. Is 28 grams or more, but less than 200 grams, such
1350 person shall be sentenced to a mandatory minimum term of
1351 imprisonment of 3 years, and the defendant shall be ordered to
1352 pay a fine of \$50,000.

1353 b. Is 200 grams or more, but less than 400 grams, such
1354 person shall be sentenced to a mandatory minimum term of
1355 imprisonment of 7 years, and the defendant shall be ordered to
1356 pay a fine of \$100,000.

1357 c. Is 400 grams or more, such person shall be sentenced to
1358 a mandatory minimum term of imprisonment of 15 calendar years
1359 and pay a fine of \$250,000.

1360 2. Any person who knowingly brings into this state 800
1361 grams or more of phencyclidine, as described in s.
1362 893.03(2)(b)23., a substituted phenylcyclohexylamine, as
1363 described in s. 893.03(1)(c)195., or a substance described in s.
1364 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
1365 containing phencyclidine, as described in s. 893.03(2)(b)23.
1366 ~~893.03(2)(b),~~ a substituted phenylcyclohexylamine, as described
1367 in s. 893.03(1)(c)195., or a substance described in s.
1368 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the
1369 probable result of such importation would be the death of any
1370 person commits capital importation of phencyclidine, a capital
1371 felony punishable as provided in ss. 775.082 and 921.142. Any
1372 person sentenced for a capital felony under this paragraph shall
1373 also be sentenced to pay the maximum fine provided under



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1374 subparagraph 1.

1375 (k)1. A person who knowingly sells, purchases,
1376 manufactures, delivers, or brings into this state, or who is
1377 knowingly in actual or constructive possession of, 10 grams or
1378 more of a any of the following substances described in s.

1379 ~~893.03(1)(c):~~

1380 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,
1381 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,
1382 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,
1383 165., or 187.-189., a substituted cathinone, as described in s.
1384 893.03(1)(c)191., or substituted phenethylamine, as described in
1385 s. 893.03(1)(c)192.;

1386 b. Mixture containing any substance described in sub-
1387 subparagraph a.; or

1388 c. Salt, isomer, ester, or ether or salt of an isomer,
1389 ester, or ether of a substance described in sub-subparagraph a.,

1390 a. (MDMA) 3,4-Methylenedioxyamphetamine;

1391 b. DOB (4-Bromo-2,5-dimethoxyamphetamine);

1392 e. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);

1393 d. 2,5-Dimethoxyamphetamine;

1394 e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);

1395 f. N-ethylamphetamine;

1396 g. 3,4-Methylenedioxy-N-hydroxyamphetamine;

1397 h. 5-Methoxy-3,4-methylenedioxyamphetamine;

1398 i. PMA (4-methoxyamphetamine);

1399 j. PMMA (4-methoxymethamphetamine);

1400 k. DOM (4-Methyl-2,5-dimethoxyamphetamine);

1401 l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);

1402 m. MDA (3,4-Methylenedioxyamphetamine);



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1403 ~~n. N,N-dimethylamphetamine;~~
1404 ~~o. 3,4,5-Trimethoxyamphetamine;~~
1405 ~~p. Methyldone (3,4-Methylenedioxymethcathinone);~~
1406 ~~q. MDPV (3,4-Methylenedioxypyrovalerone); or~~
1407 ~~r. Methyldmethcathinone,~~
1408
1409 ~~individually or analogs thereto or isomers thereto or in any~~
1410 ~~combination of or any mixture containing any substance listed in~~
1411 ~~sub-subparagraphs a.-r.,~~ commits a felony of the first degree,
1412 which felony shall be known as "trafficking in phenethylamines,"
1413 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
1414 2. If the quantity involved under subparagraph 1.:
1415 a. Is 10 grams or more, but less than 200 grams, such
1416 person shall be sentenced to a mandatory minimum term of
1417 imprisonment of 3 years and shall be ordered to pay a fine of
1418 \$50,000.
1419 b. Is 200 grams or more, but less than 400 grams, such
1420 person shall be sentenced to a mandatory minimum term of
1421 imprisonment of 7 years and shall be ordered to pay a fine of
1422 \$100,000.
1423 c. Is 400 grams or more, such person shall be sentenced to
1424 a mandatory minimum term of imprisonment of 15 years and shall
1425 be ordered to pay a fine of \$250,000.
1426 3. A person who knowingly manufactures or brings into this
1427 state 30 kilograms or more of a substance described in sub-
1428 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,
1429 or a salt, isomer, ester, or ether or a salt of an isomer,
1430 ester, or ether described in sub-subparagraph 1.c., any of the
1431 following substances described in s. 893.03(1)(c):



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1432 a. ~~MDMA (3,4-Methylenedioxymethamphetamine);~~
1433 b. ~~DOB (4-Bromo-2,5-dimethoxyamphetamine);~~
1434 c. ~~2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~
1435 d. ~~2,5-Dimethoxyamphetamine;~~
1436 e. ~~DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~
1437 f. ~~N-ethylamphetamine;~~
1438 g. ~~N-Hydroxy-3,4-methylenedioxyamphetamine;~~
1439 h. ~~5-Methoxy-3,4-methylenedioxyamphetamine;~~
1440 i. ~~PMA (4-methoxyamphetamine);~~
1441 j. ~~PMMA (4-methoxymethamphetamine);~~
1442 k. ~~DOM (4-Methyl-2,5-dimethoxyamphetamine);~~
1443 l. ~~MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~
1444 m. ~~MDA (3,4-Methylenedioxyamphetamine);~~
1445 n. ~~N,N-dimethylamphetamine;~~
1446 o. ~~3,4,5-Trimethoxyamphetamine;~~
1447 p. ~~Methylone (3,4-Methylenedioxymethcathinone);~~
1448 q. ~~MDPV (3,4-Methylenedioxypropylvalerone);~~ or
1449 r. ~~Methylmethcathinone,~~
1450
1451 ~~individually or analogs thereto or isomers thereto or in any~~
1452 ~~combination of or any mixture containing any substance listed in~~
1453 ~~sub-subparagraphs a.-r.,~~ and who knows that the probable result
1454 of such manufacture or importation would be the death of any
1455 person commits capital manufacture or importation of
1456 phenethylamines, a capital felony punishable as provided in ss.
1457 775.082 and 921.142. A person sentenced for a capital felony
1458 under this paragraph shall also be sentenced to pay the maximum
1459 fine ~~provided~~ under subparagraph 2. 1.
1460 (m)1. A person who knowingly sells, purchases,



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1461 manufactures, delivers, or brings into this state, or who is
1462 knowingly in actual or constructive possession of, 280 grams or
1463 more of a:

1464 a. Substance described in s. 893.03(1)(c)30., 46.-50.,
1465 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic
1466 cannabinoid, as described in s. 893.03(1)(c)190.; or

1467 b. Mixture containing any substance described in sub-
1468 subparagraph a.,

1469
1470 commits a felony of the first degree, which felony shall be
1471 known as "trafficking in synthetic cannabinoids," punishable as
1472 provided in s. 775.082, s. 775.083, or s. 775.084.

1473 2. If the quantity involved under subparagraph 1.:

1474 a. Is 280 grams or more, but less than 500 grams, such
1475 person shall be sentenced to a mandatory minimum term of
1476 imprisonment of 3 years, and the defendant shall be ordered to
1477 pay a fine of \$50,000.

1478 b. Is 500 grams or more, but less than 1 kilogram, such
1479 person shall be sentenced to a mandatory minimum term of
1480 imprisonment of 7 years, and the defendant shall be ordered to
1481 pay a fine of \$100,000.

1482 c. Is 1 kilogram or more, but less than 30 kilograms such
1483 person shall be sentenced to a mandatory minimum term of
1484 imprisonment of 15 years, and the defendant shall be ordered to
1485 pay a fine of \$200,000.

1486 d. Is 30 kilograms or more, such person shall be sentenced
1487 to a mandatory minimum term of imprisonment of 25 years, and the
1488 defendant shall be ordered to pay a fine of \$750,000.

1489 (n)1. A person who knowingly sells, purchases,



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1490 manufactures, delivers, or brings into this state, or who is
1491 knowingly in actual or constructive possession of, 14 grams or
1492 more of:

1493 a. A substance described in s. 893.03(1)(c)164., 174., or
1494 175., a n-benzyl phenethylamine compound, as described in s.
1495 893.03(1)(c)193.; or

1496 b. A mixture containing any substance described in sub-
1497 subparagraph a.,

1498
1499 commits a felony of the first degree, which felony shall be
1500 known as "trafficking in n-benzyl phenethylamines," punishable
1501 as provided in s. 775.082, s. 775.083, or s. 775.084.

1502 2. If the quantity involved under subparagraph 1.:

1503 a. Is 14 grams or more, but less than 100 grams, such
1504 person shall be sentenced to a mandatory minimum term of
1505 imprisonment of 3 years, and the defendant shall be ordered to
1506 pay a fine of \$50,000.

1507 b. Is 100 grams or more, but less than 200 grams, such
1508 person shall be sentenced to a mandatory minimum term of
1509 imprisonment of 7 years, and the defendant shall be ordered to
1510 pay a fine of \$100,000.

1511 c. Is 200 grams or more, such person shall be sentenced to
1512 a mandatory minimum term of imprisonment of 15 years, and the
1513 defendant shall be ordered to pay a fine of \$500,000.

1514 3. A person who knowingly manufactures or brings into this
1515 state 400 grams or more of a substance described in sub-
1516 subparagraph 1.a. or a mixture described in sub-subparagraph
1517 1.b., and who knows that the probable result of such manufacture
1518 or importation would be the death of any person commits capital



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1519 manufacture or importation of a n-benzyl phenethylamine
1520 compound, a capital felony punishable as provided in ss. 775.082
1521 and 921.142. A person sentenced for a capital felony under this
1522 paragraph shall also be sentenced to pay the maximum fine under
1523 subparagraph 2.

1524 Section 7. For the purpose of incorporating the amendments
1525 made by this act to sections 893.03, 893.13, and 893.135,
1526 Florida Statutes, in references thereto, paragraphs (a), (b),
1527 (c), (d), and (e) subsection (3) of section 921.0022, Florida
1528 Statutes, are reenacted; and paragraphs (g), (h), and (i) of
1529 subsection (3) of section 921.0022, Florida Statutes, are
1530 amended to read:

1531 921.0022 Criminal Punishment Code; offense severity ranking
1532 chart.—

1533 (3) OFFENSE SEVERITY RANKING CHART

1534 (a) LEVEL 1

1535

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

1536

1537

1538



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1539			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.



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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).



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1554	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
1555	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
1556	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
1557	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
1558	826.01	3rd	Bigamy.
1559	828.122(3)	3rd	Fighting or baiting animals.
1560	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.



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1561			893.03(5) drugs.
	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
1562			
	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.
1563			
	838.15(2)	3rd	Commercial bribe receiving.
1564			
	838.16	3rd	Commercial bribery.
1565			
	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
1566			
	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
1567			
	849.01	3rd	Keeping gambling house.
1568			
	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.



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1569	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
1570	849.25(2)	3rd	Engaging in bookmaking.
1571	860.08	3rd	Interfere with a railroad signal.
1572	860.13(1)(a)	3rd	Operate aircraft while under the influence.
1573	893.13(2)(a)2.	3rd	Purchase of cannabis.
1574	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
1575	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
1576			
1577			
1578	(b) LEVEL 2		
1579			
	Florida	Felony	Description
	Statute	Degree	
1580	379.2431	3rd	Possession of 11 or fewer



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1581	(1) (e) 3.		marine turtle eggs in violation of the Marine Turtle Protection Act.
	379.2431	3rd	Possession of more than 11
	(1) (e) 4.		marine turtle eggs in violation of the Marine Turtle Protection Act.
1582			
	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.
1583			
	517.07 (2)	3rd	Failure to furnish a prospectus meeting requirements.
1584			
	590.28 (1)	3rd	Intentional burning of lands.
1585			
	784.05 (3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
1586			
	787.04 (1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
1587			



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- 1588 806.13(1)(b)3. 3rd Criminal mischief; damage
\$1,000 or more to public
communication or any other
public service.
- 1589 810.061(2) 3rd Impairing or impeding telephone
or power to a dwelling;
facilitating or furthering
burglary.
- 1590 810.09(2)(e) 3rd Trespassing on posted
commercial horticulture
property.
- 1591 812.014(2)(c)1. 3rd Grand theft, 3rd degree; \$300
or more but less than \$5,000.
- 1592 812.014(2)(d) 3rd Grand theft, 3rd degree; \$100
or more but less than \$300,
taken from unenclosed curtilage
of dwelling.
- 1593 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.



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1594	817.481 (3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
1595	817.52 (3)	3rd	Failure to redeliver hired vehicle.
1596	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
1597	817.60 (5)	3rd	Dealing in credit cards of another.
1598	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
1599	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
1600	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
1601	831.01	3rd	Forgery.
1602			



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1603	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
1604	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
1605	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
1606	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
1607	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
1608	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
1609	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



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1610			other than cannabis.
	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
1611			
1612			
1613	(c) LEVEL 3		
1614			
	Florida Statute	Felony Degree	Description
1615			
	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
1616			
	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
1617			
	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
1618			
	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
1619			
	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
1620			



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1621	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
1622	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
1623	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
1624	327.35(2)(b)	3rd	Felony BUI.
1625	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1626	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1627	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



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			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



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1633			materially false/misleading information.
1634	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
1635	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1636	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
1637	697.08	3rd	Equity skimming.
1638	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1639	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1640	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
	810.09(2)(c)	3rd	Trespass on property other than



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1641			structure or conveyance armed with firearm or dangerous weapon.
1642	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
1643	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
1644	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.
1645	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
1646	817.233	3rd	Burning to defraud insurer.
1647	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
1648	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
	817.236	3rd	Filing a false motor vehicle



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1649			insurance application.
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	



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1657			dog or horse.
	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,



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1669	893.13(8)(a)2.	3rd	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.
1670	893.13(8)(a)3.	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.
1671	893.13(8)(a)4.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
1672	918.13(1)(a)	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.



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1673

944.47 3rd Introduce contraband to
(1) (a) 1. & 2. correctional facility.

1674

944.47 (1) (c) 2nd Possess contraband while upon
the grounds of a correctional
institution.

1675

985.721 3rd Escapes from a juvenile
facility (secure detention or
residential commitment
facility).

1676

1677

1678 (d) LEVEL 4

1679

Florida Statute	Felony Degree	Description
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1680

316.1935 (3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
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1681

499.0051 (1)	3rd	Failure to maintain or deliver transaction history, transaction information, or
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1682			transaction statements.
	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



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1691			or employee.
	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
1692			
	784.083 (3)	3rd	Battery on code inspector.
1693			
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
1694			
	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
1695			
	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
1696			
	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
1697			
	787.07	3rd	Human smuggling.
1698			



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1699	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
1700	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
1701	790.115(2)(c)	3rd	Possessing firearm on school property.
1702	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
1703	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
1704	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
1705	810.06	3rd	Burglary; possession of tools.
	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.



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1706	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
1707	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
1708	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
1709	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
1710	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
1711	817.625 (2) (a)	3rd	Fraudulent use of scanning device or reencoder.
1712	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
1713	837.02 (1)	3rd	Perjury in official



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			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 estreatment or bond jumping).
1721	847.0135(5)(c)	3rd	Lewd or lascivious exhibition



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1722			using computer; offender less than 18 years.
1723	874.05 (1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
1724	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).
1725	914.14 (2)	3rd	Witnesses accepting bribes.
1726	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.
1727	914.23 (2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
1728	918.12	3rd	Tampering with jurors.
1729	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
1730			
1731	(e) LEVEL 5		



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1732

Florida Statute	Felony Degree	Description
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1733

316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
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1734

316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
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1735

316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
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1736

322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
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1737

327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
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1738

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,
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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



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1745	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1746	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
1747	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
1748	790.01 (2)	3rd	Carrying a concealed firearm.
1749	790.162	2nd	Threat to throw or discharge destructive device.
1750	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
1751	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
	790.23	2nd	Felons in possession of firearms, ammunition, or



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1752			electronic weapons or devices.
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
1753			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
1754			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
1755			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
1756			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
1757			
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
1758			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
1759			



1760	812.131 (2) (b)	3rd	Robbery by sudden snatching.
1761	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
1762	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
1763	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
1764	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.
1765	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.



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1766	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
1767	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
1768	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
1769	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1770	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.



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1771	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
1772	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
1773	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
1774	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
1775	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
1776	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
1777	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.



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1778

893.13(1)(c)2. 2nd drugs).
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



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1781			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.
1782			
	893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
1783			
	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
1784			
1785			
1786	(g) LEVEL 7		
1787			
	Florida Statute	Felony Degree	Description
1788			
	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
1789			
	316.193(3)(c)2.	3rd	DUI resulting in serious bodily



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1790			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.
1791			
	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
1792			
	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
1793			
	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
1794			
	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
1795			
	456.065 (2)	3rd	Practicing a health care profession without a license.



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1796	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
1797	458.327 (1)	3rd	Practicing medicine without a license.
1798	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
1799	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
1800	461.012 (1)	3rd	Practicing podiatric medicine without a license.
1801	462.17	3rd	Practicing naturopathy without a license.
1802	463.015 (1)	3rd	Practicing optometry without a license.
1803	464.016 (1)	3rd	Practicing nursing without a license.
1804	465.015 (2)	3rd	Practicing pharmacy without a license.



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1805	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
1806	467.201	3rd	Practicing midwifery without a license.
1807	468.366	3rd	Delivering respiratory care services without a license.
1808	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
1809	483.901(7)	3rd	Practicing medical physics without a license.
1810	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
1811	484.053	3rd	Dispensing hearing aids without a license.
1812	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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1813	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.
1814	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
1815	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
1816	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
1817	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
1818	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or



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1819			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.
1820			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
1821			
	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
1822			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
1823			
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
1824			
	784.045(1)(a)2.	2nd	Aggravated battery; using



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1825			deadly weapon.
	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1826			
	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
1827			
	784.048 (7)	3rd	Aggravated stalking; violation of court order.
1828			
	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
1829			
	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
1830			
	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
1831			
	784.081 (1)	1st	Aggravated battery on specified official or employee.
1832			
	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
1833			
	784.083 (1)	1st	Aggravated battery on code



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1834			inspector.
	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



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1841			attempting to use a hoax weapon of mass destruction.
1842	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1843	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
1844	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.
1845	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
1846	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



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1847			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.
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.



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1853	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
1854	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.
1855	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
1856	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
1857	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
1858	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
1859	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the



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1860			theft of property and traffics in stolen property.
1861	812.131 (2) (a)	2nd	Robbery by sudden snatching.
1862	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1863	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
1864	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1865	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1866	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.



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1867	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
1868	817.611 (2) (b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
1869	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1870	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.
1871	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
1872	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
1873	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.



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1874	838.015	2nd	Bribery.
1875	838.016	2nd	Unlawful compensation or reward for official behavior.
1876	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
1877	838.22	2nd	Bid tampering.
1878	843.0855 (2)	3rd	Impersonation of a public officer or employee.
1879	843.0855 (3)	3rd	Unlawful simulation of legal process.
1880	843.0855 (4)	3rd	Intimidation of a public officer or employee.
1881	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
1882	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1883	872.06	2nd	Abuse of a dead human body.
1884			



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- 1885 874.05(2)(b) 1st Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
- 1886 874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
- 1887 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



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1888			a specified business site.
	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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1895	893.135 (1) (c) 3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
1896	<u>893.135</u> <u>(1) (c) 4.b. (I)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 4</u> <u>grams or more, less than 14</u> <u>grams.</u>
1897	<u>893.135(1) (d) 1.a.</u> 893.135(1) (d) 1.	1st	Trafficking in phencyclidine, more than 28 grams <u>or more</u> , less than 200 grams.
1898	893.135(1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams <u>or more</u> , less than 5 kilograms.
1899	893.135(1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams <u>or more</u> , less than 28 grams.
1900	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
1901	893.135 (1) (h) 1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.



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1902	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
1903	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
1904	<u>893.135 (1) (m) 2.a.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.</u>
1905	<u>893.135 (1) (m) 2.b.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 500 grams or more, less than 1 kilogram.</u>
1906	<u>893.135 (1) (n) 2.a.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.</u>
1907	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
1908	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
1909			



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- 1910 896.104 (4) (a) 1. 3rd Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
- 1911 943.0435 (4) (c) 2nd Sexual offender vacating permanent residence; failure to comply with reporting requirements.
- 1912 943.0435 (8) 2nd Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
- 1913 943.0435 (9) (a) 3rd Sexual offender; failure to comply with reporting requirements.
- 1914 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



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1915			registration information.
	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
1916			
	944.607(10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1917			
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1918			
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1919			
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1920			
	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.



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1921

985.4815(13) 3rd Sexual offender; failure to
report and reregister; failure
to respond to address
verification; providing false
registration information.

1922

1923

1924 (h) LEVEL 8

1925

Florida Statute	Felony Degree	Description
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1926

316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
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1927

316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
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1928

327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
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1929

499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
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1930

499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
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1931



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1932	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.
1933	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.
1934	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
1935	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



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1936			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).
1937			
	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
1938			
	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
1939			
	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
1940			
	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
1941			
	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
1942			
	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from



1943			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



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1948			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.



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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



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			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.



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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) .



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1975	893.135 (1) (a) 2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
1976	893.135 (1) (b) 1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
1977	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
1978	893.135 (1) (c) 2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
1979	893.135 (1) (c) 3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
1980	<u>893.135</u> <u>(1) (c) 4.b. (II)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 14 grams or more, less than 28 grams.</u>
1981	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams <u>or more</u> , less than 400 grams.
1982			



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1983	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms <u>or more</u> , less than 25 kilograms.
1984	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams <u>or more</u> , less than 200 grams.
1985	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
1986	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
1987	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
1988	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
1989	<u>893.135 (1) (m) 2.c.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 1 kilogram or more, less than 30 kilograms.</u>



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1990	<u>893.135(1)(n)2.b.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.</u>
1991	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
1992	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
1993	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
1994	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
1995	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



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requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

1996
 1997
 1998
 1999

(i) LEVEL 9

Year	Florida Statute	Felony Degree	Description
2000	316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
2001	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
2002	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
2003	499.0051 (8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
2004	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
2005			



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2006	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
2007	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
2008	775.0844	1st	Aggravated white collar crime.
2009	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
2010	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.
2011	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



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2012			elderly person or disabled adult.
	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



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2018			coercion for commercial sexual activity of an unauthorized adult alien.
2019	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.
2020	790.161	1st	Attempted capital destructive device offense.
2021	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
2022	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
2023	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



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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;



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2030			victim less than 12 years; offender 18 years or older.
2031	812.13 (2) (a)	1st,PBL	Robbery with firearm or other deadly weapon.
2032	812.133 (2) (a)	1st,PBL	Carjacking; firearm or other deadly weapon.
2033	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
2034	817.535 (3) (b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
2035	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.



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2036

817.568 (7) 2nd, Fraudulent use of personal
 PBL identification information of
 an individual under the age of
 18 by his or her parent, legal
 guardian, or person exercising
 custodial authority.

2037

827.03 (2) (a) 1st Aggravated child abuse.

2038

847.0145 (1) 1st Selling, or otherwise
 transferring custody or
 control, of a minor.

2039

847.0145 (2) 1st Purchasing, or otherwise
 obtaining custody or control,
 of a minor.

2040

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.

2041

893.135 1st Attempted capital trafficking
 offense.

2042



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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	<u>893.135</u> <u>(1) (c) 4.b. (III)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 28 grams or more.</u>
2049	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams <u>or more</u> .
2050	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms <u>or more</u> .
	893.135	1st	Trafficking in amphetamine,



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2051	(1) (f) 1.c.		more than 200 grams <u>or more</u> .
	893.135	1st	Trafficking in gamma-
	(1) (h) 1.c.		hydroxybutyric acid (GHB), 10 kilograms or more.
2052			
	893.135	1st	Trafficking in 1,4-Butanediol,
	(1) (j) 1.c.		10 kilograms or more.
2053			
	893.135	1st	Trafficking in Phenethylamines,
	(1) (k) 2.c.		400 grams or more.
2054			
	<u>893.135</u>	<u>1st</u>	<u>Trafficking in synthetic</u>
	<u>(1) (m) 2.d.</u>		<u>cannabinoids, 30 kilograms or</u> <u>more.</u>
2055			
	<u>893.135 (1) (n) 2.c.</u>	<u>1st</u>	<u>Trafficking in n-benzyl</u> <u>phenethylamines, 200 grams or</u> <u>more.</u>
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.



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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



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2087 of another state, the District of Columbia, the United States or
2088 any possession or territory thereof, or any foreign
2089 jurisdiction; or

2090 3. The court determines by clear and convincing evidence
2091 that continuing the parental relationship with the incarcerated
2092 parent would be harmful to the child and, for this reason, that
2093 termination of the parental rights of the incarcerated parent is
2094 in the best interest of the child. When determining harm, the
2095 court shall consider the following factors:

2096 a. The age of the child.

2097 b. The relationship between the child and the parent.

2098 c. The nature of the parent's current and past provision
2099 for the child's developmental, cognitive, psychological, and
2100 physical needs.

2101 d. The parent's history of criminal behavior, which may
2102 include the frequency of incarceration and the unavailability of
2103 the parent to the child due to incarceration.

2104 e. Any other factor the court deems relevant.

2105 Section 9. For the purpose of incorporating the amendment
2106 made by this act to section 782.04, Florida Statutes, in a
2107 reference thereto, paragraph (b) of subsection (4) of section
2108 63.089, Florida Statutes, is reenacted to read:

2109 63.089 Proceeding to terminate parental rights pending
2110 adoption; hearing; grounds; dismissal of petition; judgment.—

2111 (4) FINDING OF ABANDONMENT.—A finding of abandonment
2112 resulting in a termination of parental rights must be based upon
2113 clear and convincing evidence that a parent or person having
2114 legal custody has abandoned the child in accordance with the
2115 definition contained in s. 63.032. A finding of abandonment may



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2116 also be based upon emotional abuse or a refusal to provide
2117 reasonable financial support, when able, to a birth mother
2118 during her pregnancy or on whether the person alleged to have
2119 abandoned the child, while being able, failed to establish
2120 contact with the child or accept responsibility for the child's
2121 welfare.

2122 (b) The child has been abandoned when the parent of a child
2123 is incarcerated on or after October 1, 2001, in a federal,
2124 state, or county correctional institution and:

2125 1. The period of time for which the parent has been or is
2126 expected to be incarcerated will constitute a significant
2127 portion of the child's minority. In determining whether the
2128 period of time is significant, the court shall consider the
2129 child's age and the child's need for a permanent and stable
2130 home. The period of time begins on the date that the parent
2131 enters into incarceration;

2132 2. The incarcerated parent has been determined by a court
2133 of competent jurisdiction to be a violent career criminal as
2134 defined in s. 775.084, a habitual violent felony offender as
2135 defined in s. 775.084, convicted of child abuse as defined in s.
2136 827.03, or a sexual predator as defined in s. 775.21; has been
2137 convicted of first degree or second degree murder in violation
2138 of s. 782.04 or a sexual battery that constitutes a capital,
2139 life, or first degree felony violation of s. 794.011; or has
2140 been convicted of a substantially similar offense in another
2141 jurisdiction. As used in this section, the term "substantially
2142 similar offense" means any offense that is substantially similar
2143 in elements and penalties to one of those listed in this
2144 subparagraph, and that is in violation of a law of any other



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2145 jurisdiction, whether that of another state, the District of
2146 Columbia, the United States or any possession or territory
2147 thereof, or any foreign jurisdiction; or

2148 3. The court determines by clear and convincing evidence
2149 that continuing the parental relationship with the incarcerated
2150 parent would be harmful to the child and, for this reason,
2151 termination of the parental rights of the incarcerated parent is
2152 in the best interests of the child.

2153 Section 10. For the purpose of incorporating the amendment
2154 made by this act to section 782.04, Florida Statutes, in a
2155 reference thereto, subsection (10) of section 95.11, Florida
2156 Statutes, is reenacted to read:

2157 95.11 Limitations other than for the recovery of real
2158 property.—Actions other than for recovery of real property shall
2159 be commenced as follows:

2160 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
2161 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
2162 (4) (d), an action for wrongful death seeking damages authorized
2163 under s. 768.21 brought against a natural person for an
2164 intentional tort resulting in death from acts described in s.
2165 782.04 or s. 782.07 may be commenced at any time. This
2166 subsection shall not be construed to require an arrest, the
2167 filing of formal criminal charges, or a conviction for a
2168 violation of s. 782.04 or s. 782.07 as a condition for filing a
2169 civil action.

2170 Section 11. For the purpose of incorporating the amendment
2171 made by this act to section 782.04, Florida Statutes, in
2172 references thereto, paragraph (b) of subsection (1) and
2173 paragraphs (a), (b), and (c) of subsection (3) of section



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2174 775.082, Florida Statutes, are reenacted to read:

2175 775.082 Penalties; applicability of sentencing structures;
2176 mandatory minimum sentences for certain reoffenders previously
2177 released from prison.—

2178 (1)

2179 (b)1. A person who actually killed, intended to kill, or
2180 attempted to kill the victim and who is convicted under s.
2181 782.04 of a capital felony, or an offense that was reclassified
2182 as a capital felony, which was committed before the person
2183 attained 18 years of age shall be punished by a term of
2184 imprisonment for life if, after a sentencing hearing conducted
2185 by the court in accordance with s. 921.1401, the court finds
2186 that life imprisonment is an appropriate sentence. If the court
2187 finds that life imprisonment is not an appropriate sentence,
2188 such person shall be punished by a term of imprisonment of at
2189 least 40 years. A person sentenced pursuant to this subparagraph
2190 is entitled to a review of his or her sentence in accordance
2191 with s. 921.1402(2)(a).

2192 2. A person who did not actually kill, intend to kill, or
2193 attempt to kill the victim and who is convicted under s. 782.04
2194 of a capital felony, or an offense that was reclassified as a
2195 capital felony, which was committed before the person attained
2196 18 years of age may be punished by a term of imprisonment for
2197 life or by a term of years equal to life if, after a sentencing
2198 hearing conducted by the court in accordance with s. 921.1401,
2199 the court finds that life imprisonment is an appropriate
2200 sentence. A person who is sentenced to a term of imprisonment of
2201 more than 15 years is entitled to a review of his or her
2202 sentence in accordance with s. 921.1402(2)(c).



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2203 3. The court shall make a written finding as to whether a
2204 person is eligible for a sentence review hearing under s.
2205 921.1402(2)(a) or (c). Such a finding shall be based upon
2206 whether the person actually killed, intended to kill, or
2207 attempted to kill the victim. The court may find that multiple
2208 defendants killed, intended to kill, or attempted to kill the
2209 victim.

2210 (3) A person who has been convicted of any other designated
2211 felony may be punished as follows:

2212 (a)1. For a life felony committed before October 1, 1983,
2213 by a term of imprisonment for life or for a term of at least 30
2214 years.

2215 2. For a life felony committed on or after October 1, 1983,
2216 by a term of imprisonment for life or by a term of imprisonment
2217 not exceeding 40 years.

2218 3. Except as provided in subparagraph 4., for a life felony
2219 committed on or after July 1, 1995, by a term of imprisonment
2220 for life or by imprisonment for a term of years not exceeding
2221 life imprisonment.

2222 4.a. Except as provided in sub-subparagraph b., for a life
2223 felony committed on or after September 1, 2005, which is a
2224 violation of s. 800.04(5)(b), by:

2225 (I) A term of imprisonment for life; or

2226 (II) A split sentence that is a term of at least 25 years'
2227 imprisonment and not exceeding life imprisonment, followed by
2228 probation or community control for the remainder of the person's
2229 natural life, as provided in s. 948.012(4).

2230 b. For a life felony committed on or after July 1, 2008,
2231 which is a person's second or subsequent violation of s.



2232 800.04(5)(b), by a term of imprisonment for life.

2233 5. Notwithstanding subparagraphs 1.-4., a person who is
2234 convicted under s. 782.04 of an offense that was reclassified as
2235 a life felony which was committed before the person attained 18
2236 years of age may be punished by a term of imprisonment for life
2237 or by a term of years equal to life imprisonment if the judge
2238 conducts a sentencing hearing in accordance with s. 921.1401 and
2239 finds that life imprisonment or a term of years equal to life
2240 imprisonment is an appropriate sentence.

2241 a. A person who actually killed, intended to kill, or
2242 attempted to kill the victim and is sentenced to a term of
2243 imprisonment of more than 25 years is entitled to a review of
2244 his or her sentence in accordance with s. 921.1402(2)(b).

2245 b. A person who did not actually kill, intend to kill, or
2246 attempt to kill the victim and is sentenced to a term of
2247 imprisonment of more than 15 years is entitled to a review of
2248 his or her sentence in accordance with s. 921.1402(2)(c).

2249 c. The court shall make a written finding as to whether a
2250 person is eligible for a sentence review hearing under s.
2251 921.1402(2)(b) or (c). Such a finding shall be based upon
2252 whether the person actually killed, intended to kill, or
2253 attempted to kill the victim. The court may find that multiple
2254 defendants killed, intended to kill, or attempted to kill the
2255 victim.

2256 6. For a life felony committed on or after October 1, 2014,
2257 which is a violation of s. 787.06(3)(g), by a term of
2258 imprisonment for life.

2259 (b)1. For a felony of the first degree, by a term of
2260 imprisonment not exceeding 30 years or, when specifically



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2261 provided by statute, by imprisonment for a term of years not
2262 exceeding life imprisonment.

2263 2. Notwithstanding subparagraph 1., a person convicted
2264 under s. 782.04 of a first degree felony punishable by a term of
2265 years not exceeding life imprisonment, or an offense that was
2266 reclassified as a first degree felony punishable by a term of
2267 years not exceeding life, which was committed before the person
2268 attained 18 years of age may be punished by a term of years
2269 equal to life imprisonment if the judge conducts a sentencing
2270 hearing in accordance with s. 921.1401 and finds that a term of
2271 years equal to life imprisonment is an appropriate sentence.

2272 a. A person who actually killed, intended to kill, or
2273 attempted to kill the victim and is sentenced to a term of
2274 imprisonment of more than 25 years is entitled to a review of
2275 his or her sentence in accordance with s. 921.1402(2)(b).

2276 b. A person who did not actually kill, intend to kill, or
2277 attempt to kill the victim and is sentenced to a term of
2278 imprisonment of more than 15 years is entitled to a review of
2279 his or her sentence in accordance with s. 921.1402(2)(c).

2280 c. The court shall make a written finding as to whether a
2281 person is eligible for a sentence review hearing under s.
2282 921.1402(2)(b) or (c). Such a finding shall be based upon
2283 whether the person actually killed, intended to kill, or
2284 attempted to kill the victim. The court may find that multiple
2285 defendants killed, intended to kill, or attempted to kill the
2286 victim.

2287 (c) Notwithstanding paragraphs (a) and (b), a person
2288 convicted of an offense that is not included in s. 782.04 but
2289 that is an offense that is a life felony or is punishable by a



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2290 term of imprisonment for life or by a term of years not
2291 exceeding life imprisonment, or an offense that was reclassified
2292 as a life felony or an offense punishable by a term of
2293 imprisonment for life or by a term of years not exceeding life
2294 imprisonment, which was committed before the person attained 18
2295 years of age may be punished by a term of imprisonment for life
2296 or a term of years equal to life imprisonment if the judge
2297 conducts a sentencing hearing in accordance with s. 921.1401 and
2298 finds that life imprisonment or a term of years equal to life
2299 imprisonment is an appropriate sentence. A person who is
2300 sentenced to a term of imprisonment of more than 20 years is
2301 entitled to a review of his or her sentence in accordance with
2302 s. 921.1402(2)(d).

2303 Section 12. For the purpose of incorporating the amendment
2304 made by this act to section 782.04, Florida Statutes, in
2305 references thereto, subsections (1) and (2) of section 775.0823,
2306 Florida Statutes, are reenacted to read:

2307 775.0823 Violent offenses committed against law enforcement
2308 officers, correctional officers, state attorneys, assistant
2309 state attorneys, justices, or judges.—The Legislature does
2310 hereby provide for an increase and certainty of penalty for any
2311 person convicted of a violent offense against any law
2312 enforcement or correctional officer, as defined in s. 943.10(1),
2313 (2), (3), (6), (7), (8), or (9); against any state attorney
2314 elected pursuant to s. 27.01 or assistant state attorney
2315 appointed under s. 27.181; or against any justice or judge of a
2316 court described in Art. V of the State Constitution, which
2317 offense arises out of or in the scope of the officer's duty as a
2318 law enforcement or correctional officer, the state attorney's or



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2319 assistant state attorney's duty as a prosecutor or investigator,
2320 or the justice's or judge's duty as a judicial officer, as
2321 follows:

2322 (1) For murder in the first degree as described in s.
2323 782.04(1), if the death sentence is not imposed, a sentence of
2324 imprisonment for life without eligibility for release.

2325 (2) For attempted murder in the first degree as described
2326 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
2327 or s. 775.084.

2328

2329 Notwithstanding the provisions of s. 948.01, with respect to any
2330 person who is found to have violated this section, adjudication
2331 of guilt or imposition of sentence shall not be suspended,
2332 deferred, or withheld.

2333 Section 13. For the purpose of incorporating the amendment
2334 made by this act to section 782.04, Florida Statutes, in a
2335 reference thereto, subsection (1) of section 921.16, Florida
2336 Statutes, is reenacted to read:

2337 921.16 When sentences to be concurrent and when
2338 consecutive.—

2339 (1) A defendant convicted of two or more offenses charged
2340 in the same indictment, information, or affidavit or in
2341 consolidated indictments, informations, or affidavits shall
2342 serve the sentences of imprisonment concurrently unless the
2343 court directs that two or more of the sentences be served
2344 consecutively. Sentences of imprisonment for offenses not
2345 charged in the same indictment, information, or affidavit shall
2346 be served consecutively unless the court directs that two or
2347 more of the sentences be served concurrently. Any sentence for



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2348 sexual battery as defined in chapter 794 or murder as defined in
2349 s. 782.04 must be imposed consecutively to any other sentence
2350 for sexual battery or murder which arose out of a separate
2351 criminal episode or transaction.

2352 Section 14. For the purpose of incorporating the amendment
2353 made by this act to section 782.04, Florida Statutes, in a
2354 reference thereto, paragraph (c) of subsection (8) of section
2355 948.06, Florida Statutes, is reenacted to read:

2356 948.06 Violation of probation or community control;
2357 revocation; modification; continuance; failure to pay
2358 restitution or cost of supervision.—

2359 (8)

2360 (c) For purposes of this section, the term "qualifying
2361 offense" means any of the following:

2362 1. Kidnapping or attempted kidnapping under s. 787.01,
2363 false imprisonment of a child under the age of 13 under s.
2364 787.02(3), or luring or enticing a child under s. 787.025(2) (b)
2365 or (c).

2366 2. Murder or attempted murder under s. 782.04, attempted
2367 felony murder under s. 782.051, or manslaughter under s. 782.07.

2368 3. Aggravated battery or attempted aggravated battery under
2369 s. 784.045.

2370 4. Sexual battery or attempted sexual battery under s.
2371 794.011(2), (3), (4), or (8) (b) or (c).

2372 5. Lewd or lascivious battery or attempted lewd or
2373 lascivious battery under s. 800.04(4), lewd or lascivious
2374 molestation under s. 800.04(5) (b) or (c)2., lewd or lascivious
2375 conduct under s. 800.04(6) (b), lewd or lascivious exhibition
2376 under s. 800.04(7) (b), or lewd or lascivious exhibition on



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2377 computer under s. 847.0135(5) (b) .
2378 6. Robbery or attempted robbery under s. 812.13, carjacking
2379 or attempted carjacking under s. 812.133, or home invasion
2380 robbery or attempted home invasion robbery under s. 812.135.
2381 7. Lewd or lascivious offense upon or in the presence of an
2382 elderly or disabled person or attempted lewd or lascivious
2383 offense upon or in the presence of an elderly or disabled person
2384 under s. 825.1025.
2385 8. Sexual performance by a child or attempted sexual
2386 performance by a child under s. 827.071.
2387 9. Computer pornography under s. 847.0135(2) or (3),
2388 transmission of child pornography under s. 847.0137, or selling
2389 or buying of minors under s. 847.0145.
2390 10. Poisoning food or water under s. 859.01.
2391 11. Abuse of a dead human body under s. 872.06.
2392 12. Any burglary offense or attempted burglary offense that
2393 is either a first degree felony or second degree felony under s.
2394 810.02(2) or (3) .
2395 13. Arson or attempted arson under s. 806.01(1) .
2396 14. Aggravated assault under s. 784.021.
2397 15. Aggravated stalking under s. 784.048(3), (4), (5), or
2398 (7) .
2399 16. Aircraft piracy under s. 860.16.
2400 17. Unlawful throwing, placing, or discharging of a
2401 destructive device or bomb under s. 790.161(2), (3), or (4) .
2402 18. Treason under s. 876.32.
2403 19. Any offense committed in another jurisdiction which
2404 would be an offense listed in this paragraph if that offense had
2405 been committed in this state.



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2406 Section 15. For the purpose of incorporating the amendment
2407 made by this act to section 782.04, Florida Statutes, in a
2408 reference thereto, paragraph (a) of subsection (1) of section
2409 948.062, Florida Statutes, is reenacted to read:

2410 948.062 Reviewing and reporting serious offenses committed
2411 by offenders placed on probation or community control.—

2412 (1) The department shall review the circumstances related
2413 to an offender placed on probation or community control who has
2414 been arrested while on supervision for the following offenses:

2415 (a) Any murder as provided in s. 782.04;

2416 Section 16. For the purpose of incorporating the amendment
2417 made by this act to section 782.04, Florida Statutes, in a
2418 reference thereto, paragraph (b) of subsection (3) of section
2419 985.265, Florida Statutes, is reenacted to read:

2420 985.265 Detention transfer and release; education; adult
2421 jails.—

2422 (3)

2423 (b) When a juvenile is released from secure detention or
2424 transferred to nonsecure detention, detention staff shall
2425 immediately notify the appropriate law enforcement agency,
2426 school personnel, and victim if the juvenile is charged with
2427 committing any of the following offenses or attempting to commit
2428 any of the following offenses:

2429 1. Murder, under s. 782.04;

2430 2. Sexual battery, under chapter 794;

2431 3. Stalking, under s. 784.048; or

2432 4. Domestic violence, as defined in s. 741.28.

2433 Section 17. For the purpose of incorporating the amendment
2434 made by this act to section 782.04, Florida Statutes, in a



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2435 reference thereto, paragraph (d) of subsection (1) of section
2436 1012.315, Florida Statutes, is reenacted to read:

2437 1012.315 Disqualification from employment.—A person is
2438 ineligible for educator certification, and instructional
2439 personnel and school administrators, as defined in s. 1012.01,
2440 are ineligible for employment in any position that requires
2441 direct contact with students in a district school system,
2442 charter school, or private school that accepts scholarship
2443 students under s. 1002.39 or s. 1002.395, if the person,
2444 instructional personnel, or school administrator has been
2445 convicted of:

2446 (1) Any felony offense prohibited under any of the
2447 following statutes:

2448 (d) Section 782.04, relating to murder.

2449 Section 18. For the purpose of incorporating the amendment
2450 made by this act to section 782.04, Florida Statutes, in a
2451 reference thereto, paragraph (g) of subsection (2) of section
2452 1012.467, Florida Statutes, is reenacted to read:

2453 1012.467 Noninstructional contractors who are permitted
2454 access to school grounds when students are present; background
2455 screening requirements.—

2456 (2)

2457 (g) A noninstructional contractor for whom a criminal
2458 history check is required under this section may not have been
2459 convicted of any of the following offenses designated in the
2460 Florida Statutes, any similar offense in another jurisdiction,
2461 or any similar offense committed in this state which has been
2462 redesignated from a former provision of the Florida Statutes to
2463 one of the following offenses:



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2464 1. Any offense listed in s. 943.0435(1)(h)1., relating to
2465 the registration of an individual as a sexual offender.

2466 2. Section 393.135, relating to sexual misconduct with
2467 certain developmentally disabled clients and the reporting of
2468 such sexual misconduct.

2469 3. Section 394.4593, relating to sexual misconduct with
2470 certain mental health patients and the reporting of such sexual
2471 misconduct.

2472 4. Section 775.30, relating to terrorism.

2473 5. Section 782.04, relating to murder.

2474 6. Section 787.01, relating to kidnapping.

2475 7. Any offense under chapter 800, relating to lewdness and
2476 indecent exposure.

2477 8. Section 826.04, relating to incest.

2478 9. Section 827.03, relating to child abuse, aggravated
2479 child abuse, or neglect of a child.

2480 Section 19. This act shall take effect October 1, 2017.

2481
2482 ===== T I T L E A M E N D M E N T =====

2483 And the title is amended as follows:

2484 Delete everything before the enacting clause
2485 and insert:

2486 A bill to be entitled
2487 An act relating to controlled substances; amending s.
2488 381.887, F.S.; providing that certain emergency
2489 responders and crime laboratory personnel may possess,
2490 store, and administer emergency opioid antagonists;
2491 amending s. 782.04, F.S.; providing that unlawful
2492 distribution of specified controlled substances and



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2493 analogs or mixtures thereof by an adult which
2494 proximately cause a death is murder; providing
2495 criminal penalties; creating s. 893.015, F.S.;
2496 specifying purpose relating to drug abuse prevention
2497 and control; providing that a reference to ch. 893,
2498 F.S., or to any section or portion thereof, includes
2499 all subsequent amendments; amending s. 893.03, F.S.;
2500 adding certain synthetic opioid substitute compounds
2501 to the list of Schedule I controlled substances;
2502 amending s. 893.13, F.S.; prohibiting possession of
2503 more than 10 grams of specified substances; providing
2504 criminal penalties; amending s. 893.135, F.S.;
2505 revising the substances that constitute the offenses
2506 of trafficking and capital trafficking in, and capital
2507 importation of, hydrocodone and oxycodone; creating
2508 the offense of trafficking in fentanyl; providing
2509 penalties and specifying minimum terms of imprisonment
2510 and fines based on the quantity involved in the
2511 offense; revising the substances that constitute the
2512 offenses of trafficking in phencyclidine and capital
2513 importation of phencyclidine; revising the substances
2514 that constitute trafficking in phenethylamines and
2515 capital manufacture or importation of phenethylamines;
2516 creating the offense of trafficking in synthetic
2517 cannabinoids; providing penalties and specifying
2518 minimum terms of imprisonment and fines based on the
2519 quantity involved in the offense; creating the
2520 offenses of trafficking in n-benzyl phenethylamines
2521 and capital manufacture or importation of a n-benzyl



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2522 phenethylamine compound; providing penalties and
2523 specifying minimum terms of imprisonment and fines
2524 based on the quantity involved in the offense;
2525 reenacting and amending s. 921.0022, F.S.; ranking
2526 offenses on the offense severity ranking chart of the
2527 Criminal Punishment Code; incorporating the amendments
2528 made by the act in cross-references to amended
2529 provisions; reenacting ss. 39.806(1)(d), 63.089(4)(b),
2530 95.11(10), 775.082(1)(b) and (3)(a), (b), and (c),
2531 775.0823(1) and (2), 921.16(1), 948.06(8)(c),
2532 948.062(1)(a), 985.265(3)(b), 1012.315(1)(d), and
2533 1012.467(2)(g), relating to grounds for termination of
2534 parental rights, proceeding to terminate parental
2535 rights pending adoption, limitations other than for
2536 the recovery of real property, penalties, violent
2537 offenses committed against specified officials, when
2538 sentences to be concurrent and when consecutive,
2539 violation of probation or community control, reviewing
2540 and reporting serious offenses committed by offenders
2541 placed on probation or community control, detention
2542 transfer and release, disqualification from
2543 employment, and noninstructional contractors who are
2544 permitted access to school grounds when students are
2545 present, respectively, to incorporate the amendments
2546 made by the act in cross-references to amended
2547 provisions; providing an effective date.



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LEGISLATIVE ACTION

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

The Committee on Appropriations (Steube, Benacquisto, and Latvala) recommended the following:

1 **Senate Substitute for Amendment (531844) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Subsection (4) of section 381.887, Florida
7 Statutes, is amended to read:

8 381.887 Emergency treatment for suspected opioid overdose.—

9 (4) The following persons ~~Emergency responders, including,~~
10 ~~but not limited to, law enforcement officers, paramedics, and~~



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11 ~~emergency medical technicians,~~ are authorized to possess, store,
12 and administer emergency opioid antagonists as clinically
13 indicated:

14 (a) Emergency responders, including, but not limited to,
15 law enforcement officers, paramedics, and emergency medical
16 technicians.

17 (b) Crime laboratory personnel for the statewide criminal
18 analysis laboratory system as described in s. 943.32, including,
19 but not limited to, analysts, evidence intake personnel, and
20 their supervisors.

21 Section 2. Paragraph (a) of subsection (1) of section
22 782.04, Florida Statutes, is amended to read:

23 782.04 Murder.—

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

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

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

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

30 b. Arson,

31 c. Sexual battery,

32 d. Robbery,

33 e. Burglary,

34 f. Kidnapping,

35 g. Escape,

36 h. Aggravated child abuse,

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

38 j. Aircraft piracy,

39 k. Unlawful throwing, placing, or discharging of a



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40 destructive device or bomb,
41 1. Carjacking,
42 m. Home-invasion robbery,
43 n. Aggravated stalking,
44 o. Murder of another human being,
45 p. Resisting an officer with violence to his or her person,
46 q. Aggravated fleeing or eluding with serious bodily injury
47 or death,
48 r. Felony that is an act of terrorism or is in furtherance
49 of an act of terrorism,
50 s. Human trafficking; or
51 3. Which resulted from the unlawful distribution by a
52 person 18 years of age or older of any of the following
53 substances, or mixture containing any of the following
54 substances ~~substance controlled under s. 893.03(1), cocaine as~~
55 ~~described in s. 893.03(2) (a)4., opium or any synthetic or~~
56 ~~natural salt, compound, derivative, or preparation of opium, or~~
57 ~~methadone by a person 18 years of age or older, when such~~
58 substance or mixture ~~drug~~ is proven to be the proximate cause of
59 the death of the user:
60 a. A substance controlled under s. 893.03(1);
61 b. Cocaine as described in s. 893.03(2) (a)4.;
62 c. Opium or any synthetic or natural salt, compound,
63 derivative, or preparation of opium;
64 d. Methadone;
65 e. Alfentanil, as described in s. 893.03(2) (b)1.;
66 f. Carfentanil, as described in s. 893.03(2) (b)6.;
67 g. Fentanyl, as described in s. 893.03(2) (b)9.;
68 h. Sufentanil, as described in s. 893.03(2) (b)29.; or



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69 i. A controlled substance analog, as described in s.
70 893.0356, of any substance specified in sub-subparagraphs a.-h.,
71
72 is murder in the first degree and constitutes a capital felony,
73 punishable as provided in s. 775.082.

74 Section 3. Section 893.015, Florida Statutes, is created to
75 read:

76 893.015 Statutory references.—The purpose of this chapter
77 is to comprehensively address drug abuse prevention and control
78 in this state. To this end, unless expressly provided otherwise,
79 a reference in any section of the Florida Statutes to chapter
80 893 or to any section or portion of a section of chapter 893
81 includes all subsequent amendments to chapter 893 or to the
82 referenced section or portion of a section.

83 Section 4. Paragraphs (a) and (c) of subsection (1) of
84 section 893.03, Florida Statutes, are amended to read:

85 893.03 Standards and schedules.—The substances enumerated
86 in this section are controlled by this chapter. The controlled
87 substances listed or to be listed in Schedules I, II, III, IV,
88 and V are included by whatever official, common, usual,
89 chemical, trade name, or class designated. The provisions of
90 this section shall not be construed to include within any of the
91 schedules contained in this section any excluded drugs listed
92 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
93 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
94 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
95 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
96 Anabolic Steroid Products."

97 (1) SCHEDULE I.—A substance in Schedule I has a high



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98 potential for abuse and has no currently accepted medical use in
99 treatment in the United States and in its use under medical
100 supervision does not meet accepted safety standards. The
101 following substances are controlled in Schedule I:

102 (a) Unless specifically excepted or unless listed in
103 another schedule, any of the following substances, including
104 their isomers, esters, ethers, salts, and salts of isomers,
105 esters, and ethers, whenever the existence of such isomers,
106 esters, ethers, and salts is possible within the specific
107 chemical designation:

- 108 1. Acetyl-alpha-methylfentanyl.
- 109 2. Acetylmethadol.
- 110 3. Allylprodine.
- 111 4. Alphacetylmethadol (except levo-alphacetylmethadol, also
112 known as levo-alpha-acetylmethadol, levomethadyl acetate, or
113 LAAM).
- 114 5. Alphamethadol.
- 115 6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
116 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
117 (N-propanilido) piperidine).
- 118 7. Alpha-methylthiofentanyl.
- 119 8. Alphameprodine.
- 120 9. Benzethidine.
- 121 10. Benzylfentanyl.
- 122 11. Betacetylmethadol.
- 123 12. Beta-hydroxyfentanyl.
- 124 13. Beta-hydroxy-3-methylfentanyl.
- 125 14. Betameprodine.
- 126 15. Betamethadol.



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- 127 16. Betaprodine.
- 128 17. Clonitazene.
- 129 18. Dextromoramide.
- 130 19. Diampromide.
- 131 20. Diethylthiambutene.
- 132 21. DifenoXin.
- 133 22. Dimenoxadol.
- 134 23. Dimepheptanol.
- 135 24. Dimethylthiambutene.
- 136 25. Dioxaphetyl butyrate.
- 137 26. Dipipanone.
- 138 27. Ethylmethylthiambutene.
- 139 28. Etonitazene.
- 140 29. EtoXeridine.
- 141 30. Flunitrazepam.
- 142 31. Furethidine.
- 143 32. HydroXypethidine.
- 144 33. Ketobemidone.
- 145 34. Levomoramide.
- 146 35. Levophenacylmorphan.
- 147 36. Desmethylprodine (1-Methyl-4-Phenyl-4-
- 148 Propionoxypiperidine).
- 149 37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
- 150 piperidyl]-N-phenylpropanamide).
- 151 38. 3-Methylthiofentanyl.
- 152 39. Morpheridine.
- 153 40. Noracymethadol.
- 154 41. Norlevorphanol.
- 155 42. Normethadone.



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- 156 43. Norpipanone.
157 44. Para-Fluorofentanyl.
158 45. Phenadoxone.
159 46. Phenampromide.
160 47. Phenomorphan.
161 48. Phenoperidine.
162 49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-
163 Acetyloxypiperidine).
164 50. Piritramide.
165 51. Proheptazine.
166 52. Properidine.
167 53. Propiram.
168 54. Racemoramide.
169 55. Thenylfentanyl.
170 56. Thiofentanyl.
171 57. Tilidine.
172 58. Trimeperidine.
173 59. Acetylfentanyl.
174 60. Butyrylfentanyl.
175 61. Beta-Hydroxythiofentanyl.
176 62. Fentanyl Derivatives. Unless specifically excepted,
177 listed in another schedule, or contained within a pharmaceutical
178 product approved by the United States Food and Drug
179 Administration, any material, compound, mixture, or preparation,
180 including its salts, isomers, esters, or ethers, and salts of
181 isomers, esters, or ethers, whenever the existence of such salts
182 is possible within any of the following specific chemical
183 designations containing a 4-anilidopiperidine structure:
184 a. With or without substitution at the carbonyl of the



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185 aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl,
186 methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl,
187 dihydrofuranyl, benzyl moiety, or rings containing heteroatoms
188 sulfur, oxygen, or nitrogen;

189 b. With or without substitution at the piperidine amino
190 moiety with a phenethyl, benzyl, alkylaryl (including
191 heteroaromatics), alkyltetrazolyl ring, or an alkyl or
192 carbomethoxy group, whether or not further substituted in the
193 ring or group;

194 c. With or without substitution or addition to the
195 piperidine ring to any extent with one or more methyl,
196 carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester
197 groups;

198 d. With or without substitution of one or more hydrogen
199 atoms for halogens, or methyl, alkyl, or methoxy groups, in the
200 aromatic ring of the anilide moiety;

201 e. With or without substitution at the alpha or beta
202 position of the piperidine ring with alkyl, hydroxyl, or methoxy
203 groups;

204 f. With or without substitution of the benzene ring of the
205 anilide moiety for an aromatic heterocycle; and

206 g. With or without substitution of the piperidine ring for
207 a pyrrolidine ring, perhydroazepine ring, or azepine ring;

208
209 excluding, alfentanil, carfentanil, fentanyl, and sufentanil;
210 including, but not limited to:

211 (I) Acetyl-alpha-methylfentanyl.

212 (II) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)
213 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-



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- 214 (N-propanilido) piperidine).
215 (III) Alpha-methylthiofentanyl.
216 (IV) Benzylfentanyl.
217 (V) Beta-hydroxyfentanyl.
218 (VI) Beta-hydroxy-3-methylfentanyl.
219 (VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
220 piperidyl]-N-phenylpropanamide).
221 (VIII) 3-Methylthiofentanyl.
222 (IX) Para-Fluorofentanyl.
223 (X) Thenylfentanyl or Thienyl fentanyl.
224 (XI) Thiofentanyl.
225 (XII) Acetylfentanyl.
226 (XIII) Butyrylfentanyl.
227 (XIV) Beta-Hydroxythiofentanyl.
228 (XV) Lofentanil.
229 (XVI) Ocfentanil.
230 (XVII) Ohmfentanyl.
231 (XVIII) Benzodioxolefentanyl.
232 (XIX) Furanyl fentanyl.
233 (XX) Pentanoyl fentanyl.
234 (XXI) Cyclopentyl fentanyl.
235 (XXII) Isobutyryl fentanyl.
236 (XXIII) Remifentanil.
237 (c) Unless specifically excepted or unless listed in
238 another schedule, any material, compound, mixture, or
239 preparation that contains any quantity of the following
240 hallucinogenic substances or that contains any of their salts,
241 isomers, including optical, positional, or geometric isomers,
242 homologues, nitrogen-heterocyclic analogs, esters, ethers, and



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- 243 salts of isomers, homologues, nitrogen-heterocyclic analogs,
244 esters, or ethers, if the existence of such salts, isomers, and
245 salts of isomers is possible within the specific chemical
246 designation or class description:
- 247 1. Alpha-Ethyltryptamine.
 - 248 2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-
249 oxazoline).
 - 250 3. Aminorex (2-Amino-5-phenyl-2-oxazoline).
 - 251 4. DOB (4-Bromo-2,5-dimethoxyamphetamine).
 - 252 5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
 - 253 6. Bufotenine.
 - 254 7. Cannabis.
 - 255 8. Cathinone.
 - 256 9. DET (Diethyltryptamine).
 - 257 10. 2,5-Dimethoxyamphetamine.
 - 258 11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).
 - 259 12. DMT (Dimethyltryptamine).
 - 260 13. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog
261 of phencyclidine).
 - 262 14. JB-318 (N-Ethyl-3-piperidyl benzilate).
 - 263 15. N-Ethylamphetamine.
 - 264 16. Fenethylamine.
 - 265 17. 3,4-Methylenedioxy-N-hydroxyamphetamine.
 - 266 18. Ibogaine.
 - 267 19. LSD (Lysergic acid diethylamide).
 - 268 20. Mescaline.
 - 269 21. Methcathinone.
 - 270 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
 - 271 23. PMA (4-Methoxyamphetamine).



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- 272 24. PMMA (4-Methoxymethamphetamine).
- 273 25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
- 274 26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
- 275 27. MDA (3,4-Methylenedioxyamphetamine).
- 276 28. JB-336 (N-Methyl-3-piperidyl benzilate).
- 277 29. N,N-Dimethylamphetamine.
- 278 30. Parahexyl.
- 279 31. Peyote.
- 280 32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine
281 analog of phencyclidine).
- 282 33. Psilocybin.
- 283 34. Psilocyn.
- 284 35. *Salvia divinorum*, except for any drug product approved
285 by the United States Food and Drug Administration which contains
286 *Salvia divinorum* or its isomers, esters, ethers, salts, and
287 salts of isomers, esters, and ethers, if the existence of such
288 isomers, esters, ethers, and salts is possible within the
289 specific chemical designation.
- 290 36. Salvinorin A, except for any drug product approved by
291 the United States Food and Drug Administration which contains
292 Salvinorin A or its isomers, esters, ethers, salts, and salts of
293 isomers, esters, and ethers, if the existence of such isomers,
294 esters, ethers, and salts is possible within the specific
295 chemical designation.
- 296 37. Xylazine.
- 297 38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)
298 (Thiophene analog of phencyclidine).
- 299 39. 3,4,5-Trimethoxyamphetamine.
- 300 40. Methydone (3,4-Methylenedioxymethcathinone).



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- 301 41. MDPV (3,4-Methylenedioxypropylvalerone).
- 302 42. Methylmethcathinone.
- 303 43. Methoxymethcathinone.
- 304 44. Fluoromethcathinone.
- 305 45. Methylethcathinone.
- 306 46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-
- 307 yl)phenol) and its dimethyloctyl (C8) homologue.
- 308 47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-
- 309 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol].
- 310 48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).
- 311 49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
- 312 50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
- 313 naphthoyl)indole).
- 314 51. BZP (Benzylpiperazine).
- 315 52. Fluorophenylpiperazine.
- 316 53. Methylphenylpiperazine.
- 317 54. Chlorophenylpiperazine.
- 318 55. Methoxyphenylpiperazine.
- 319 56. DBZP (1,4-Dibenzylpiperazine).
- 320 57. TFMPP (Trifluoromethylphenylpiperazine).
- 321 58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
- 322 Methylenedioxy-N-methylbutanamine).
- 323 59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
- 324 60. 5-Hydroxy-N-methyltryptamine.
- 325 61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
- 326 62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
- 327 63. Methyltryptamine.
- 328 64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
- 329 65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).



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- 330 66. Tyramine (4-Hydroxyphenethylamine).
- 331 67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
- 332 68. DiPT (N,N-Diisopropyltryptamine).
- 333 69. DPT (N,N-Dipropyltryptamine).
- 334 70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
- 335 71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
- 336 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 337 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 338 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 339 75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
- 340 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 341 77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
- 342 78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
- 343 79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
- 344 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 345 81. Butylone (3,4-Methylenedioxy-alpha-
- 346 methylaminobutyrophenone).
- 347 82. Ethcathinone.
- 348 83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
- 349 84. Naphyrone (Naphthylpyrovalerone).
- 350 85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).
- 351 86. 3,4-Methylenedioxy-N,N-diethylcathinone.
- 352 87. 3,4-Methylenedioxy-propiofenone.
- 353 88. 3,4-Methylenedioxy-alpha-bromopropiofenone.
- 354 89. 3,4-Methylenedioxy-propiofenone-2-oxime.
- 355 90. 3,4-Methylenedioxy-N-acetylcathinone.
- 356 91. 3,4-Methylenedioxy-N-acetylmethcathinone.
- 357 92. 3,4-Methylenedioxy-N-acetylethcathinone.
- 358 93. Bromomethcathinone.



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- 359 94. Buphedrone (alpha-Methylamino-butyrophenone).
- 360 95. Eutylone (3,4-Methylenedioxy-alpha-
- 361 ethylaminobutyrophenone).
- 362 96. Dimethylcathinone.
- 363 97. Dimethylmethcathinone.
- 364 98. Pentylone (3,4-Methylenedioxy-alpha-
- 365 methylaminovalerophenone).
- 366 99. MDPPP (3,4-Methylenedioxy-alpha-
- 367 pyrrolidinopropiophenone).
- 368 100. MDPBP (3,4-Methylenedioxy-alpha-
- 369 pyrrolidinobutyrophenone).
- 370 101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
- 371 102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).
- 372 103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
- 373 (Benocyclidine).
- 374 104. F-MABP (Fluoromethylaminobutyrophenone).
- 375 105. MeO-PBP (Methoxypyrrolidinobutyrophenone).
- 376 106. Et-PBP (Ethylpyrrolidinobutyrophenone).
- 377 107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
- 378 108. Me-EABP (Methylethylaminobutyrophenone).
- 379 109. Etizolam.
- 380 110. PPP (Pyrrolidinopropiophenone).
- 381 111. PBP (Pyrrolidinobutyrophenone).
- 382 112. PVP (Pyrrolidinovalerophenone) or
- 383 (Pyrrolidinopentiophenone).
- 384 113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).
- 385 114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).
- 386 115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).
- 387 116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).



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- 388 117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).
389 118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
390 119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
391 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
392 121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-
393 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
394 122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
395 123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
396 124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
397 125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
398 126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
399 127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
400 128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
401 129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
402 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
403 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
404 ol).
405 131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-
406 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]
407 methanol).
408 132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-
409 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
410 1,4-dione).
411 133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
412 134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
413 undecanamide).
414 135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
415 undecanamide).
416 136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-



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417 methyloctan-2-yl)phenol) .
418 137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole) .
419 138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole) .
420 139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole) .
421 140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-
422 methoxyphenylacetyl)indole) .
423 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
424 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
425 naphthalenylmethanone) .
426 142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-
427 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
428 naphthalenylmethanone) .
429 143. Pentedrone (alpha-Methylaminovalerophenone) .
430 144. Fluoroamphetamine .
431 145. Fluoromethamphetamine .
432 146. Methoxetamine .
433 147. Methiopropamine .
434 148. Methylbuphedrone (Methyl-alpha-
435 methylaminobutyrophenone) .
436 149. APB ((2-Aminopropyl)benzofuran) .
437 150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran) .
438 151. UR-144 (1-Pentyl-3-(2,2,3,3-
439 tetramethylcyclopropanoyl)indole) .
440 152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-
441 tetramethylcyclopropanoyl)indole) .
442 153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-
443 tetramethylcyclopropanoyl)indole) .
444 154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide) .
445 155. AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-



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446 iodobenzoyl)indole).

447 156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-

448 carboxamide).

449 157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-

450 cyclohexylcarbamate).

451 158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid,

452 cyclohexyl ester).

453 159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-

454 benzoxazin-4-one).

455 160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

456 161. 2C-H (2,5-Dimethoxyphenethylamine).

457 162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

458 163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

459 164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-

460 methoxybenzyl)]phenethylamine).

461 165. MDMA (3,4-Methylenedioxymethamphetamine).

462 166. PB-22 (8-Quinolinyll 1-pentylindole-3-carboxylate).

463 167. Fluoro PB-22 (8-Quinolinyll 1-(fluoropentyl)indole-3-

464 carboxylate).

465 168. BB-22 (8-Quinolinyll 1-(cyclohexylmethyl)indole-3-

466 carboxylate).

467 169. Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-

468 3-carboxamide).

469 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

470 pentylindazole-3-carboxamide).

471 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

472 (4-fluorobenzyl)indazole-3-carboxamide).

473 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-

474 1-pentylindazole-3-carboxamide).



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- 475 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
476 yl)-1-(fluoropentyl)indole-3-carboxamide).
- 477 174. 25B-NBOME (4-Bromo-2,5-dimethoxy-[N-(2-
478 methoxybenzyl)]phenethylamine).
- 479 175. 25C-NBOME (4-Chloro-2,5-dimethoxy-[N-(2-
480 methoxybenzyl)]phenethylamine).
- 481 176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
482 (cyclohexylmethyl)indazole-3-carboxamide).
- 483 177. FUB-PB-22 (8-Quinolinyll 1-(4-fluorobenzyl)indole-3-
484 carboxylate).
- 485 178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-
486 3-carboxamide).
- 487 179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
488 (fluoropentyl)indazole-3-carboxamide).
- 489 180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).
- 490 181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-
491 1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).
- 492 182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-
493 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
494 hexahydrobenzo[c]chromen-1-ol).
- 495 183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-
496 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
497 hexahydrobenzo[c]chromen-1-ol).
- 498 184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-
499 6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9
500 diol).
- 501 185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-
502 dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-
503 tetrahydro-6aH-benzo[c]chromen-1-ol).



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504 186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-
505 6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).
506 187. MAPB ((2-Methylaminopropyl)benzofuran).
507 188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).
508 189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).
509 190. Synthetic Cannabinoids.—Unless specifically excepted
510 or unless listed in another schedule or contained within a
511 pharmaceutical product approved by the United States Food and
512 Drug Administration, any material, compound, mixture, or
513 preparation that contains any quantity of a synthetic
514 cannabinoid found to be in any of the following chemical class
515 descriptions, or homologues, nitrogen-heterocyclic analogs,
516 isomers (including optical, positional, or geometric), esters,
517 ethers, salts, and salts of homologues, nitrogen-heterocyclic
518 analogs, isomers, esters, or ethers, whenever the existence of
519 such homologues, nitrogen-heterocyclic analogs, isomers, esters,
520 ethers, salts, and salts of isomers, esters, or ethers is
521 possible within the specific chemical class or designation.
522 Since nomenclature of these synthetically produced cannabinoids
523 is not internationally standardized and may continually evolve,
524 these structures or the compounds of these structures shall be
525 included under this subparagraph, regardless of their specific
526 numerical designation of atomic positions covered, if it can be
527 determined through a recognized method of scientific testing or
528 analysis that the substance contains properties that fit within
529 one or more of the following categories:
530 a. Tetrahydrocannabinols.—Any tetrahydrocannabinols
531 naturally contained in a plant of the genus *Cannabis*, the
532 synthetic equivalents of the substances contained in the plant



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533 or in the resinous extracts of the genus *Cannabis*, or synthetic
534 substances, derivatives, and their isomers with similar chemical
535 structure and pharmacological activity, including, but not
536 limited to, Delta 9 tetrahydrocannabinols and their optical
537 isomers, Delta 8 tetrahydrocannabinols and their optical
538 isomers, Delta 6a,10a tetrahydrocannabinols and their optical
539 isomers, or any compound containing a tetrahydrobenzo[c]chromene
540 structure with substitution at either or both the 3-position or
541 9-position, with or without substitution at the 1-position with
542 hydroxyl or alkoxy groups, including, but not limited to:

543 (I) Tetrahydrocannabinol.

544 (II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-
545 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
546 ol).

547 (III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
548 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
549 ol).

550 (IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-
551 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

552 (V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-
553 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

554 (VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-
555 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

556 (VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-
557 dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

558 (VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-
559 6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

560 (IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-
561 6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).



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- 562 (X) Parahexyl.
- 563 b. Naphthoylindoles, Naphthoylindazoles,
564 Naphthoylcarbazoles, Naphthylmethylindoles,
565 Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any
566 compound containing a naphthoylindole, naphthoylindazole,
567 naphthoylcarbazole, naphthylmethylindole,
568 naphthylmethylindazole, or naphthylmethylcarbazole structure,
569 with or without substitution on the indole, indazole, or
570 carbazole ring to any extent, whether or not substituted on the
571 naphthyl ring to any extent, including, but not limited to:
- 572 (I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).
573 (II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-
574 naphthoyl)indole).
575 (III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).
576 (IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).
577 (V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).
578 (VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).
579 (VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).
580 (VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).
581 (IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).
582 (X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
583 (XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
584 (XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).
585 (XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
586 (XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-
587 naphthoyl)indole).
588 (XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).
589 (XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
590 (XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-



591 naphthoyl) indole).
592 (XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl) indole).
593 (XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl) indole).
594 (XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl) indole).
595 (XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl) indole).
596 (XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-
597 naphthylmethyl] indole).
598 (XXIII) JWH-193 (1-[2-(4-Morpholinyl) ethyl]-3-(4-methyl-1-
599 naphthoyl) indole).
600 (XXIV) JWH-198 (1-[2-(4-Morpholinyl) ethyl]-3-(4-methoxy-1-
601 naphthoyl) indole).
602 (XXV) JWH-200 (1-[2-(4-Morpholinyl) ethyl]-3-(1-
603 naphthoyl) indole).
604 (XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl) indole).
605 (XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl) indole).
606 (XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole).
607 (XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl) indole).
608 (XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl) indole).
609 (XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl) methyl]-3-(1-
610 naphthoyl) indole).
611 (XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-
612 naphthoyl) indole).
613 (XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-
614 naphthoyl) indole).
615 (XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-
616 naphthoyl) indole).
617 (XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-
618 naphthoyl) indole).
619 (XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl) indole).



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- 620 (XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-
621 naphthoyl)indazole).
- 622 (XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-
623 naphthoyl)indole).
- 624 (XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-
625 naphthoyl)indole).
- 626 (XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).
- 627 (XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-
628 naphthoyl)carbazole).
- 629 c. Naphthoylpyrroles.—Any compound containing a
630 naphthoylpyrrole structure, with or without substitution on the
631 pyrrole ring to any extent, whether or not substituted on the
632 naphthyl ring to any extent, including, but not limited to:
- 633 (I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).
- 634 (II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).
- 635 (III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).
- 636 (IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).
- 637 (V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).
- 638 (VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-
639 naphthoyl)pyrrole).
- 640 (VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-
641 naphthoyl)pyrrole).
- 642 (VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-
643 naphthoyl)pyrrole).
- 644 (IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-
645 naphthoyl)pyrrole).
- 646 (X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-
647 naphthoyl)pyrrole).
- 648 d. Naphthylmethylenindenes.—Any compound containing a



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649 naphthylmethylenindene structure, with or without substitution
650 at the 3-position of the indene ring to any extent, whether or
651 not substituted on the naphthyl ring to any extent, including,
652 but not limited to, JWH-176 (3-Pentyl-1-
653 (naphthylmethylene)indene).

654 e. Phenylacetylindoles and Phenylacetylindazoles.—Any
655 compound containing a phenylacetylindole or phenylacetylindazole
656 structure, with or without substitution on the indole or
657 indazole ring to any extent, whether or not substituted on the
658 phenyl ring to any extent, including, but not limited to:

- 659 (I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).
- 660 (II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
- 661 (III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
- 662 (IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
- 663 (V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
- 664 (VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
- 665 (VII) Cannabipiperidiethanone.
- 666 (VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-
667 methoxyphenylacetyl)indole).

668 f. Cyclohexylphenols.—Any compound containing a
669 cyclohexylphenol structure, with or without substitution at the
670 5-position of the phenolic ring to any extent, whether or not
671 substituted on the cyclohexyl ring to any extent, including, but
672 not limited to:

- 673 (I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-
674 yl)phenol).
- 675 (II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8)
676 homologue).
- 677 (III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-



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678 methyloctan-2-yl)phenol).

679 g. Benzoylindoles and Benzoylindazoles.—Any compound
680 containing a benzoylindole or benzoylindazole structure, with or
681 without substitution on the indole or indazole ring to any
682 extent, whether or not substituted on the phenyl ring to any
683 extent, including, but not limited to:

684 (I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

685 (II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

686 (III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
687 iodo-5-nitrobenzoyl)indole).

688 (IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-
689 methoxybenzoyl)indole).

690 (V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
691 iodobenzoyl)indole).

692 (VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

693 (VII) RCS-4 C4 homologue (1-Butyl-3-(4-
694 methoxybenzoyl)indole).

695 (VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-
696 3-(4-methoxybenzoyl)indole).

697 h. Tetramethylcyclopropanoylindoles and
698 Tetramethylcyclopropanoylindazoles.—Any compound containing a
699 tetramethylcyclopropanoylindole or
700 tetramethylcyclopropanoylindazole structure, with or without
701 substitution on the indole or indazole ring to any extent,
702 whether or not substituted on the tetramethylcyclopropyl group
703 to any extent, including, but not limited to:

704 (I) UR-144 (1-Pentyl-3-(2,2,3,3-
705 tetramethylcyclopropanoyl)indole).

706 (II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-



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707 tetramethylcyclopropanoyl)indole).

708 (III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-

709 tetramethylcyclopropanoyl)indole).

710 (IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-

711 tetramethylcyclopropanoyl)indole).

712 (V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-

713 tetramethylcyclopropanoyl)indole).

714 (VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-

715 tetramethylcyclopropanoyl)indole).

716 (VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-

717 tetramethylcyclopropanoyl)indole).

718 (VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-

719 tetramethylcyclopropanoyl)indazole).

720 (IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-

721 tetramethylcyclopropanoyl)indole).

722 (X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-

723 tetramethylcyclopropanoyl)indole).

724 i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole

725 carboxamides, and Adamantylindazole carboxamides.—Any compound

726 containing an adamantoyl indole, adamantoyl indazole, adamantyl

727 indole carboxamide, or adamantyl indazole carboxamide structure,

728 with or without substitution on the indole or indazole ring to

729 any extent, whether or not substituted on the adamantyl ring to

730 any extent, including, but not limited to:

731 (I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

732 (II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-

733 3-carboxamide).

734 (III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-

735 carboxamide).



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- 736 (IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-
737 adamantoyl)indole).
- 738 (V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).
- 739 (VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).
- 740 (VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-
741 adamantoyl)indole).
- 742 j. Quinolinyllindolecarboxylates,
743 Quinolinyllindazolecarboxylates, Quinolinyllindolecarboxamides,
744 and Quinolinyllindazolecarboxamides.—Any compound containing a
745 quinolinyllindole carboxylate, quinolinyllindazole carboxylate,
746 isoquinolinyllindole carboxylate, isoquinolinyllindazole
747 carboxylate, quinolinyllindole carboxamide, quinolinyllindazole
748 carboxamide, isoquinolinyllindole carboxamide, or
749 isoquinolinyllindazole carboxamide structure, with or without
750 substitution on the indole or indazole ring to any extent,
751 whether or not substituted on the quinoline or isoquinoline ring
752 to any extent, including, but not limited to:
- 753 (I) PB-22 (8-Quinolinyll 1-pentylindole-3-carboxylate).
- 754 (II) Fluoro PB-22 (8-Quinolinyll 1-(fluoropentyl)indole-3-
755 carboxylate).
- 756 (III) BB-22 (8-Quinolinyll 1-(cyclohexylmethyl)indole-3-
757 carboxylate).
- 758 (IV) FUB-PB-22 (8-Quinolinyll 1-(4-fluorobenzyl)indole-3-
759 carboxylate).
- 760 (V) NPB-22 (8-Quinolinyll 1-pentylindazole-3-carboxylate).
- 761 (VI) Fluoro NPB-22 (8-Quinolinyll 1-(fluoropentyl)indazole-
762 3-carboxylate).
- 763 (VII) FUB-NPB-22 (8-Quinolinyll 1-(4-fluorobenzyl)indazole-
764 3-carboxylate).



765 (VIII) THJ (8-Quinoliny 1-pentylindazole-3-carboxamide).

766 (IX) Fluoro THJ (8-Quinoliny 1-(fluoropentyl)indazole-3-
767 carboxamide).

768 k. Naphthylindolecarboxylates and
769 Naphthylindazolecarboxylates.—Any compound containing a
770 naphthylindole carboxylate or naphthylindazole carboxylate
771 structure, with or without substitution on the indole or
772 indazole ring to any extent, whether or not substituted on the
773 naphthyl ring to any extent, including, but not limited to:

774 (I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-
775 carboxylate).

776 (II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-
777 carboxylate).

778 (III) Fluoro SDB-005 (1-Naphthalenyl 1-
779 (fluoropentyl)indazole-3-carboxylate).

780 (IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-
781 carboxylate).

782 (V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-
783 carboxylate).

784 l. Naphthylindole carboxamides and Naphthylindazole
785 carboxamides.—Any compound containing a naphthylindole
786 carboxamide or naphthylindazole carboxamide structure, with or
787 without substitution on the indole or indazole ring to any
788 extent, whether or not substituted on the naphthyl ring to any
789 extent, including, but not limited to:

790 (I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

791 (II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-
792 3-carboxamide).

793 (III) Chloro-NNEI (N-Naphthalen-1-yl 1-



794 (chloropentyl)indole-3-carboxamide).

795 (IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-

796 carboxamide).

797 (V) Fluoro MN-18 (N-Naphthalen-1-yl 1-

798 (fluoropentyl)indazole-3-carboxamide).

799 m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl

800 indazole carboxamides, Alkylcarbonyl indole carboxylates, and

801 Alkylcarbonyl indazole carboxylates.—Any compound containing an

802 alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl,

803 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-

804 phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an

805 indole carboxamide, indazole carboxamide, indole carboxylate, or

806 indazole carboxylate, with or without substitution on the indole

807 or indazole ring to any extent, whether or not substituted on

808 the alkylcarbonyl group to any extent, including, but not

809 limited to:

810 (I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-

811 pentylindole-3-carboxamide).

812 (II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-

813 yl)-1-(fluoropentyl)indole-3-carboxamide).

814 (III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

815 (fluoropentyl)indole-3-carboxamide).

816 (IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

817 pentylindazole-3-carboxamide).

818 (V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-

819 1-(fluoropentyl)indazole-3-carboxamide).

820 (VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-

821 1-pentylindazole-3-carboxamide).

822 (VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-



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823 oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

824 (VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

825 (4-fluorobenzyl)indazole-3-carboxamide).

826 (IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-

827 yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

828 (X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

829 (cyclohexylmethyl)indazole-3-carboxamide).

830 (XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-

831 (cyclohexylmethyl)indazole-3-carboxamide).

832 (XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-

833 yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

834 (XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-

835 pentylindazole-3-carboxamide).

836 (XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-

837 (fluoropentyl)indazole-3-carboxamide).

838 (XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-

839 fluorobenzyl)indazole-3-carboxamide).

840 (XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-

841 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

842 (XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-

843 2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

844 (XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-

845 2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

846 (XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-

847 fluoropentyl)indole-3-carboxamide).

848 (XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-

849 fluoropentyl)indazole-3-carboxamide).

850 (XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-

851 (cyclohexylmethyl)indazole-3-carboxamide).



852 (XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-
853 fluorobenzyl)indazole-3-carboxamide).

854 (XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
855 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

856 n. Cumylindolecarboxamides and Cumylindazolecarboxamides.-
857 Any compound containing a N-(2-phenylpropan-2-yl) indole
858 carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide
859 structure, with or without substitution on the indole or
860 indazole ring to any extent, whether or not substituted on the
861 phenyl ring of the cumyl group to any extent, including, but not
862 limited to:

863 (I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-
864 carboxamide).

865 (II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-
866 (fluoropentyl)indole-3-carboxamide).

867 o. Other Synthetic Cannabinoids.-Any material, compound,
868 mixture, or preparation that contains any quantity of a
869 Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

870 (I) With or without modification or replacement of a
871 carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage
872 between either two core rings, or linkage between a core ring
873 and group structure, with or without the addition of a carbon or
874 replacement of a carbon;

875 (II) With or without replacement of a core ring or group
876 structure, whether or not substituted on the ring or group
877 structures to any extent; and

878 (III) Is a cannabinoid receptor agonist, unless
879 specifically excepted or unless listed in another schedule or
880 contained within a pharmaceutical product approved by the United



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881 States Food and Drug Administration.

882 191. Substituted Cathinones.—Unless specifically excepted,
883 listed in another schedule, or contained within a pharmaceutical
884 product approved by the United States Food and Drug
885 Administration, any material, compound, mixture, or preparation,
886 including its salts, isomers, esters, or ethers, and salts of
887 isomers, esters, or ethers, whenever the existence of such salts
888 is possible within any of the following specific chemical
889 designations:

890 a. Any compound containing a 2-amino-1-phenyl-1-propanone
891 structure;

892 b. Any compound containing a 2-amino-1-naphthyl-1-propanone
893 structure; or

894 c. Any compound containing a 2-amino-1-thiophenyl-1-
895 propanone structure,
896 whether or not the compound is further modified:

897 (I) With or without substitution on the ring system to any
898 extent with alkyl, alkylthio, thio, fused alkylendioxy, alkoxy,
899 haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused
900 dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide
901 substituents;

902 (II) With or without substitution at the 3-propanone
903 position with an alkyl substituent or removal of the methyl
904 group at the 3-propanone position;

905 (III) With or without substitution at the 2-amino nitrogen
906 atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or
907 not further substituted in the ring system; or

908 (IV) With or without inclusion of the 2-amino nitrogen atom
909 in a cyclic structure, including, but not limited to:



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- 910 (A) Methcathinone.
- 911 (B) Ethcathinone.
- 912 (C) Methylone (3,4-Methylenedioxy-methcathinone).
- 913 (D) 2,3-Methylenedioxy-methcathinone.
- 914 (E) MDPV (3,4-Methylenedioxy-pyrovalerone).
- 915 (F) Methylmethcathinone.
- 916 (G) Methoxymethcathinone.
- 917 (H) Fluoromethcathinone.
- 918 (I) Methylethcathinone.
- 919 (J) Butylone (3,4-Methylenedioxy-alpha-
- 920 methylaminobutyrophenone).
- 921 (K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
- 922 (L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).
- 923 (M) Naphyrone (Naphthylpyrovalerone).
- 924 (N) Bromomethcathinone.
- 925 (O) Buphedrone (alpha-Methylaminobutyrophenone).
- 926 (P) Eutylone (3,4-Methylenedioxy-alpha-
- 927 ethylaminobutyrophenone).
- 928 (Q) Dimethylcathinone.
- 929 (R) Dimethylmethcathinone.
- 930 (S) Pentylone (3,4-Methylenedioxy-alpha-
- 931 methylaminovalerophenone).
- 932 (T) Pentedrone (alpha-Methylaminovalerophenone).
- 933 (U) MDPPP (3,4-Methylenedioxy-alpha-
- 934 pyrrolidinopropiophenone).
- 935 (V) MDPBP (3,4-Methylenedioxy-alpha-
- 936 pyrrolidinobutyrophenone).
- 937 (W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).
- 938 (X) PPP (Pyrrolidinopropiophenone).



- 939 (Y) PVP (Pyrrolidinovalerophenone) or
- 940 (Pyrrolidinopentiophenone).
- 941 (Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
- 942 (AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).
- 943 (BB) F-MABP (Fluoromethylaminobutyrophenone).
- 944 (CC) Me-EABP (Methylethylaminobutyrophenone).
- 945 (DD) PBP (Pyrrolidinobutyrophenone).
- 946 (EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).
- 947 (FF) Et-PBP (Ethylpyrrolidinobutyrophenone).
- 948 (GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
- 949 (HH) Dimethylone (3,4-Methylenedioxy-N,N-
- 950 dimethylcathinone).
- 951 (II) 3,4-Methylenedioxy-N,N-diethylcathinone.
- 952 (JJ) 3,4-Methylenedioxy-N-acetylcathinone.
- 953 (KK) 3,4-Methylenedioxy-N-acetylmethcathinone.
- 954 (LL) 3,4-Methylenedioxy-N-acetylethcathinone.
- 955 (MM) Methylbuphedrone (Methyl-alpha-
- 956 methylaminobutyrophenone).
- 957 (NN) Methyl-alpha-methylaminohexanophenone.
- 958 (OO) N-Ethyl-N-methylcathinone.
- 959 (PP) PHP (Pyrrolidinohexanophenone).
- 960 (QQ) PV8 (Pyrrolidinoheptanophenone).
- 961 (RR) Chloromethcathinone.
- 962 (SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.
- 963 192. Substituted Phenethylamines.—Unless specifically
- 964 excepted or unless listed in another schedule, or contained
- 965 within a pharmaceutical product approved by the United States
- 966 Food and Drug Administration, any material, compound, mixture,
- 967 or preparation, including its salts, isomers, esters, or ethers,



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968 and salts of isomers, esters, or ethers, whenever the existence
969 of such salts is possible within any of the following specific
970 chemical designations, any compound containing a phenethylamine
971 structure, without a beta-keto group, and without a benzyl group
972 attached to the amine group, whether or not the compound is
973 further modified with or without substitution on the phenyl ring
974 to any extent with alkyl, alkylthio, nitro, alkoxy, thio,
975 halide, fused alkylenedioxy, fused furan, fused benzofuran,
976 fused dihydrofuran, or fused tetrahydropyran substituents,
977 whether or not further substituted on a ring to any extent, with
978 or without substitution at the alpha or beta position by any
979 alkyl substituent, with or without substitution at the nitrogen
980 atom, and with or without inclusion of the 2-amino nitrogen atom
981 in a cyclic structure, including, but not limited to:

- 982 a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
- 983 b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 984 c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
- 985 d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 986 e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
- 987 f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
- 988 g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
- 989 h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 990 i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
- 991 j. 2C-H (2,5-Dimethoxyphenethylamine).
- 992 k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
- 993 l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
- 994 m. MDMA (3,4-Methylenedioxyamphetamin).
- 995 n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
996 Methylenedioxy-N-methylbutanamine).



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- 997 o. MDA (3,4-Methylenedioxyamphetamine).
- 998 p. 2,5-Dimethoxyamphetamine.
- 999 q. Fluoroamphetamine.
- 1000 r. Fluoromethamphetamine.
- 1001 s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
- 1002 t. DOB (4-Bromo-2,5-dimethoxyamphetamine).
- 1003 u. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 1004 v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).
- 1005 w. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 1006 x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
- 1007 y. PMA (4-Methoxyamphetamine).
- 1008 z. N-Ethylamphetamine.
- 1009 aa. 3,4-Methylenedioxy-N-hydroxyamphetamine.
- 1010 bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 1011 cc. PMMA (4-Methoxymethamphetamine).
- 1012 dd. N,N-Dimethylamphetamine.
- 1013 ee. 3,4,5-Trimethoxyamphetamine.
- 1014 ff. 4-APB (4-(2-Aminopropyl)benzofuran).
- 1015 gg. 5-APB (5-(2-Aminopropyl)benzofuran).
- 1016 hh. 6-APB (6-(2-Aminopropyl)benzofuran).
- 1017 ii. 7-APB (7-(2-Aminopropyl)benzofuran).
- 1018 jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1019 kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1020 ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1021 mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1022 nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
- 1023 oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
- 1024 pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
- 1025 qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).



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1026 rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).

1027 ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-

1028 dihydrobenzofuran),

1029

1030 which does not include phenethylamine, mescaline as described in

1031 subparagraph 20., substituted cathinones as described in

1032 subparagraph 191., N-Benzyl phenethylamine compounds as

1033 described in subparagraph 193., or methamphetamine as described

1034 in subparagraph (2)(c)4.

1035 193. N-Benzyl Phenethylamine Compounds.—Unless specifically

1036 excepted or unless listed in another schedule, or contained

1037 within a pharmaceutical product approved by the United States

1038 Food and Drug Administration, any material, compound, mixture,

1039 or preparation, including its salts, isomers, esters, or ethers,

1040 and salts of isomers, esters, or ethers, whenever the existence

1041 of such salts is possible within any of the following specific

1042 chemical designations, any compound containing a phenethylamine

1043 structure without a beta-keto group, with substitution on the

1044 nitrogen atom of the amino group with a benzyl substituent, with

1045 or without substitution on the phenyl or benzyl ring to any

1046 extent with alkyl, alkoxy, thio, alkylthio, halide, fused

1047 alkylenedioxy, fused furan, fused benzofuran, or fused

1048 tetrahydropyran substituents, whether or not further substituted

1049 on a ring to any extent, with or without substitution at the

1050 alpha position by any alkyl substituent, including, but not

1051 limited to:

1052 a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-

1053 methoxybenzyl)]phenethylamine).

1054 b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-



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- 1055 hydroxybenzyl)]phenethylamine) .
1056 c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-
1057 fluorobenzyl)]phenethylamine) .
1058 d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-
1059 methylenedioxybenzyl)]phenethylamine) .
1060 e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-
1061 methoxybenzyl)]phenethylamine) .
1062 f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-
1063 hydroxybenzyl)]phenethylamine) .
1064 g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-
1065 fluorobenzyl)]phenethylamine) .
1066 h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-
1067 methylenedioxybenzyl)]phenethylamine) .
1068 i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-
1069 methoxybenzyl)]phenethylamine) .
1070 j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-
1071 methoxybenzyl)]phenethylamine) .
1072 k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-
1073 methoxybenzyl)]phenethylamine) .
1074 l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-
1075 methoxybenzyl)]phenethylamine) .
1076 m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-
1077 hydroxybenzyl)]phenethylamine) .
1078 n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-
1079 fluorobenzyl)]phenethylamine) .
1080 o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-
1081 methylenedioxybenzyl)]phenethylamine) .
1082 p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-
1083 methoxybenzyl)]phenethylamine) .



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1084 q. 25H-NBOH (2,5-Dimethoxy-[N-(2-
1085 hydroxybenzyl)]phenethylamine).

1086 r. 25H-NBF (2,5-Dimethoxy-[N-(2-
1087 fluorobenzyl)]phenethylamine).

1088 s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-
1089 methoxybenzyl)]phenethylamine),

1090

1091 which does not include substituted cathinones as described in
1092 subparagraph 191.

1093 194. Substituted Tryptamines.—Unless specifically excepted
1094 or unless listed in another schedule, or contained within a
1095 pharmaceutical product approved by the United States Food and
1096 Drug Administration, any material, compound, mixture, or
1097 preparation containing a 2-(1H-indol-3-yl)ethanamine, for
1098 example tryptamine, structure with or without mono- or di-
1099 substitution of the amine nitrogen with alkyl or alkenyl groups,
1100 or by inclusion of the amino nitrogen atom in a cyclic
1101 structure, whether or not substituted at the alpha position with
1102 an alkyl group, whether or not substituted on the indole ring to
1103 any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy
1104 groups, including, but not limited to:

1105 a. Alpha-Ethyltryptamine.

1106 b. Bufotenine.

1107 c. DET (Diethyltryptamine).

1108 d. DMT (Dimethyltryptamine).

1109 e. MET (N-Methyl-N-ethyltryptamine).

1110 f. DALT (N,N-Diallyltryptamine).

1111 g. EiPT (N-Ethyl-N-isopropyltryptamine).

1112 h. MiPT (N-Methyl-N-isopropyltryptamine).



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- 1113 i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
- 1114 j. 5-Hydroxy-N-methyltryptamine.
- 1115 k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
- 1116 l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
- 1117 m. Methyltryptamine.
- 1118 n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
- 1119 o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
- 1120 p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
- 1121 q. DiPT (N,N-Diisopropyltryptamine).
- 1122 r. DPT (N,N-Dipropyltryptamine).
- 1123 s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
- 1124 t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
- 1125 u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
- 1126 v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
- 1127 w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
- 1128 x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
- 1129 y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-
- 1130 isopropyltryptamine).
- 1131 z. Methyl-alpha-ethyltryptamine.
- 1132 aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

1133
1134 which does not include tryptamine, psilocyn as described in
1135 subparagraph 34., or psilocybin as described in subparagraph 33.

1136 195. Substituted Phenylcyclohexylamines.—Unless
1137 specifically excepted or unless listed in another schedule, or
1138 contained within a pharmaceutical product approved by the United
1139 States Food and Drug Administration, any material, compound,
1140 mixture, or preparation containing a phenylcyclohexylamine
1141 structure, with or without any substitution on the phenyl ring,



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1142 any substitution on the cyclohexyl ring, any replacement of the
1143 phenyl ring with a thiophenyl or benzothiophenyl ring, with or
1144 without substitution on the amine with alkyl, dialkyl, or alkoxy
1145 substituents, inclusion of the nitrogen in a cyclic structure,
1146 or any combination of the above, including, but not limited to:

- 1147 a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
- 1148 (Benocyclidine).
- 1149 b. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog
- 1150 of phencyclidine).
- 1151 c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine
- 1152 analog of phencyclidine).
- 1153 d. PCPr (Phenylcyclohexylpropylamine).
- 1154 e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene
- 1155 analog of phencyclidine).
- 1156 f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).
- 1157 g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).
- 1158 h. Methoxetamine.
- 1159 i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).
- 1160 j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).
- 1161 k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).
- 1162 l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).
- 1163 m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).
- 1164 n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).
- 1165 o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).
- 1166 p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).
- 1167 q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).
- 1168 r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).
- 1169 196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-
- 1170 piperidinylidene]-benzenesulfonamide.



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- 1171 197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-
1172 piperidinylidene]-benzenesulfonamide.
- 1173 198. AH-7921, 3,4-dichloro-N-[[1-
1174 (dimethylamino)cyclohexyl]methyl]-benzamide.
- 1175 199. U47700, trans-3,4-dichloro-N-[2-
1176 (dimethylamino)cyclohexyl]-N-methyl-benzamide.
- 1177 200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine,
1178 dihydrochloride.

1179 Section 5. Paragraph (c) of subsection (6) of section
1180 893.13, Florida Statutes, is amended to read:

1181 893.13 Prohibited acts; penalties.—

1182 (6)

1183 (c) Except as provided in this chapter, a person may not
1184 possess more than 10 grams of any substance named or described
1185 in s. 893.03(1)(a), ~~or~~ (1)(b), or (2)(b), or any combination
1186 thereof, or any mixture containing any such substance. A person
1187 who violates this paragraph commits a felony of the first
1188 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1189 775.084.

1190 Section 6. Paragraphs (c), (d), and (k) of subsection (1)
1191 of section 893.135, Florida Statutes, are amended, and
1192 paragraphs (m) and (n) are added to that subsection, to read:

1193 893.135 Trafficking; mandatory sentences; suspension or
1194 reduction of sentences; conspiracy to engage in trafficking.—

1195 (1) Except as authorized in this chapter or in chapter 499
1196 and notwithstanding the provisions of s. 893.13:

1197 (c)1. A person who knowingly sells, purchases,
1198 manufactures, delivers, or brings into this state, or who is
1199 knowingly in actual or constructive possession of, 4 grams or



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1200 more of any morphine, opium, hydromorphone, or any salt,
1201 derivative, isomer, or salt of an isomer thereof, including
1202 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
1203 (3)(c)4., or 4 grams or more of any mixture containing any such
1204 substance, but less than 30 kilograms of such substance or
1205 mixture, commits a felony of the first degree, which felony
1206 shall be known as "trafficking in illegal drugs," punishable as
1207 provided in s. 775.082, s. 775.083, or s. 775.084. If the
1208 quantity involved:

1209 a. Is 4 grams or more, but less than 14 grams, such person
1210 shall be sentenced to a mandatory minimum term of imprisonment
1211 of 3 years and shall be ordered to pay a fine of \$50,000.

1212 b. Is 14 grams or more, but less than 28 grams, such person
1213 shall be sentenced to a mandatory minimum term of imprisonment
1214 of 15 years and shall be ordered to pay a fine of \$100,000.

1215 c. Is 28 grams or more, but less than 30 kilograms, such
1216 person shall be sentenced to a mandatory minimum term of
1217 imprisonment of 25 years and shall be ordered to pay a fine of
1218 \$500,000.

1219 2. A person who knowingly sells, purchases, manufactures,
1220 delivers, or brings into this state, or who is knowingly in
1221 actual or constructive possession of, 14 grams or more of
1222 hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as
1223 described in s. 893.03(2)(a)1.g., or any salt, ~~derivative,~~
1224 ~~isomer, or salt of an isomer~~ thereof, or 14 grams or more of any
1225 mixture containing any such substance, commits a felony of the
1226 first degree, which felony shall be known as "trafficking in
1227 hydrocodone," punishable as provided in s. 775.082, s. 775.083,
1228 or s. 775.084. If the quantity involved:



1229 a. Is 14 grams or more, but less than 28 grams, such person
1230 shall be sentenced to a mandatory minimum term of imprisonment
1231 of 3 years and shall be ordered to pay a fine of \$50,000.

1232 b. Is 28 grams or more, but less than 50 grams, such person
1233 shall be sentenced to a mandatory minimum term of imprisonment
1234 of 7 years and shall be ordered to pay a fine of \$100,000.

1235 c. Is 50 grams or more, but less than 200 grams, such
1236 person shall be sentenced to a mandatory minimum term of
1237 imprisonment of 15 years and shall be ordered to pay a fine of
1238 \$500,000.

1239 d. Is 200 grams or more, but less than 30 kilograms, such
1240 person shall be sentenced to a mandatory minimum term of
1241 imprisonment of 25 years and shall be ordered to pay a fine of
1242 \$750,000.

1243 3. A person who knowingly sells, purchases, manufactures,
1244 delivers, or brings into this state, or who is knowingly in
1245 actual or constructive possession of, 7 grams or more of
1246 oxycodone, as described in s. 893.03(2)(a)1.o., or any salt,
1247 ~~derivative, isomer, or salt of an isomer~~ thereof, or 7 grams or
1248 more of any mixture containing any such substance, commits a
1249 felony of the first degree, which felony shall be known as
1250 "trafficking in oxycodone," punishable as provided in s.
1251 775.082, s. 775.083, or s. 775.084. If the quantity involved:

1252 a. Is 7 grams or more, but less than 14 grams, such person
1253 shall be sentenced to a mandatory minimum term of imprisonment
1254 of 3 years and shall be ordered to pay a fine of \$50,000.

1255 b. Is 14 grams or more, but less than 25 grams, such person
1256 shall be sentenced to a mandatory minimum term of imprisonment
1257 of 7 years and shall be ordered to pay a fine of \$100,000.



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1258 c. Is 25 grams or more, but less than 100 grams, such
1259 person shall be sentenced to a mandatory minimum term of
1260 imprisonment of 15 years and shall be ordered to pay a fine of
1261 \$500,000.

1262 d. Is 100 grams or more, but less than 30 kilograms, such
1263 person shall be sentenced to a mandatory minimum term of
1264 imprisonment of 25 years and shall be ordered to pay a fine of
1265 \$750,000.

1266 4.a. A person who knowingly sells, purchases, manufactures,
1267 delivers, or brings into this state, or who is knowingly in
1268 actual or constructive possession of, 4 grams or more of:

1269 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

1270 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

1271 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

1272 (IV) Sufentanil, as described in s. 893.03(2)(b)29.;

1273 (V) A fentanyl derivative, as described in s.

1274 893.03(1)(a)62.;

1275 (VI) A controlled substance analog, as described in s.

1276 893.0356, of any substance described in sub-sub-subparagraphs

1277 (I)-(V); or

1278 (VII) A mixture containing any substance described in sub-

1279 sub-subparagraphs (I)-(VI),

1280
1281 commits a felony of the first degree, which felony shall be
1282 known as "trafficking in fentanyl," punishable as provided in s.
1283 775.082, s. 775.083, or s. 775.084.

1284 b. If the quantity involved under sub-subparagraph a.:

1285 (I) Is 4 grams or more, but less than 14 grams, such person
1286 shall be sentenced to a mandatory minimum term of imprisonment



1287 of 3 years, and shall be ordered to pay a fine of \$50,000.

1288 (II) Is 14 grams or more, but less than 28 grams, such
1289 person shall be sentenced to a mandatory minimum term of
1290 imprisonment of 15 years, and shall be ordered to pay a fine of
1291 \$100,000.

1292 (III) Is 28 grams or more, such person shall be sentenced
1293 to a mandatory minimum term of imprisonment of 25 years, and
1294 shall be ordered to pay a fine of \$500,000.

1295 5.4. A person who knowingly sells, purchases, manufactures,
1296 delivers, or brings into this state, or who is knowingly in
1297 actual or constructive possession of, 30 kilograms or more of
1298 any morphine, opium, oxycodone, hydrocodone, codeine,
1299 hydromorphone, or any salt, derivative, isomer, or salt of an
1300 isomer thereof, including heroin, as described in s.
1301 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
1302 more of any mixture containing any such substance, commits the
1303 first degree felony of trafficking in illegal drugs. A person
1304 who has been convicted of the first degree felony of trafficking
1305 in illegal drugs under this subparagraph shall be punished by
1306 life imprisonment and is ineligible for any form of
1307 discretionary early release except pardon or executive clemency
1308 or conditional medical release under s. 947.149. However, if the
1309 court determines that, in addition to committing any act
1310 specified in this paragraph:

1311 a. The person intentionally killed an individual or
1312 counseled, commanded, induced, procured, or caused the
1313 intentional killing of an individual and such killing was the
1314 result; or

1315 b. The person's conduct in committing that act led to a



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1316 natural, though not inevitable, lethal result,
1317
1318 such person commits the capital felony of trafficking in illegal
1319 drugs, punishable as provided in ss. 775.082 and 921.142. A
1320 person sentenced for a capital felony under this paragraph shall
1321 also be sentenced to pay the maximum fine provided under
1322 subparagraph 1.

1323 ~~6.5.~~ A person who knowingly brings into this state 60
1324 kilograms or more of any morphine, opium, oxycodone,
1325 hydrocodone, codeine, hydromorphone, or any salt, derivative,
1326 isomer, or salt of an isomer thereof, including heroin, as
1327 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
1328 60 kilograms or more of any mixture containing any such
1329 substance, and who knows that the probable result of such
1330 importation would be the death of a person, commits capital
1331 importation of illegal drugs, a capital felony punishable as
1332 provided in ss. 775.082 and 921.142. A person sentenced for a
1333 capital felony under this paragraph shall also be sentenced to
1334 pay the maximum fine provided under subparagraph 1.

1335 (d)1. Any person who knowingly sells, purchases,
1336 manufactures, delivers, or brings into this state, or who is
1337 knowingly in actual or constructive possession of, 28 grams or
1338 more of phencyclidine, as described in s. 893.03(2)(b)23., a
1339 substituted phenylcyclohexylamine, as described in s.
1340 893.03(1)(c)195., or a substance described in s.
1341 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
1342 containing phencyclidine, as described in s. 893.03(2)(b)23.
1343 893.03(2)(b), a substituted phenylcyclohexylamine, as described
1344 in s. 893.03(1)(c)195., or a substance described in s.



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1345 893.03(1)(c)13., 32., 38., 103., or 146.,
1346 commits a felony of the first degree, which felony shall be
1347 known as "trafficking in phencyclidine," punishable as provided
1348 in s. 775.082, s. 775.083, or s. 775.084. If the quantity
1349 involved:

1350 a. Is 28 grams or more, but less than 200 grams, such
1351 person shall be sentenced to a mandatory minimum term of
1352 imprisonment of 3 years, and the defendant shall be ordered to
1353 pay a fine of \$50,000.

1354 b. Is 200 grams or more, but less than 400 grams, such
1355 person shall be sentenced to a mandatory minimum term of
1356 imprisonment of 7 years, and the defendant shall be ordered to
1357 pay a fine of \$100,000.

1358 c. Is 400 grams or more, such person shall be sentenced to
1359 a mandatory minimum term of imprisonment of 15 calendar years
1360 and pay a fine of \$250,000.

1361 2. Any person who knowingly brings into this state 800
1362 grams or more of phencyclidine, as described in s.
1363 893.03(2)(b)23., a substituted phenylcyclohexylamine, as
1364 described in s. 893.03(1)(c)195., or a substance described in s.
1365 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
1366 containing phencyclidine, as described in s. 893.03(2)(b)23.
1367 ~~893.03(2)(b),~~ a substituted phenylcyclohexylamine, as described
1368 in s. 893.03(1)(c)195., or a substance described in s.
1369 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the
1370 probable result of such importation would be the death of any
1371 person commits capital importation of phencyclidine, a capital
1372 felony punishable as provided in ss. 775.082 and 921.142. Any
1373 person sentenced for a capital felony under this paragraph shall



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1374 also be sentenced to pay the maximum fine provided under
1375 subparagraph 1.

1376 (k)1. A person who knowingly sells, purchases,
1377 manufactures, delivers, or brings into this state, or who is
1378 knowingly in actual or constructive possession of, 10 grams or
1379 more of a any of the following substances described in s.
1380 ~~893.03(1)(e):~~

1381 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,
1382 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,
1383 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,
1384 165., or 187.-189., a substituted cathinone, as described in s.
1385 893.03(1)(c)191., or substituted phenethylamine, as described in
1386 s. 893.03(1)(c)192.;

1387 b. Mixture containing any substance described in sub-
1388 subparagraph a.; or

1389 c. Salt, isomer, ester, or ether or salt of an isomer,
1390 ester, or ether of a substance described in sub-subparagraph a.,

1391 ~~a. (MDMA) 3,4-Methylenedioxyamphetamine;~~

1392 ~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~

1393 ~~c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~

1394 ~~d. 2,5-Dimethoxyamphetamine;~~

1395 ~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~

1396 ~~f. N-ethylamphetamine;~~

1397 ~~g. 3,4-Methylenedioxy-N-hydroxyamphetamine;~~

1398 ~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~

1399 ~~i. PMA (4-methoxyamphetamine);~~

1400 ~~j. PMMA (4-methoxymethamphetamine);~~

1401 ~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~

1402 ~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~



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1403 ~~m. MDA (3,4-Methylenedioxyamphetamine);~~
1404 ~~n. N,N-dimethylamphetamine;~~
1405 ~~o. 3,4,5-Trimethoxyamphetamine;~~
1406 ~~p. Methyloone (3,4-Methylenedioxymethcathinone);~~
1407 ~~q. MDPV (3,4-Methylenedioxypropylvalerone); or~~
1408 ~~r. Methyloone,~~
1409
1410 ~~individually or analogs thereto or isomers thereto or in any~~
1411 ~~combination of or any mixture containing any substance listed in~~
1412 ~~sub-subparagraphs a. r.,~~ commits a felony of the first degree,
1413 which felony shall be known as "trafficking in phenethylamines,"
1414 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
1415 2. If the quantity involved under subparagraph 1.:
1416 a. Is 10 grams or more, but less than 200 grams, such
1417 person shall be sentenced to a mandatory minimum term of
1418 imprisonment of 3 years and shall be ordered to pay a fine of
1419 \$50,000.
1420 b. Is 200 grams or more, but less than 400 grams, such
1421 person shall be sentenced to a mandatory minimum term of
1422 imprisonment of 7 years and shall be ordered to pay a fine of
1423 \$100,000.
1424 c. Is 400 grams or more, such person shall be sentenced to
1425 a mandatory minimum term of imprisonment of 15 years and shall
1426 be ordered to pay a fine of \$250,000.
1427 3. A person who knowingly manufactures or brings into this
1428 state 30 kilograms or more of a substance described in sub-
1429 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,
1430 or a salt, isomer, ester, or ether or a salt of an isomer,
1431 ester, or ether described in sub-subparagraph 1.c., ~~any of the~~



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1432 ~~following substances described in s. 893.03(1)(c):~~

- 1433 ~~a. MDMA (3,4-Methylenedioxyamphetamine);~~
- 1434 ~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~
- 1435 ~~c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~
- 1436 ~~d. 2,5-Dimethoxyamphetamine;~~
- 1437 ~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~
- 1438 ~~f. N-ethylamphetamine;~~
- 1439 ~~g. N-Hydroxy-3,4-methylenedioxyamphetamine;~~
- 1440 ~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~
- 1441 ~~i. PMA (4-methoxyamphetamine);~~
- 1442 ~~j. PMMA (4-methoxymethamphetamine);~~
- 1443 ~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~
- 1444 ~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~
- 1445 ~~m. MDA (3,4-Methylenedioxyamphetamine);~~
- 1446 ~~n. N,N-dimethylamphetamine;~~
- 1447 ~~o. 3,4,5-Trimethoxyamphetamine;~~
- 1448 ~~p. Mephedrone (3,4-Methylenedioxyphenethylamine);~~
- 1449 ~~q. MDPV (3,4-Methylenedioxypropylone); or~~
- 1450 ~~r. Methylmethcathinone,~~

1451
1452 ~~individually or analogs thereto or isomers thereto or in any~~
1453 ~~combination of or any mixture containing any substance listed in~~
1454 ~~sub-subparagraphs a.-r.,~~ and who knows that the probable result
1455 of such manufacture or importation would be the death of any
1456 person commits capital manufacture or importation of
1457 phenethylamines, a capital felony punishable as provided in ss.
1458 775.082 and 921.142. A person sentenced for a capital felony
1459 under this paragraph shall also be sentenced to pay the maximum
1460 fine ~~provided~~ under subparagraph 2. 1.



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1461 (m)1. A person who knowingly sells, purchases,
1462 manufactures, delivers, or brings into this state, or who is
1463 knowingly in actual or constructive possession of, 280 grams or
1464 more of a:
1465 a. Substance described in s. 893.03(1)(c)30., 46.-50.,
1466 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic
1467 cannabinoid, as described in s. 893.03(1)(c)190.; or
1468 b. Mixture containing any substance described in sub-
1469 subparagraph a.,
1470
1471 commits a felony of the first degree, which felony shall be
1472 known as "trafficking in synthetic cannabinoids," punishable as
1473 provided in s. 775.082, s. 775.083, or s. 775.084.
1474 2. If the quantity involved under subparagraph 1.:
1475 a. Is 280 grams or more, but less than 500 grams, such
1476 person shall be sentenced to a mandatory minimum term of
1477 imprisonment of 3 years, and the defendant shall be ordered to
1478 pay a fine of \$50,000.
1479 b. Is 500 grams or more, but less than 1 kilogram, such
1480 person shall be sentenced to a mandatory minimum term of
1481 imprisonment of 7 years, and the defendant shall be ordered to
1482 pay a fine of \$100,000.
1483 c. Is 1 kilogram or more, but less than 30 kilograms such
1484 person shall be sentenced to a mandatory minimum term of
1485 imprisonment of 15 years, and the defendant shall be ordered to
1486 pay a fine of \$200,000.
1487 d. Is 30 kilograms or more, such person shall be sentenced
1488 to a mandatory minimum term of imprisonment of 25 years, and the
1489 defendant shall be ordered to pay a fine of \$750,000.



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1490 (n)1. A person who knowingly sells, purchases,
1491 manufactures, delivers, or brings into this state, or who is
1492 knowingly in actual or constructive possession of, 14 grams or
1493 more of:
1494 a. A substance described in s. 893.03(1)(c)164., 174., or
1495 175., a n-benzyl phenethylamine compound, as described in s.
1496 893.03(1)(c)193.; or
1497 b. A mixture containing any substance described in sub-
1498 subparagraph a.,
1499
1500 commits a felony of the first degree, which felony shall be
1501 known as "trafficking in n-benzyl phenethylamines," punishable
1502 as provided in s. 775.082, s. 775.083, or s. 775.084.
1503 2. If the quantity involved under subparagraph 1.:
1504 a. Is 14 grams or more, but less than 100 grams, such
1505 person shall be sentenced to a mandatory minimum term of
1506 imprisonment of 3 years, and the defendant shall be ordered to
1507 pay a fine of \$50,000.
1508 b. Is 100 grams or more, but less than 200 grams, such
1509 person shall be sentenced to a mandatory minimum term of
1510 imprisonment of 7 years, and the defendant shall be ordered to
1511 pay a fine of \$100,000.
1512 c. Is 200 grams or more, such person shall be sentenced to
1513 a mandatory minimum term of imprisonment of 15 years, and the
1514 defendant shall be ordered to pay a fine of \$500,000.
1515 3. A person who knowingly manufactures or brings into this
1516 state 400 grams or more of a substance described in sub-
1517 subparagraph 1.a. or a mixture described in sub-subparagraph
1518 1.b., and who knows that the probable result of such manufacture



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1519 or importation would be the death of any person commits capital
1520 manufacture or importation of a n-benzyl phenethylamine
1521 compound, a capital felony punishable as provided in ss. 775.082
1522 and 921.142. A person sentenced for a capital felony under this
1523 paragraph shall also be sentenced to pay the maximum fine under
1524 subparagraph 2.

1525 Section 7. For the purpose of incorporating the amendments
1526 made by this act to sections 893.03, 893.13, and 893.135,
1527 Florida Statutes, in references thereto, paragraphs (a), (b),
1528 (c), (d), and (e) subsection (3) of section 921.0022, Florida
1529 Statutes, are reenacted; and paragraphs (g), (h), and (i) of
1530 subsection (3) of section 921.0022, Florida Statutes, are
1531 amended to read:

1532 921.0022 Criminal Punishment Code; offense severity ranking
1533 chart.—

1534 (3) OFFENSE SEVERITY RANKING CHART

1535 (a) LEVEL 1

1536

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,

1537

1538

1539



1540			amount greater than \$300 but less than \$20,000.
1541	316.1935 (1)	3rd	Fleeing or attempting to elude law enforcement officer.
1542	319.30 (5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
1543	319.35 (1) (a)	3rd	Tamper, adjust, change, etc., an odometer.
1544	320.26 (1) (a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
1545	322.212 (1) (a) - (c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
1546	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.



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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).



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1554	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
1555	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
1556	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
1557	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
1558	826.01	3rd	Bigamy.
1559	828.122(3)	3rd	Fighting or baiting animals.
1560	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
1561	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled



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1562			substances, all but s. 893.03(5) drugs.
1563	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
1564	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.
1565	838.15(2)	3rd	Commercial bribe receiving.
1566	838.16	3rd	Commercial bribery.
1567	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
1568	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
1569	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



1570			by means of lottery.
1571	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
1572	849.25 (2)	3rd	Engaging in bookmaking.
1573	860.08	3rd	Interfere with a railroad signal.
1574	860.13 (1) (a)	3rd	Operate aircraft while under the influence.
1575	893.13 (2) (a) 2.	3rd	Purchase of cannabis.
1576	893.13 (6) (a)	3rd	Possession of cannabis (more than 20 grams).
1577			
1578			
1579			
1580	(b) LEVEL 2		
1581			
	Florida	Felony	Description
	Statute	Degree	



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1582	379.2431 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
1583	379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
1584	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.
1585	517.07 (2)	3rd	Failure to furnish a prospectus meeting requirements.
1586	590.28 (1)	3rd	Intentional burning of lands.
1587	784.05 (3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
1588	787.04 (1)	3rd	In violation of court order, take, entice, etc., minor



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1589			beyond state limits.
	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
1590			
	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
1591			
	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
1592			
	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
1593			
	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
1594			
	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
1595			



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1596	817.234 (1) (a) 2.	3rd	False statement in support of insurance claim.
1597	817.481 (3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
1598	817.52 (3)	3rd	Failure to redeliver hired vehicle.
1599	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
1600	817.60 (5)	3rd	Dealing in credit cards of another.
1601	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
1602	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
1603	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.



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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.,



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(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs
other than cannabis.

1612

893.147(2) 3rd Manufacture or delivery of drug
paraphernalia.

1613

1614

1615

1616 (c) LEVEL 3

1617

Florida Statute	Felony Degree	Description
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1618

119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
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1619

316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
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1620

316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
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1621

316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
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1622

319.30(4)	3rd	Possession by junkyard of motor
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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.



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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



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1643			duty.
	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



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			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



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1659			public servant.
1660	843.19	3rd	Injure, disable, or kill police dog or horse.
1661	860.15(3)	3rd	Overcharging for repairs and parts.
1662	870.01(2)	3rd	Riot; inciting or encouraging.
1663	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).
1664	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.,



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1665			(2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
1666	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
1667	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
1668	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
1669	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
1670	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



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1671

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.

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.



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1675	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
1676	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
1677	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
1678	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
1679			
1680			
1681			
1682	(d) LEVEL 4		
1683			
	Florida Statute	Felony Degree	Description
1684	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.



1685	499.0051 (1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
1686	499.0051 (5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
1687	517.07 (1)	3rd	Failure to register securities.
1688	517.12 (1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
1689	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
1690	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
1691	784.075	3rd	Battery on detention or commitment facility staff.
1692	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
1693			



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1694	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
1695	784.081 (3)	3rd	Battery on specified official or employee.
1696	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
1697	784.083 (3)	3rd	Battery on code inspector.
1698	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
1699	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
1700	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



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1701			to designated person.
1702	787.07	3rd	Human smuggling.
1703	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
1704	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
1705	790.115(2)(c)	3rd	Possessing firearm on school property.
1706	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
1707	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
1708	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.



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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



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1717			breeding disability to any registered horse or cattle.
	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



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1725			for felony (bond estreature or bond jumping).
1726	847.0135 (5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
1727	874.05 (1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
1728	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).
1729	914.14 (2)	3rd	Witnesses accepting bribes.
1730	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.
1731	914.23 (2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
1732	918.12	3rd	Tampering with jurors.
	934.215	3rd	Use of two-way communications device to facilitate commission



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of a crime.

1733

1734

1735

1736 (e) LEVEL 5

1737

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

1738

1739

1740

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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.



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1748	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
1749	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1750	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
1751	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
1752	790.01 (2)	3rd	Carrying a concealed firearm.
1753	790.162	2nd	Threat to throw or discharge destructive device.
1754	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
1755			



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1756	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
1757	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
1758	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
1759	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
1760	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
1761	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
1762	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.
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,



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1770			\$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			
1771	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
1772			
1772	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
1773			
1773	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1774			
1774	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1775			



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1776	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.
1777	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
1778	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
1779	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
1780	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
1781	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.



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1786	893.13(1)(f)1.	1st	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.
1787	893.13(4)(b)	2nd	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.
1788	893.1351(1)	3rd	Use or hire of minor; deliver to minor other controlled substance.
1789			Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
1790			
1791			
1792	(g) LEVEL 7		
1793			
	Florida	Felony	Description



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	Statute	Degree	
1794	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
1795	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
1796	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.
1797	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
1798	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
1799	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
1800			



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1801	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
1802	456.065 (2)	3rd	Practicing a health care profession without a license.
1803	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
1804	458.327 (1)	3rd	Practicing medicine without a license.
1805	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
1806	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
1807	461.012 (1)	3rd	Practicing podiatric medicine without a license.
1808	462.17	3rd	Practicing naturopathy without a license.
	463.015 (1)	3rd	Practicing optometry without a license.



1809	464.016(1)	3rd	Practicing nursing without a license.
1810	465.015(2)	3rd	Practicing pharmacy without a license.
1811	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
1812	467.201	3rd	Practicing midwifery without a license.
1813	468.366	3rd	Delivering respiratory care services without a license.
1814	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
1815	483.901(7)	3rd	Practicing medical physics without a license.
1816	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
1817	484.053	3rd	Dispensing hearing aids without a license.
1818			



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1819	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.
1820	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.
1821	560.125 (5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
1822	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
1823	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.



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1824	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
1825	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
1826	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
1827	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
1828	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).



1829	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
1830	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
1831	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1832	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
1833	784.048 (7)	3rd	Aggravated stalking; violation of court order.
1834	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
1835	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
1836	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
1837	784.081 (1)	1st	Aggravated battery on specified official or employee.



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1838	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
1839	784.083(1)	1st	Aggravated battery on code inspector.
1840	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
1841	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.
1842	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
1843	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
1844	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1845			



1846	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1847	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
1848	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1849	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
1850	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.
1851	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.



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1852	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
1853	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
1854	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.
1855	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.
1856	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
1857	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
	810.02(3)(b)	2nd	Burglary of unoccupied



1858			dwelling; unarmed; no assault or battery.
	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.



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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



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1873	(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.
1874	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
1875	817.611 (2) (b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
1876	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1877	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.
1878	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



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1879			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.
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.



1888	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1889	872.06	2nd	Abuse of a dead human body.
1890	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
1891	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
1892	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.
1893	893.13(1)(e)1.	1st	Sell, manufacture, or deliver



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			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



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1900	(1) (c) 2.b.		grams or more, less than 50 grams.
	893.135	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
1901	(1) (c) 3.a.		
	893.135	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
1902	(1) (c) 3.b.		
	<u>893.135</u>	<u>1st</u>	<u>Trafficking in fentanyl, 4 grams or more, less than 14 grams.</u>
1903	(1) (c) 4.b. (I)		
	<u>893.135 (1) (d) 1.a.</u>	1st	Trafficking in phencyclidine, more than 28 grams <u>or more</u> , less than 200 grams.
1904	893.135 (1) (d) 1.		
	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams <u>or more</u> , less than 5 kilograms.
1905			
	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams <u>or more</u> , less than 28 grams.
1906			
	893.135	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14
	(1) (g) 1.a.		



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1907			grams.
893.135 (1) (h) 1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.	
1908			
893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.	
1909			
893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.	
1910			
<u>893.135 (1) (m) 2.a.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.</u>	
1911			
<u>893.135 (1) (m) 2.b.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 500 grams or more, less than 1 kilogram.</u>	
1912			
<u>893.135 (1) (n) 2.a.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.</u>	
1913			
893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing	



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1914			of controlled substance.
1914	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
1915			
1915	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
1916			
1916	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
1917			
1917	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
1918			
1918	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
1919			
1919	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or



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1920			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.
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



1926			digitized photograph.
	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1927			
	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1928			
1929			
1930			
1931	(h) LEVEL 8		
1932			
	Florida Statute	Felony Degree	Description
1933			
	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
1934			
	316.1935(4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
1935			
	327.35(3) (c) 3.	2nd	Vessel BUI manslaughter.
1936			



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1937	499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
1938	499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
1939	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.
1940	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.
1941	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
1942	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
	782.04 (4)	2nd	Killing of human without design



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1943	782.051(2)	1st	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. 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			



1949	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
1950	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.
1951	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.
1952	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
1953	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



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1954			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			
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			
1956	794.08 (3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
1957			
1957	800.04 (4) (b)	2nd	Lewd or lascivious battery.
1958			
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			



1974	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
1975	825.103 (3) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
1976	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
1977	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
1978	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
1979	860.16	1st	Aircraft piracy.
1980	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).



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1981	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
1982	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
1983	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
1984	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
1985	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
1986	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
1987	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
	<u>893.135</u>	<u>1st</u>	<u>Trafficking in fentanyl, 14</u>



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	<u>(1) (c) 4.b. (II)</u>		<u>grams or more, less than 28</u> <u>grams.</u>
1988	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams <u>or more</u> , less than 400 grams.
1989	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms <u>or more</u> , less than 25 kilograms.
1990	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams <u>or more</u> , 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,



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1995	(1) (k) 2.b.		200 grams or more, less than 400 grams.
	<u>893.135(1) (m) 2.c.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 1 kilogram or more, less than 30 kilograms.</u>
1996	<u>893.135(1) (n) 2.b.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.</u>
1997	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
1998	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
1999	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
2000	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
2001			



2002	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.
2003			
2004			
2005			
2006	(i) LEVEL 9		
2007			
	Florida Statute	Felony Degree	Description
2008	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
2009	327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
2010	409.920 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
2011	499.0051(8)	1st	Knowing sale or purchase of



2012			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.
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



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			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,



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2024			molestation, conduct, or exhibition.
	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			



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2031	794.011 (2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
2032	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.
2033	794.011 (4) (b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
2034	794.011 (4) (c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
2035	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



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2036			18 years by person in familial or custodial authority.
	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



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2043

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.

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



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2049			compounds into food, drink, medicine, or water with intent to kill or injure another person.
2050	893.135	1st	Attempted capital trafficking offense.
2051	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
2052	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
2053	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
2054	893.135 (1) (c) 2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
2055	893.135 (1) (c) 3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
	<u>893.135</u> <u>(1) (c) 4.b. (III)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 28</u> <u>grams or more.</u>



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2056	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams <u>or more</u> .
2057	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms <u>or more</u> .
2058	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams <u>or more</u> .
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	<u>893.135</u> <u>(1) (m) 2.d.</u>	<u>1st</u>	<u>Trafficking in synthetic</u> <u>cannabinoids, 30 kilograms or</u> <u>more.</u>
2063	<u>893.135 (1) (n) 2.c.</u>	<u>1st</u>	<u>Trafficking in n-benzyl</u> <u>phenethylamines, 200 grams or</u> <u>more.</u>
2064	896.101 (5) (c)	1st	Money laundering, financial



instruments totaling or
exceeding \$100,000.

2065

896.104(4)(a)3. 1st Structuring transactions to
evade reporting or registration
requirements, financial
transactions totaling or
exceeding \$100,000.

2066

2067

2068

2069 Section 8. For the purpose of incorporating the amendment
2070 made by this act to section 782.04, Florida Statutes, in a
2071 reference thereto, paragraph (d) of subsection (1) of section
2072 39.806, Florida Statutes, is reenacted to read:

2073 39.806 Grounds for termination of parental rights.—

2074 (1) Grounds for the termination of parental rights may be
2075 established under any of the following circumstances:

2076 (d) When the parent of a child is incarcerated and either:

2077 1. The period of time for which the parent is expected to
2078 be incarcerated will constitute a significant portion of the
2079 child's minority. When determining whether the period of time is
2080 significant, the court shall consider the child's age and the
2081 child's need for a permanent and stable home. The period of time
2082 begins on the date that the parent enters into incarceration;

2083 2. The incarcerated parent has been determined by the court
2084 to be a violent career criminal as defined in s. 775.084, a
2085 habitual violent felony offender as defined in s. 775.084, or a
2086 sexual predator as defined in s. 775.21; has been convicted of



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2087 first degree or second degree murder in violation of s. 782.04
2088 or a sexual battery that constitutes a capital, life, or first
2089 degree felony violation of s. 794.011; or has been convicted of
2090 an offense in another jurisdiction which is substantially
2091 similar to one of the offenses listed in this paragraph. As used
2092 in this section, the term "substantially similar offense" means
2093 any offense that is substantially similar in elements and
2094 penalties to one of those listed in this subparagraph, and that
2095 is in violation of a law of any other jurisdiction, whether that
2096 of another state, the District of Columbia, the United States or
2097 any possession or territory thereof, or any foreign
2098 jurisdiction; or

2099 3. The court determines by clear and convincing evidence
2100 that continuing the parental relationship with the incarcerated
2101 parent would be harmful to the child and, for this reason, that
2102 termination of the parental rights of the incarcerated parent is
2103 in the best interest of the child. When determining harm, the
2104 court shall consider the following factors:

2105 a. The age of the child.

2106 b. The relationship between the child and the parent.

2107 c. The nature of the parent's current and past provision
2108 for the child's developmental, cognitive, psychological, and
2109 physical needs.

2110 d. The parent's history of criminal behavior, which may
2111 include the frequency of incarceration and the unavailability of
2112 the parent to the child due to incarceration.

2113 e. Any other factor the court deems relevant.

2114 Section 9. For the purpose of incorporating the amendment
2115 made by this act to section 782.04, Florida Statutes, in a



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2116 reference thereto, paragraph (b) of subsection (4) of section
2117 63.089, Florida Statutes, is reenacted to read:

2118 63.089 Proceeding to terminate parental rights pending
2119 adoption; hearing; grounds; dismissal of petition; judgment.—

2120 (4) FINDING OF ABANDONMENT.—A finding of abandonment
2121 resulting in a termination of parental rights must be based upon
2122 clear and convincing evidence that a parent or person having
2123 legal custody has abandoned the child in accordance with the
2124 definition contained in s. 63.032. A finding of abandonment may
2125 also be based upon emotional abuse or a refusal to provide
2126 reasonable financial support, when able, to a birth mother
2127 during her pregnancy or on whether the person alleged to have
2128 abandoned the child, while being able, failed to establish
2129 contact with the child or accept responsibility for the child's
2130 welfare.

2131 (b) The child has been abandoned when the parent of a child
2132 is incarcerated on or after October 1, 2001, in a federal,
2133 state, or county correctional institution and:

2134 1. The period of time for which the parent has been or is
2135 expected to be incarcerated will constitute a significant
2136 portion of the child's minority. In determining whether the
2137 period of time is significant, the court shall consider the
2138 child's age and the child's need for a permanent and stable
2139 home. The period of time begins on the date that the parent
2140 enters into incarceration;

2141 2. The incarcerated parent has been determined by a court
2142 of competent jurisdiction to be a violent career criminal as
2143 defined in s. 775.084, a habitual violent felony offender as
2144 defined in s. 775.084, convicted of child abuse as defined in s.



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2145 827.03, or a sexual predator as defined in s. 775.21; has been
2146 convicted of first degree or second degree murder in violation
2147 of s. 782.04 or a sexual battery that constitutes a capital,
2148 life, or first degree felony violation of s. 794.011; or has
2149 been convicted of a substantially similar offense in another
2150 jurisdiction. As used in this section, the term "substantially
2151 similar offense" means any offense that is substantially similar
2152 in elements and penalties to one of those listed in this
2153 subparagraph, and that is in violation of a law of any other
2154 jurisdiction, whether that of another state, the District of
2155 Columbia, the United States or any possession or territory
2156 thereof, or any foreign jurisdiction; or

2157 3. The court determines by clear and convincing evidence
2158 that continuing the parental relationship with the incarcerated
2159 parent would be harmful to the child and, for this reason,
2160 termination of the parental rights of the incarcerated parent is
2161 in the best interests of the child.

2162 Section 10. For the purpose of incorporating the amendment
2163 made by this act to section 782.04, Florida Statutes, in a
2164 reference thereto, subsection (10) of section 95.11, Florida
2165 Statutes, is reenacted to read:

2166 95.11 Limitations other than for the recovery of real
2167 property.—Actions other than for recovery of real property shall
2168 be commenced as follows:

2169 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
2170 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
2171 (4) (d), an action for wrongful death seeking damages authorized
2172 under s. 768.21 brought against a natural person for an
2173 intentional tort resulting in death from acts described in s.



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2174 782.04 or s. 782.07 may be commenced at any time. This
2175 subsection shall not be construed to require an arrest, the
2176 filing of formal criminal charges, or a conviction for a
2177 violation of s. 782.04 or s. 782.07 as a condition for filing a
2178 civil action.

2179 Section 11. For the purpose of incorporating the amendment
2180 made by this act to section 782.04, Florida Statutes, in
2181 references thereto, paragraph (b) of subsection (1) and
2182 paragraphs (a), (b), and (c) of subsection (3) of section
2183 775.082, Florida Statutes, are reenacted to read:

2184 775.082 Penalties; applicability of sentencing structures;
2185 mandatory minimum sentences for certain reoffenders previously
2186 released from prison.-

2187 (1)

2188 (b)1. A person who actually killed, intended to kill, or
2189 attempted to kill the victim and who is convicted under s.
2190 782.04 of a capital felony, or an offense that was reclassified
2191 as a capital felony, which was committed before the person
2192 attained 18 years of age shall be punished by a term of
2193 imprisonment for life if, after a sentencing hearing conducted
2194 by the court in accordance with s. 921.1401, the court finds
2195 that life imprisonment is an appropriate sentence. If the court
2196 finds that life imprisonment is not an appropriate sentence,
2197 such person shall be punished by a term of imprisonment of at
2198 least 40 years. A person sentenced pursuant to this subparagraph
2199 is entitled to a review of his or her sentence in accordance
2200 with s. 921.1402(2)(a).

2201 2. A person who did not actually kill, intend to kill, or
2202 attempt to kill the victim and who is convicted under s. 782.04



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2203 of a capital felony, or an offense that was reclassified as a
2204 capital felony, which was committed before the person attained
2205 18 years of age may be punished by a term of imprisonment for
2206 life or by a term of years equal to life if, after a sentencing
2207 hearing conducted by the court in accordance with s. 921.1401,
2208 the court finds that life imprisonment is an appropriate
2209 sentence. A person who is sentenced to a term of imprisonment of
2210 more than 15 years is entitled to a review of his or her
2211 sentence in accordance with s. 921.1402(2)(c).

2212 3. The court shall make a written finding as to whether a
2213 person is eligible for a sentence review hearing under s.
2214 921.1402(2)(a) or (c). Such a finding shall be based upon
2215 whether the person actually killed, intended to kill, or
2216 attempted to kill the victim. The court may find that multiple
2217 defendants killed, intended to kill, or attempted to kill the
2218 victim.

2219 (3) A person who has been convicted of any other designated
2220 felony may be punished as follows:

2221 (a)1. For a life felony committed before October 1, 1983,
2222 by a term of imprisonment for life or for a term of at least 30
2223 years.

2224 2. For a life felony committed on or after October 1, 1983,
2225 by a term of imprisonment for life or by a term of imprisonment
2226 not exceeding 40 years.

2227 3. Except as provided in subparagraph 4., for a life felony
2228 committed on or after July 1, 1995, by a term of imprisonment
2229 for life or by imprisonment for a term of years not exceeding
2230 life imprisonment.

2231 4.a. Except as provided in sub-subparagraph b., for a life



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2232 felony committed on or after September 1, 2005, which is a
2233 violation of s. 800.04(5) (b), by:

2234 (I) A term of imprisonment for life; or

2235 (II) A split sentence that is a term of at least 25 years'
2236 imprisonment and not exceeding life imprisonment, followed by
2237 probation or community control for the remainder of the person's
2238 natural life, as provided in s. 948.012(4).

2239 b. For a life felony committed on or after July 1, 2008,
2240 which is a person's second or subsequent violation of s.
2241 800.04(5) (b), by a term of imprisonment for life.

2242 5. Notwithstanding subparagraphs 1.-4., a person who is
2243 convicted under s. 782.04 of an offense that was reclassified as
2244 a life felony which was committed before the person attained 18
2245 years of age may be punished by a term of imprisonment for life
2246 or by a term of years equal to life imprisonment if the judge
2247 conducts a sentencing hearing in accordance with s. 921.1401 and
2248 finds that life imprisonment or a term of years equal to life
2249 imprisonment is an appropriate sentence.

2250 a. A person who actually killed, intended to kill, or
2251 attempted to kill the victim and is sentenced to a term of
2252 imprisonment of more than 25 years is entitled to a review of
2253 his or her sentence in accordance with s. 921.1402(2) (b).

2254 b. A person who did not actually kill, intend to kill, or
2255 attempt to kill the victim and is sentenced to a term of
2256 imprisonment of more than 15 years is entitled to a review of
2257 his or her sentence in accordance with s. 921.1402(2) (c).

2258 c. The court shall make a written finding as to whether a
2259 person is eligible for a sentence review hearing under s.
2260 921.1402(2) (b) or (c). Such a finding shall be based upon



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2261 whether the person actually killed, intended to kill, or
2262 attempted to kill the victim. The court may find that multiple
2263 defendants killed, intended to kill, or attempted to kill the
2264 victim.

2265 6. For a life felony committed on or after October 1, 2014,
2266 which is a violation of s. 787.06(3)(g), by a term of
2267 imprisonment for life.

2268 (b)1. For a felony of the first degree, by a term of
2269 imprisonment not exceeding 30 years or, when specifically
2270 provided by statute, by imprisonment for a term of years not
2271 exceeding life imprisonment.

2272 2. Notwithstanding subparagraph 1., a person convicted
2273 under s. 782.04 of a first degree felony punishable by a term of
2274 years not exceeding life imprisonment, or an offense that was
2275 reclassified as a first degree felony punishable by a term of
2276 years not exceeding life, which was committed before the person
2277 attained 18 years of age may be punished by a term of years
2278 equal to life imprisonment if the judge conducts a sentencing
2279 hearing in accordance with s. 921.1401 and finds that a term of
2280 years equal to life imprisonment is an appropriate sentence.

2281 a. A person who actually killed, intended to kill, or
2282 attempted to kill the victim and is sentenced to a term of
2283 imprisonment of more than 25 years is entitled to a review of
2284 his or her sentence in accordance with s. 921.1402(2)(b).

2285 b. A person who did not actually kill, intend to kill, or
2286 attempt to kill the victim and is sentenced to a term of
2287 imprisonment of more than 15 years is entitled to a review of
2288 his or her sentence in accordance with s. 921.1402(2)(c).

2289 c. The court shall make a written finding as to whether a



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2290 person is eligible for a sentence review hearing under s.
2291 921.1402(2) (b) or (c). Such a finding shall be based upon
2292 whether the person actually killed, intended to kill, or
2293 attempted to kill the victim. The court may find that multiple
2294 defendants killed, intended to kill, or attempted to kill the
2295 victim.

2296 (c) Notwithstanding paragraphs (a) and (b), a person
2297 convicted of an offense that is not included in s. 782.04 but
2298 that is an offense that is a life felony or is punishable by a
2299 term of imprisonment for life or by a term of years not
2300 exceeding life imprisonment, or an offense that was reclassified
2301 as a life felony or an offense punishable by a term of
2302 imprisonment for life or by a term of years not exceeding life
2303 imprisonment, which was committed before the person attained 18
2304 years of age may be punished by a term of imprisonment for life
2305 or a term of years equal to life imprisonment if the judge
2306 conducts a sentencing hearing in accordance with s. 921.1401 and
2307 finds that life imprisonment or a term of years equal to life
2308 imprisonment is an appropriate sentence. A person who is
2309 sentenced to a term of imprisonment of more than 20 years is
2310 entitled to a review of his or her sentence in accordance with
2311 s. 921.1402(2) (d).

2312 Section 12. For the purpose of incorporating the amendment
2313 made by this act to section 782.04, Florida Statutes, in
2314 references thereto, subsections (1) and (2) of section 775.0823,
2315 Florida Statutes, are reenacted to read:

2316 775.0823 Violent offenses committed against law enforcement
2317 officers, correctional officers, state attorneys, assistant
2318 state attorneys, justices, or judges.—The Legislature does



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2319 hereby provide for an increase and certainty of penalty for any
2320 person convicted of a violent offense against any law
2321 enforcement or correctional officer, as defined in s. 943.10(1),
2322 (2), (3), (6), (7), (8), or (9); against any state attorney
2323 elected pursuant to s. 27.01 or assistant state attorney
2324 appointed under s. 27.181; or against any justice or judge of a
2325 court described in Art. V of the State Constitution, which
2326 offense arises out of or in the scope of the officer's duty as a
2327 law enforcement or correctional officer, the state attorney's or
2328 assistant state attorney's duty as a prosecutor or investigator,
2329 or the justice's or judge's duty as a judicial officer, as
2330 follows:

2331 (1) For murder in the first degree as described in s.
2332 782.04(1), if the death sentence is not imposed, a sentence of
2333 imprisonment for life without eligibility for release.

2334 (2) For attempted murder in the first degree as described
2335 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
2336 or s. 775.084.

2337
2338 Notwithstanding the provisions of s. 948.01, with respect to any
2339 person who is found to have violated this section, adjudication
2340 of guilt or imposition of sentence shall not be suspended,
2341 deferred, or withheld.

2342 Section 13. For the purpose of incorporating the amendment
2343 made by this act to section 782.04, Florida Statutes, in a
2344 reference thereto, subsection (1) of section 921.16, Florida
2345 Statutes, is reenacted to read:

2346 921.16 When sentences to be concurrent and when
2347 consecutive.-



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2348 (1) A defendant convicted of two or more offenses charged
2349 in the same indictment, information, or affidavit or in
2350 consolidated indictments, informations, or affidavits shall
2351 serve the sentences of imprisonment concurrently unless the
2352 court directs that two or more of the sentences be served
2353 consecutively. Sentences of imprisonment for offenses not
2354 charged in the same indictment, information, or affidavit shall
2355 be served consecutively unless the court directs that two or
2356 more of the sentences be served concurrently. Any sentence for
2357 sexual battery as defined in chapter 794 or murder as defined in
2358 s. 782.04 must be imposed consecutively to any other sentence
2359 for sexual battery or murder which arose out of a separate
2360 criminal episode or transaction.

2361 Section 14. For the purpose of incorporating the amendment
2362 made by this act to section 782.04, Florida Statutes, in a
2363 reference thereto, paragraph (c) of subsection (8) of section
2364 948.06, Florida Statutes, is reenacted to read:

2365 948.06 Violation of probation or community control;
2366 revocation; modification; continuance; failure to pay
2367 restitution or cost of supervision.—

2368 (8)

2369 (c) For purposes of this section, the term "qualifying
2370 offense" means any of the following:

2371 1. Kidnapping or attempted kidnapping under s. 787.01,
2372 false imprisonment of a child under the age of 13 under s.
2373 787.02(3), or luring or enticing a child under s. 787.025(2) (b)
2374 or (c).

2375 2. Murder or attempted murder under s. 782.04, attempted
2376 felony murder under s. 782.051, or manslaughter under s. 782.07.



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2377 3. Aggravated battery or attempted aggravated battery under
2378 s. 784.045.

2379 4. Sexual battery or attempted sexual battery under s.
2380 794.011(2), (3), (4), or (8)(b) or (c).

2381 5. Lewd or lascivious battery or attempted lewd or
2382 lascivious battery under s. 800.04(4), lewd or lascivious
2383 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
2384 conduct under s. 800.04(6)(b), lewd or lascivious exhibition
2385 under s. 800.04(7)(b), or lewd or lascivious exhibition on
2386 computer under s. 847.0135(5)(b).

2387 6. Robbery or attempted robbery under s. 812.13, carjacking
2388 or attempted carjacking under s. 812.133, or home invasion
2389 robbery or attempted home invasion robbery under s. 812.135.

2390 7. Lewd or lascivious offense upon or in the presence of an
2391 elderly or disabled person or attempted lewd or lascivious
2392 offense upon or in the presence of an elderly or disabled person
2393 under s. 825.1025.

2394 8. Sexual performance by a child or attempted sexual
2395 performance by a child under s. 827.071.

2396 9. Computer pornography under s. 847.0135(2) or (3),
2397 transmission of child pornography under s. 847.0137, or selling
2398 or buying of minors under s. 847.0145.

2399 10. Poisoning food or water under s. 859.01.

2400 11. Abuse of a dead human body under s. 872.06.

2401 12. Any burglary offense or attempted burglary offense that
2402 is either a first degree felony or second degree felony under s.
2403 810.02(2) or (3).

2404 13. Arson or attempted arson under s. 806.01(1).

2405 14. Aggravated assault under s. 784.021.



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2406 15. Aggravated stalking under s. 784.048(3), (4), (5), or
2407 (7).

2408 16. Aircraft piracy under s. 860.16.

2409 17. Unlawful throwing, placing, or discharging of a
2410 destructive device or bomb under s. 790.161(2), (3), or (4).

2411 18. Treason under s. 876.32.

2412 19. Any offense committed in another jurisdiction which
2413 would be an offense listed in this paragraph if that offense had
2414 been committed in this state.

2415 Section 15. For the purpose of incorporating the amendment
2416 made by this act to section 782.04, Florida Statutes, in a
2417 reference thereto, paragraph (a) of subsection (1) of section
2418 948.062, Florida Statutes, is reenacted to read:

2419 948.062 Reviewing and reporting serious offenses committed
2420 by offenders placed on probation or community control.—

2421 (1) The department shall review the circumstances related
2422 to an offender placed on probation or community control who has
2423 been arrested while on supervision for the following offenses:

2424 (a) Any murder as provided in s. 782.04;

2425 Section 16. For the purpose of incorporating the amendment
2426 made by this act to section 782.04, Florida Statutes, in a
2427 reference thereto, paragraph (b) of subsection (3) of section
2428 985.265, Florida Statutes, is reenacted to read:

2429 985.265 Detention transfer and release; education; adult
2430 jails.—

2431 (3)

2432 (b) When a juvenile is released from secure detention or
2433 transferred to nonsecure detention, detention staff shall
2434 immediately notify the appropriate law enforcement agency,



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2435 school personnel, and victim if the juvenile is charged with
2436 committing any of the following offenses or attempting to commit
2437 any of the following offenses:

- 2438 1. Murder, under s. 782.04;
- 2439 2. Sexual battery, under chapter 794;
- 2440 3. Stalking, under s. 784.048; or
- 2441 4. Domestic violence, as defined in s. 741.28.

2442 Section 17. For the purpose of incorporating the amendment
2443 made by this act to section 782.04, Florida Statutes, in a
2444 reference thereto, paragraph (d) of subsection (1) of section
2445 1012.315, Florida Statutes, is reenacted to read:

2446 1012.315 Disqualification from employment.—A person is
2447 ineligible for educator certification, and instructional
2448 personnel and school administrators, as defined in s. 1012.01,
2449 are ineligible for employment in any position that requires
2450 direct contact with students in a district school system,
2451 charter school, or private school that accepts scholarship
2452 students under s. 1002.39 or s. 1002.395, if the person,
2453 instructional personnel, or school administrator has been
2454 convicted of:

2455 (1) Any felony offense prohibited under any of the
2456 following statutes:

2457 (d) Section 782.04, relating to murder.

2458 Section 18. For the purpose of incorporating the amendment
2459 made by this act to section 782.04, Florida Statutes, in a
2460 reference thereto, paragraph (g) of subsection (2) of section
2461 1012.467, Florida Statutes, is reenacted to read:

2462 1012.467 Noninstructional contractors who are permitted
2463 access to school grounds when students are present; background



2464 screening requirements.-

2465 (2)

2466 (g) A noninstructional contractor for whom a criminal
2467 history check is required under this section may not have been
2468 convicted of any of the following offenses designated in the
2469 Florida Statutes, any similar offense in another jurisdiction,
2470 or any similar offense committed in this state which has been
2471 redesignated from a former provision of the Florida Statutes to
2472 one of the following offenses:

2473 1. Any offense listed in s. 943.0435(1)(h)1., relating to
2474 the registration of an individual as a sexual offender.

2475 2. Section 393.135, relating to sexual misconduct with
2476 certain developmentally disabled clients and the reporting of
2477 such sexual misconduct.

2478 3. Section 394.4593, relating to sexual misconduct with
2479 certain mental health patients and the reporting of such sexual
2480 misconduct.

2481 4. Section 775.30, relating to terrorism.

2482 5. Section 782.04, relating to murder.

2483 6. Section 787.01, relating to kidnapping.

2484 7. Any offense under chapter 800, relating to lewdness and
2485 indecent exposure.

2486 8. Section 826.04, relating to incest.

2487 9. Section 827.03, relating to child abuse, aggravated
2488 child abuse, or neglect of a child.

2489 Section 19. This act shall take effect October 1, 2017.

2490

2491 ===== T I T L E A M E N D M E N T =====

2492 And the title is amended as follows:



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2493 Delete everything before the enacting clause
2494 and insert:

2495 A bill to be entitled
2496 An act relating to controlled substances; amending s.
2497 381.887, F.S.; providing that certain emergency
2498 responders and crime laboratory personnel may possess,
2499 store, and administer emergency opioid antagonists;
2500 amending s. 782.04, F.S.; providing that unlawful
2501 distribution of specified controlled substances and
2502 analogs or mixtures thereof by an adult which
2503 proximately cause a death is murder; providing
2504 criminal penalties; creating s. 893.015, F.S.;
2505 specifying purpose relating to drug abuse prevention
2506 and control; providing that a reference to ch. 893,
2507 F.S., or to any section or portion thereof, includes
2508 all subsequent amendments; amending s. 893.03, F.S.;
2509 adding certain synthetic opioid substitute compounds
2510 to the list of Schedule I controlled substances;
2511 amending s. 893.13, F.S.; prohibiting possession of
2512 more than 10 grams of specified substances; providing
2513 criminal penalties; amending s. 893.135, F.S.;
2514 revising the substances that constitute the offenses
2515 of trafficking and capital trafficking in, and capital
2516 importation of, hydrocodone and oxycodone; creating
2517 the offense of trafficking in fentanyl; providing
2518 penalties and specifying minimum terms of imprisonment
2519 and fines based on the quantity involved in the
2520 offense; revising the substances that constitute the
2521 offenses of trafficking in phencyclidine and capital



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2522 importation of phencyclidine; revising the substances
2523 that constitute trafficking in phenethylamines and
2524 capital manufacture or importation of phenethylamines;
2525 creating the offense of trafficking in synthetic
2526 cannabinoids; providing penalties and specifying
2527 minimum terms of imprisonment and fines based on the
2528 quantity involved in the offense; creating the
2529 offenses of trafficking in n-benzyl phenethylamines
2530 and capital manufacture or importation of a n-benzyl
2531 phenethylamine compound; providing penalties and
2532 specifying minimum terms of imprisonment and fines
2533 based on the quantity involved in the offense;
2534 reenacting and amending s. 921.0022, F.S.; ranking
2535 offenses on the offense severity ranking chart of the
2536 Criminal Punishment Code; incorporating the amendments
2537 made by the act in cross-references to amended
2538 provisions; reenacting ss. 39.806(1)(d), 63.089(4)(b),
2539 95.11(10), 775.082(1)(b) and (3)(a), (b), and (c),
2540 775.0823(1) and (2), 921.16(1), 948.06(8)(c),
2541 948.062(1)(a), 985.265(3)(b), 1012.315(1)(d), and
2542 1012.467(2)(g), relating to grounds for termination of
2543 parental rights, proceeding to terminate parental
2544 rights pending adoption, limitations other than for
2545 the recovery of real property, penalties, violent
2546 offenses committed against specified officials, when
2547 sentences to be concurrent and when consecutive,
2548 violation of probation or community control, reviewing
2549 and reporting serious offenses committed by offenders
2550 placed on probation or community control, detention



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2551 transfer and release, disqualification from
2552 employment, and noninstructional contractors who are
2553 permitted access to school grounds when students are
2554 present, respectively, to incorporate the amendments
2555 made by the act in cross-references to amended
2556 provisions; providing an effective date.



355094

LEGISLATIVE ACTION

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

The Committee on Appropriations (Brandes) recommended the following:

1 **Senate Amendment to Amendment (145864) (with directory and**
2 **title amendments)**

3
4 Between lines 1524 and 1525
5 insert:

6 (8) For an offense listed under this section committed on
7 or after October 1, 2017, which carries a mandatory minimum
8 sentence, a court may depart from the applicable mandatory
9 minimum sentence if, in giving due regard to the nature of the
10 crime, history, and character of the defendant, and the



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11 defendant's chances of successful rehabilitation, the court
12 finds compelling reasons on the record that imposition of the
13 mandatory minimum is not necessary for the protection of the
14 public. Each month, a court shall submit to the Office of
15 Economic and Demographic Research of the Legislature the written
16 reasons in each case in which the court departed from the
17 mandatory minimum sentence.

18
19 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

20 And the directory clause is amended as follows:

21 Delete lines 1190 - 1192

22 and insert:

23 Section 6. Paragraphs (c), (d), and (k) of subsection (1)
24 of section 893.135, Florida Statutes, are amended, and
25 paragraphs (m) and (n) are added to that subsection, and a new
26 subsection (8) is added to that section, to read:

27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Between lines 2533 and 2534

31 insert:

32 authorizing a court to depart from a mandatory minimum
33 sentence for drug trafficking if the court finds
34 compelling reasons that the mandatory minimum sentence
35 is not necessary for the protection of the public;
36 requiring a court to submit written reasons for such
37 departure to the Office of Economic and Demographic
38 Research;

By the Committees on Judiciary; and Criminal Justice; and
Senators Steube, Baxley, Passidomo, Artiles, and Mayfield

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1 A bill to be entitled
2 An act relating to controlled substances; amending s.
3 381.887, F.S.; providing that certain emergency
4 responders and crime laboratory personnel may possess,
5 store, and administer emergency opioid antagonists;
6 amending s. 782.04, F.S.; providing that unlawful
7 distribution of specified controlled substances and
8 analogs or mixtures thereof by an adult which
9 proximately cause a death is murder; providing
10 criminal penalties; creating s. 893.015, F.S.;
11 specifying the purpose relating to drug abuse
12 prevention and control; providing that a reference to
13 ch. 893, F.S., or to any section or portion thereof,
14 includes all subsequent amendments; amending s.
15 893.03, F.S.; adding certain synthetic opioid
16 substitute compounds to the list of Schedule I
17 controlled substances; amending s. 893.13, F.S.;
18 prohibiting possession of more than 10 grams of
19 specified substances; providing criminal penalties;
20 amending s. 893.135, F.S.; revising the substances
21 that constitute the offenses of trafficking and
22 capital trafficking in, and capital importation of,
23 hydrocodone and oxycodone; creating the offense of
24 trafficking in fentanyl; providing penalties and
25 specifying minimum terms of imprisonment and fines
26 based on the quantity involved in the offense;
27 revising the substances that constitute the offenses
28 of trafficking in phencyclidine and capital
29 importation of phencyclidine; revising the substances

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30 that constitute trafficking in phenethylamines and
31 capital manufacture or importation of phenethylamines;
32 creating the offense of trafficking in synthetic
33 cannabinoids; providing penalties and specifying
34 minimum terms of imprisonment and fines based on the
35 quantity involved in the offense; creating the
36 offenses of trafficking in n-benzyl phenethylamines
37 and capital manufacture or importation of a n-benzyl
38 phenethylamine compound; providing penalties and
39 specifying minimum terms of imprisonment and fines
40 based on the quantity involved in the offense;
41 authorizing a court to depart from a mandatory minimum
42 sentence for drug trafficking if the court finds
43 compelling reasons that the mandatory minimum sentence
44 is not necessary for the protection of the public;
45 requiring a court to submit written reasons for such
46 departure to the Office of Economic and Demographic
47 Research; reenacting and amending s. 921.0022, F.S.;
48 ranking offenses on the offense severity ranking chart
49 of the Criminal Punishment Code; incorporating the
50 amendments made by the act in cross-references to
51 amended provisions; amending s. 775.082, F.S.;
52 requiring that a court sentence a defendant who is
53 convicted of a primary offense of possession of a
54 controlled substance committed on or after a specified
55 date to a nonstate prison sanction under certain
56 circumstances; defining the term "possession of a
57 controlled substance"; amending s. 921.0026, F.S.;
58 revising the mitigating circumstances under which a

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59 departure from the lowest permissible sentence is
60 reasonably justified; making technical changes;
61 amending s. 948.01, F.S.; requiring a sentencing court
62 to place certain defendants who commit an offense on
63 or after a specified date into a postadjudicatory
64 treatment-based drug court program, into residential
65 drug treatment, or on drug offender probation; making
66 technical changes; reenacting ss. 775.08435(1)(b) and
67 (c), 921.002(3), and 921.00265(1), F.S., relating to
68 the prohibition on withholding adjudication in felony
69 cases, the Criminal Punishment Code, and recommended
70 and departure sentences, respectively, to incorporate
71 the amendment made to s. 921.0026, F.S., in references
72 thereto; reenacting ss. 394.47892(2) and (4)(a),
73 397.334(3)(a) and (5), 910.035(5)(a), 921.187(1)(c),
74 and 943.04352, F.S., relating to mental health court
75 programs, treatment-based drug court programs,
76 transfer for participation in a problem-solving court,
77 offender probation with or without adjudication of
78 guilt, and court placement of a defendant on
79 misdemeanor probation, respectively, to incorporate
80 the amendment made to s. 948.01, F.S., in references
81 thereto; reenacting ss. 39.806(1)(d), 63.089(4)(b),
82 95.11(10), 775.082(1)(b) and (3)(a), (b), and (c),
83 775.0823(1) and (2), 921.16(1), 948.06(8)(c),
84 948.062(1)(a), 985.265(3)(b), 1012.315(1)(d), and
85 1012.467(2)(g), relating to grounds for termination of
86 parental rights, proceedings to terminate parental
87 rights pending adoption, limitations other than for

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88 the recovery of real property, penalties, violent
89 offenses committed against specified officials, when
90 sentences are to be concurrent and when consecutive,
91 violation of probation or community control, reviewing
92 and reporting serious offenses committed by offenders
93 placed on probation or community control, detention
94 transfer and release, disqualification from
95 employment, and noninstructional contractors who are
96 permitted access to school grounds when students are
97 present, respectively, to incorporate the amendments
98 made by the act in cross-references to amended
99 provisions; providing an effective date.

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

101
102 Section 1. Subsection (4) of section 381.887, Florida
103 Statutes, is amended to read:

104 381.887 Emergency treatment for suspected opioid overdose.-

105 (4) The following persons ~~Emergency responders, including,~~
106 ~~but not limited to, law enforcement officers, paramedics, and~~
107 ~~emergency medical technicians,~~ are authorized to possess, store,
108 and administer emergency opioid antagonists as clinically
109 indicated:

110 (a) Emergency responders, including, but not limited to,
111 law enforcement officers, paramedics, and emergency medical
112 technicians.

113 (b) Crime laboratory personnel for the statewide criminal
114 analysis laboratory system as described in s. 943.32, including,
115 but not limited to, analysts, evidence intake personnel, and
116

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117 their supervisors.
 118 Section 2. Paragraph (a) of subsection (1) of section
 119 782.04, Florida Statutes, is amended to read:
 120 782.04 Murder.—
 121 (1) (a) The unlawful killing of a human being:
 122 1. When perpetrated from a premeditated design to effect
 123 the death of the person killed or any human being;
 124 2. When committed by a person engaged in the perpetration
 125 of, or in the attempt to perpetrate, any:
 126 a. Trafficking offense prohibited by s. 893.135(1),
 127 b. Arson,
 128 c. Sexual battery,
 129 d. Robbery,
 130 e. Burglary,
 131 f. Kidnapping,
 132 g. Escape,
 133 h. Aggravated child abuse,
 134 i. Aggravated abuse of an elderly person or disabled adult,
 135 j. Aircraft piracy,
 136 k. Unlawful throwing, placing, or discharging of a
 137 destructive device or bomb,
 138 l. Carjacking,
 139 m. Home-invasion robbery,
 140 n. Aggravated stalking,
 141 o. Murder of another human being,
 142 p. Resisting an officer with violence to his or her person,
 143 q. Aggravated fleeing or eluding with serious bodily injury
 144 or death,
 145 r. Felony that is an act of terrorism or is in furtherance

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146 of an act of terrorism,
 147 s. Human trafficking; or
 148 3. Which resulted from the unlawful distribution by a
 149 person 18 years of age or older of any of the following
 150 substances, or mixture containing any of the following
 151 substances substance controlled under s. 893.03(1), cocaine as
 152 described in s. 893.03(2)(a)4., opium or any synthetic or
 153 natural salt, compound, derivative, or preparation of opium, or
 154 methadone by a person 18 years of age or older, when such
 155 substance or mixture drug is proven to be the proximate cause of
 156 the death of the user:
 157 a. A substance controlled under s. 893.03(1);
 158 b. Cocaine as described in s. 893.03(2)(a)4.;
 159 c. Opium or any synthetic or natural salt, compound,
 160 derivative, or preparation of opium;
 161 d. Methadone;
 162 e. Alfentanil, as described in s. 893.03(2)(b)1.;
 163 f. Carfentanil, as described in s. 893.03(2)(b)6.;
 164 g. Fentanyl, as described in s. 893.03(2)(b)9.;
 165 h. Sufentanil, as described in s. 893.03(2)(b)29.; or
 166 i. A controlled substance analog, as described in s.
 167 893.0356, of any substance specified in sub-subparagraphs a.-h.,
 168
 169 is murder in the first degree and constitutes a capital felony,
 170 punishable as provided in s. 775.082.
 171 Section 3. Section 893.015, Florida Statutes, is created to
 172 read:
 173 893.015 Statutory references.—The purpose of this chapter
 174 is to comprehensively address drug abuse prevention and control

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175 in this state. To this end, unless expressly provided otherwise,
 176 a reference in any section of the Florida Statutes to chapter
 177 893 or to any section or portion of a section of chapter 893
 178 includes all subsequent amendments to chapter 893 or to the
 179 referenced section or portion of a section.

180 Section 4. Paragraphs (a) and (c) of subsection (1) of
 181 section 893.03, Florida Statutes, are amended to read:

182 893.03 Standards and schedules.—The substances enumerated
 183 in this section are controlled by this chapter. The controlled
 184 substances listed or to be listed in Schedules I, II, III, IV,
 185 and V are included by whatever official, common, usual,
 186 chemical, trade name, or class designated. The provisions of
 187 this section shall not be construed to include within any of the
 188 schedules contained in this section any excluded drugs listed
 189 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 190 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 191 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 192 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 193 Anabolic Steroid Products."

194 (1) SCHEDULE I.—A substance in Schedule I has a high
 195 potential for abuse and has no currently accepted medical use in
 196 treatment in the United States and in its use under medical
 197 supervision does not meet accepted safety standards. The
 198 following substances are controlled in Schedule I:

199 (a) Unless specifically excepted or unless listed in
 200 another schedule, any of the following substances, including
 201 their isomers, esters, ethers, salts, and salts of isomers,
 202 esters, and ethers, whenever the existence of such isomers,
 203 esters, ethers, and salts is possible within the specific

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204 chemical designation:

- 205 1. Acetyl-alpha-methylfentanyl.
- 206 2. Acetylmethadol.
- 207 3. Allylprodine.
- 208 4. Alphacetylmethadol (except levo-alphacetylmethadol, also
 209 known as levo-alpha-acetylmethadol, levomethadyl acetate, or
 210 LAAM).
- 211 5. Alphamethadol.
- 212 6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
 213 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
 214 (N-propanilido) piperidine).
- 215 7. Alpha-methylthiofentanyl.
- 216 8. Alphameprodine.
- 217 9. Benzethidine.
- 218 10. Benzylfentanyl.
- 219 11. Betacetylmethadol.
- 220 12. Beta-hydroxyfentanyl.
- 221 13. Beta-hydroxy-3-methylfentanyl.
- 222 14. Betameprodine.
- 223 15. Betamethadol.
- 224 16. Betaprodine.
- 225 17. Clonitazene.
- 226 18. Dextromoramide.
- 227 19. Diampromide.
- 228 20. Diethylthiambutene.
- 229 21. Difenoxin.
- 230 22. Dimenoxadol.
- 231 23. Dimepheptanol.
- 232 24. Dimethylthiambutene.

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233 25. Dioxaphetyl butyrate.
 234 26. Dipipanone.
 235 27. Ethylmethylthiambutene.
 236 28. Etonitazene.
 237 29. Etoxeridine.
 238 30. Flunitrazepam.
 239 31. Furethidine.
 240 32. Hydroxypethidine.
 241 33. Ketobemidone.
 242 34. Levomoramide.
 243 35. Levophenacymorphan.
 244 36. Desmethylprodine (1-Methyl-4-Phenyl-4-
 245 Propionoxypiperidine).
 246 37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
 247 piperidyl]-N-phenylpropanamide).
 248 38. 3-Methylthiofentanyl.
 249 39. Morpheridine.
 250 40. Noracymethadol.
 251 41. Norlevorphanol.
 252 42. Normethadone.
 253 43. Norpipanone.
 254 44. Para-Fluorofentanyl.
 255 45. Phenadoxone.
 256 46. Phenampromide.
 257 47. Phenomorphan.
 258 48. Phenoperidine.
 259 49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-
 260 Acetyloxypiperidine).
 261 50. Piritramide.

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262 51. Proheptazine.
 263 52. Properidine.
 264 53. Propiram.
 265 54. Racemoramide.
 266 55. Thenylfentanyl.
 267 56. Thiofentanyl.
 268 57. Tilidine.
 269 58. Trimeperidine.
 270 59. Acetylfentanyl.
 271 60. Butyrylfentanyl.
 272 61. Beta-Hydroxythiofentanyl.
 273 62. Fentanyl derivatives. Unless specifically excepted,
 274 listed in another schedule, or contained within a pharmaceutical
 275 product approved by the United States Food and Drug
 276 Administration, any material, compound, mixture, or preparation,
 277 including its salts, isomers, esters, or ethers, and salts of
 278 isomers, esters, or ethers, whenever the existence of such salts
 279 is possible within any of the following specific chemical
 280 designations containing a 4-anilidopiperidine structure:
 281 a. With or without substitution at the carbonyl of the
 282 aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl,
 283 methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl,
 284 dihydrofuranyl, benzyl moiety, or rings containing heteroatoms
 285 sulfur, oxygen, or nitrogen;
 286 b. With or without substitution at the piperidine amino
 287 moiety with a phenethyl, benzyl, alkylaryl (including
 288 heteroaromatics), alkyltetrazolyl ring, or an alkyl or
 289 carbomethoxy group, whether or not further substituted in the
 290 ring or group;

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291 c. With or without substitution or addition to the
 292 piperidine ring to any extent with one or more methyl,
 293 carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester
 294 groups;
 295 d. With or without substitution of one or more hydrogen
 296 atoms for halogens, or methyl, alkyl, or methoxy groups, in the
 297 aromatic ring of the anilide moiety;
 298 e. With or without substitution at the alpha or beta
 299 position of the piperidine ring with alkyl, hydroxyl, or methoxy
 300 groups;
 301 f. With or without substitution of the benzene ring of the
 302 anilide moiety for an aromatic heterocycle; and
 303 g. With or without substitution of the piperidine ring for
 304 a pyrrolidine ring, perhydroazepine ring, or azepine ring;
 305
 306 excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil;
 307 including, but not limited to:
 308 (I) Acetyl-alpha-methylfentanyl.
 309 (II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
 310 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
 311 (N-propanilido) piperidine).
 312 (III) Alpha-methylthiofentanyl.
 313 (IV) Benzylfentanyl.
 314 (V) Beta-hydroxyfentanyl.
 315 (VI) Beta-hydroxy-3-methylfentanyl.
 316 (VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
 317 piperidyl]-N-phenylpropanamide).
 318 (VIII) 3-Methylthiofentanyl.
 319 (IX) Para-Fluorofentanyl.

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320 (X) Thenylfentanyl or Thienyl fentanyl.
 321 (XI) Thiofentanyl.
 322 (XII) Acetylfentanyl.
 323 (XIII) Butyrylfentanyl.
 324 (XIV) Beta-Hydroxythiofentanyl.
 325 (XV) Lofentanil.
 326 (XVI) Ocfentanil.
 327 (XVII) Ohmfentanyl.
 328 (XVIII) Benzodioxolefentanyl.
 329 (XIX) Furanyl fentanyl.
 330 (XX) Pentanoyl fentanyl.
 331 (XXI) Cyclopentyl fentanyl.
 332 (XXII) Isobutyryl fentanyl.
 333 (XXIII) Remifentanil.
 334 (c) Unless specifically excepted or unless listed in
 335 another schedule, any material, compound, mixture, or
 336 preparation that contains any quantity of the following
 337 hallucinogenic substances or that contains any of their salts,
 338 isomers, including optical, positional, or geometric isomers,
 339 homologues, nitrogen-heterocyclic analogs, esters, ethers, and
 340 salts of isomers, homologues, nitrogen-heterocyclic analogs,
 341 esters, or ethers, if the existence of such salts, isomers, and
 342 salts of isomers is possible within the specific chemical
 343 designation or class description:
 344 1. Alpha-Ethyltryptamine.
 345 2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-
 346 oxazoline).
 347 3. Aminorex (2-Amino-5-phenyl-2-oxazoline).
 348 4. DOB (4-Bromo-2,5-dimethoxyamphetamine).

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- 349 5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
 350 6. Bufotenine.
 351 7. Cannabis.
 352 8. Cathinone.
 353 9. DET (Diethyltryptamine).
 354 10. 2,5-Dimethoxyamphetamine.
 355 11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).
 356 12. DMT (Dimethyltryptamine).
 357 13. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog
 358 of phencyclidine).
 359 14. JB-318 (N-Ethyl-3-piperidyl benzilate).
 360 15. N-Ethylamphetamine.
 361 16. Fenethylamine.
 362 17. 3,4-Methylenedioxy-N-hydroxyamphetamine.
 363 18. Ibogaine.
 364 19. LSD (Lysergic acid diethylamide).
 365 20. Mescaline.
 366 21. Methcathinone.
 367 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
 368 23. PMA (4-Methoxyamphetamine).
 369 24. PMMA (4-Methoxymethamphetamine).
 370 25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
 371 26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
 372 27. MDA (3,4-Methylenedioxyamphetamine).
 373 28. JB-336 (N-Methyl-3-piperidyl benzilate).
 374 29. N,N-Dimethylamphetamine.
 375 30. Parahexyl.
 376 31. Peyote.
 377 32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine

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- 378 analog of phencyclidine).
 379 33. Psilocybin.
 380 34. Psilocyn.
 381 35. *Salvia divinorum*, except for any drug product approved
 382 by the United States Food and Drug Administration which contains
 383 *Salvia divinorum* or its isomers, esters, ethers, salts, and
 384 salts of isomers, esters, and ethers, if the existence of such
 385 isomers, esters, ethers, and salts is possible within the
 386 specific chemical designation.
 387 36. Salvinorin A, except for any drug product approved by
 388 the United States Food and Drug Administration which contains
 389 Salvinorin A or its isomers, esters, ethers, salts, and salts of
 390 isomers, esters, and ethers, if the existence of such isomers,
 391 esters, ethers, and salts is possible within the specific
 392 chemical designation.
 393 37. Xylazine.
 394 38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)
 395 (Thiophene analog of phencyclidine).
 396 39. 3,4,5-Trimethoxyamphetamine.
 397 40. Methylone (3,4-Methylenedioxymethcathinone).
 398 41. MDPV (3,4-Methylenedioxyprovalerone).
 399 42. Methylenedioxymethcathinone.
 400 43. Methoxymethcathinone.
 401 44. Fluoromethcathinone.
 402 45. Methylethcathinone.
 403 46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-
 404 yl)phenol) and its dimethyloctyl (C8) homologue.
 405 47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-
 406 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol].

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407 48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).
 408 49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
 409 50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
 410 naphthoyl)indole).
 411 51. BZP (Benzylpiperazine).
 412 52. Fluorophenylpiperazine.
 413 53. Methylphenylpiperazine.
 414 54. Chlorophenylpiperazine.
 415 55. Methoxyphenylpiperazine.
 416 56. DBZP (1,4-Dibenzylpiperazine).
 417 57. TFMPP (Trifluoromethylphenylpiperazine).
 418 58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
 419 Methylenedioxy-N-methylbutanamine).
 420 59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
 421 60. 5-Hydroxy-N-methyltryptamine.
 422 61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
 423 62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
 424 63. Methyltryptamine.
 425 64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
 426 65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
 427 66. Tyramine (4-Hydroxyphenethylamine).
 428 67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
 429 68. DiPT (N,N-Diisopropyltryptamine).
 430 69. DPT (N,N-Dipropyltryptamine).
 431 70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
 432 71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
 433 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
 434 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
 435 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

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436 75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
 437 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 438 77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
 439 78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
 440 79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
 441 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 442 81. Butylone (3,4-Methylenedioxy-alpha-
 443 methylaminobutyrophenone).
 444 82. Ethcathinone.
 445 83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
 446 84. Naphyrone (Naphthylpyrovalerone).
 447 85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).
 448 86. 3,4-Methylenedioxy-N,N-diethylcathinone.
 449 87. 3,4-Methylenedioxy-propiofenone.
 450 88. 3,4-Methylenedioxy-alpha-bromopropiophenone.
 451 89. 3,4-Methylenedioxy-propiofenone-2-oxime.
 452 90. 3,4-Methylenedioxy-N-acetylcathinone.
 453 91. 3,4-Methylenedioxy-N-acetylmethcathinone.
 454 92. 3,4-Methylenedioxy-N-acetylethcathinone.
 455 93. Bromomethcathinone.
 456 94. Buphedrone (alpha-Methylamino-butyrophenone).
 457 95. Eutylone (3,4-Methylenedioxy-alpha-
 458 ethylaminobutyrophenone).
 459 96. Dimethylcathinone.
 460 97. Dimethylmethcathinone.
 461 98. Pentylone (3,4-Methylenedioxy-alpha-
 462 methylaminovalerophenone).
 463 99. MDPPP (3,4-Methylenedioxy-alpha-
 464 pyrrolidinopropiophenone).

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465 100. MDPBP (3,4-Methylenedioxy-alpha-
 466 pyrrolidinobutyrophenone).
 467 101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
 468 102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).
 469 103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
 470 (Benocyclidine).
 471 104. F-MABP (Fluoromethylaminobutyrophenone).
 472 105. MeO-PBP (Methoxypyrrolidinobutyrophenone).
 473 106. Et-PBP (Ethylpyrrolidinobutyrophenone).
 474 107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
 475 108. Me-EABP (Methylethylaminobutyrophenone).
 476 109. Etizolam.
 477 110. PPP (Pyrrolidinopropiophenone).
 478 111. PBP (Pyrrolidinobutyrophenone).
 479 112. PVP (Pyrrolidinovalerophenone) or
 480 (Pyrrolidinopentiophenone).
 481 113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).
 482 114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).
 483 115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).
 484 116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).
 485 117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).
 486 118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
 487 119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
 488 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
 489 121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-
 490 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
 491 122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
 492 123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
 493 124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

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494 125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
 495 126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
 496 127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
 497 128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
 498 129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
 499 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 500 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 501 ol).
 502 131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-
 503 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]
 504 methanol).
 505 132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-
 506 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
 507 1,4-dione).
 508 133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
 509 134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
 510 undecanamide).
 511 135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
 512 undecanamide).
 513 136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-
 514 methyloctan-2-yl)phenol).
 515 137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
 516 138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).
 517 139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
 518 140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-
 519 methoxyphenylacetyl)indole).
 520 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
 521 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
 522 naphthalenylmethanone).

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523 142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-

524 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

525 naphthalenylmethanone).

526 143. Pentedrone (alpha-Methylaminovalerophenone).

527 144. Fluoroamphetamine.

528 145. Fluoromethamphetamine.

529 146. Methoxetamine.

530 147. Methiopropamine.

531 148. Methylbuphedrone (Methyl-alpha-

532 methylaminobutyrophenone).

533 149. APB ((2-Aminopropyl)benzofuran).

534 150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).

535 151. UR-144 (1-Pentyl-3-(2,2,3,3-

536 tetramethylcyclopropanoyl)indole).

537 152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-

538 tetramethylcyclopropanoyl)indole).

539 153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-

540 tetramethylcyclopropanoyl)indole).

541 154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

542 155. AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-

543 iodobenzoyl)indole).

544 156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-

545 carboxamide).

546 157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-

547 cyclohexylcarbamate).

548 158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid,

549 cyclohexyl ester).

550 159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-

551 benzoxazin-4-one).

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552 160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

553 161. 2C-H (2,5-Dimethoxyphenethylamine).

554 162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

555 163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

556 164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-

557 methoxybenzyl)]phenethylamine).

558 165. MDMA (3,4-Methylenedioxyamphetamine).

559 166. PB-22 (8-Quinoliny 1-pentylindole-3-carboxylate).

560 167. Fluoro PB-22 (8-Quinoliny 1-(fluoropentyl)indole-3-

561 carboxylate).

562 168. BB-22 (8-Quinoliny 1-(cyclohexylmethyl)indole-3-

563 carboxylate).

564 169. Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-

565 3-carboxamide).

566 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

567 pentylindazole-3-carboxamide).

568 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

569 (4-fluorobenzyl)indazole-3-carboxamide).

570 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-

571 1-pentylindazole-3-carboxamide).

572 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-

573 yl)-1-(fluoropentyl)indole-3-carboxamide).

574 174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-

575 methoxybenzyl)]phenethylamine).

576 175. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-

577 methoxybenzyl)]phenethylamine).

578 176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

579 (cyclohexylmethyl)indazole-3-carboxamide).

580 177. FUB-PB-22 (8-Quinoliny 1-(4-fluorobenzyl)indole-3-

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581 carboxylate).

582 178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-

583 3-carboxamide).

584 179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-

585 (fluoropentyl)indazole-3-carboxamide).

586 180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

587 181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-

588 1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).

589 182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-

590 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-

591 hexahydrobenzo[c]chromen-1-ol).

592 183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-

593 (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-

594 hexahydrobenzo[c]chromen-1-ol).

595 184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-

596 6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9

597 diol).

598 185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-

599 dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-

600 tetrahydro-6aH-benzo[c]chromen-1-ol).

601 186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-

602 6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).

603 187. MAPB ((2-Methylaminopropyl)benzofuran).

604 188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).

605 189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).

606 190. Synthetic Cannabinoids.—Unless specifically excepted

607 or unless listed in another schedule or contained within a

608 pharmaceutical product approved by the United States Food and

609 Drug Administration, any material, compound, mixture, or

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610 preparation that contains any quantity of a synthetic

611 cannabinoid found to be in any of the following chemical class

612 descriptions, or homologues, nitrogen-heterocyclic analogs,

613 isomers (including optical, positional, or geometric), esters,

614 ethers, salts, and salts of homologues, nitrogen-heterocyclic

615 analogs, isomers, esters, or ethers, whenever the existence of

616 such homologues, nitrogen-heterocyclic analogs, isomers, esters,

617 ethers, salts, and salts of isomers, esters, or ethers is

618 possible within the specific chemical class or designation.

619 Since nomenclature of these synthetically produced cannabinoids

620 is not internationally standardized and may continually evolve,

621 these structures or the compounds of these structures shall be

622 included under this subparagraph, regardless of their specific

623 numerical designation of atomic positions covered, if it can be

624 determined through a recognized method of scientific testing or

625 analysis that the substance contains properties that fit within

626 one or more of the following categories:

627 a. Tetrahydrocannabinols.—Any tetrahydrocannabinols

628 naturally contained in a plant of the genus *Cannabis*, the

629 synthetic equivalents of the substances contained in the plant

630 or in the resinous extracts of the genus *Cannabis*, or synthetic

631 substances, derivatives, and their isomers with similar chemical

632 structure and pharmacological activity, including, but not

633 limited to, Delta 9 tetrahydrocannabinols and their optical

634 isomers, Delta 8 tetrahydrocannabinols and their optical

635 isomers, Delta 6a,10a tetrahydrocannabinols and their optical

636 isomers, or any compound containing a tetrahydrobenzo[c]chromene

637 structure with substitution at either or both the 3-position or

638 9-position, with or without substitution at the 1-position with

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639 hydroxyl or alkoxy groups, including, but not limited to:

640 (I) Tetrahydrocannabinol.

641 (II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-

642 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-

643 ol).

644 (III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-

645 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-

646 ol).

647 (IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-

648 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

649 (V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-

650 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

651 (VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-

652 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

653 (VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-

654 dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

655 (VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-

656 6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

657 (IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-

658 6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

659 (X) Parahexyl.

660 b. Naphthoylindoles, Naphthoylindazoles,

661 Naphthoylcarbazoles, Naphthylmethylindoles,

662 Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any

663 compound containing a naphthoylindole, naphthoylindazole,

664 naphthoylcarbazole, naphthylmethylindole,

665 naphthylmethylindazole, or naphthylmethylcarbazole structure,

666 with or without substitution on the indole, indazole, or

667 carbazole ring to any extent, whether or not substituted on the

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668 naphthyl ring to any extent, including, but not limited to:

669 (I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

670 (II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-

671 naphthoyl)indole).

672 (III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

673 (IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).

674 (V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

675 (VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

676 (VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

677 (VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).

678 (IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).

679 (X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

680 (XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

681 (XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).

682 (XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

683 (XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-

684 naphthoyl)indole).

685 (XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).

686 (XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

687 (XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-

688 naphthoyl)indole).

689 (XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).

690 (XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).

691 (XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).

692 (XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).

693 (XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-

694 naphthylmethyl]indole).

695 (XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-

696 naphthoyl)indole).

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697 (XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-
 698 naphthoyl)indole).
 699 (XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
 700 naphthoyl)indole).
 701 (XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
 702 (XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).
 703 (XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
 704 (XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).
 705 (XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).
 706 (XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-
 707 naphthoyl)indole).
 708 (XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-
 709 naphthoyl)indole).
 710 (XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-
 711 naphthoyl)indole).
 712 (XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-
 713 naphthoyl)indole).
 714 (XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-
 715 naphthoyl)indole).
 716 (XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).
 717 (XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-
 718 naphthoyl)indazole).
 719 (XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-
 720 naphthoyl)indole).
 721 (XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-
 722 naphthoyl)indole).
 723 (XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).
 724 (XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-
 725 naphthoyl)carbazole).

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726 c. Naphthoylpyrroles.—Any compound containing a
 727 naphthoylpyrrole structure, with or without substitution on the
 728 pyrrole ring to any extent, whether or not substituted on the
 729 naphthyl ring to any extent, including, but not limited to:
 730 (I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).
 731 (II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).
 732 (III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).
 733 (IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).
 734 (V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).
 735 (VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-
 736 naphthoyl)pyrrole).
 737 (VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-
 738 naphthoyl)pyrrole).
 739 (VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-
 740 naphthoyl)pyrrole).
 741 (IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-
 742 naphthoyl)pyrrole).
 743 (X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-
 744 naphthoyl)pyrrole).
 745 d. Naphthylmethylenindenenes.—Any compound containing a
 746 naphthylmethylenindene structure, with or without substitution
 747 at the 3-position of the indene ring to any extent, whether or
 748 not substituted on the naphthyl ring to any extent, including,
 749 but not limited to, JWH-176 (3-Pentyl-1-
 750 (naphthylmethylene)indene).
 751 e. Phenylacetylindoles and Phenylacetylindazoles.—Any
 752 compound containing a phenylacetylindole or phenylacetylindazole
 753 structure, with or without substitution on the indole or
 754 indazole ring to any extent, whether or not substituted on the

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755 phenyl ring to any extent, including, but not limited to:

756 (I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).

757 (II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

758 (III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

759 (IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).

760 (V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).

761 (VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

762 (VII) Cannabipiperidiethanone.

763 (VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-

764 methoxyphenylacetyl)indole).

765 f. Cyclohexylphenols.—Any compound containing a

766 cyclohexylphenol structure, with or without substitution at the

767 5-position of the phenolic ring to any extent, whether or not

768 substituted on the cyclohexyl ring to any extent, including, but

769 not limited to:

770 (I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-

771 yl)phenol).

772 (II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8)

773 homologue).

774 (III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-

775 methyloctan-2-yl)phenol).

776 g. Benzoylindoles and Benzoylindazoles.—Any compound

777 containing a benzoylindole or benzoylindazole structure, with or

778 without substitution on the indole or indazole ring to any

779 extent, whether or not substituted on the phenyl ring to any

780 extent, including, but not limited to:

781 (I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

782 (II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

783 (III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-

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784 iodo-5-nitrobenzoyl)indole).

785 (IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-

786 methoxybenzoyl)indole).

787 (V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-

788 iodobenzoyl)indole).

789 (VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

790 (VII) RCS-4 C4 homologue (1-Butyl-3-(4-

791 methoxybenzoyl)indole).

792 (VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-

793 3-(4-methoxybenzoyl)indole).

794 h. Tetramethylcyclopropanoylindoles and

795 Tetramethylcyclopropanoylindazoles.—Any compound containing a

796 tetramethylcyclopropanoylindole or

797 tetramethylcyclopropanoylindazole structure, with or without

798 substitution on the indole or indazole ring to any extent,

799 whether or not substituted on the tetramethylcyclopropyl group

800 to any extent, including, but not limited to:

801 (I) UR-144 (1-Pentyl-3-(2,2,3,3-

802 tetramethylcyclopropanoyl)indole).

803 (II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-

804 tetramethylcyclopropanoyl)indole).

805 (III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-

806 tetramethylcyclopropanoyl)indole).

807 (IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-

808 tetramethylcyclopropanoyl)indole).

809 (V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-

810 tetramethylcyclopropanoyl)indole).

811 (VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-

812 tetramethylcyclopropanoyl)indole).

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813 (VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-
 814 tetramethylcyclopropanoyl)indole).
 815 (VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-
 816 tetramethylcyclopropanoyl)indazole).
 817 (IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-
 818 tetramethylcyclopropanoyl)indole).
 819 (X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-
 820 tetramethylcyclopropanoyl)indole).
 821 i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole
 822 carboxamides, and Adamantylindazole carboxamides.—Any compound
 823 containing an adamantoyl indole, adamantoyl indazole, adamantyl
 824 indole carboxamide, or adamantyl indazole carboxamide structure,
 825 with or without substitution on the indole or indazole ring to
 826 any extent, whether or not substituted on the adamantyl ring to
 827 any extent, including, but not limited to:
 828 (I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).
 829 (II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-
 830 3-carboxamide).
 831 (III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-
 832 carboxamide).
 833 (IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-
 834 adamantoyl)indole).
 835 (V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).
 836 (VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).
 837 (VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-
 838 adamantoyl)indole).
 839 j. Quinolinyndolecarboxylates,
 840 Quinolinyndazolecarboxylates, Quinolinyndolecarboxamides,
 841 and Quinolinyndazolecarboxamides.—Any compound containing a

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842 quinolinyndole carboxylate, quinolinyndazole carboxylate,
 843 isoquinolinyndole carboxylate, isoquinolinyndazole
 844 carboxylate, quinolinyndole carboxamide, quinolinyndazole
 845 carboxamide, isoquinolinyndole carboxamide, or
 846 isoquinolinyndazole carboxamide structure, with or without
 847 substitution on the indole or indazole ring to any extent,
 848 whether or not substituted on the quinoline or isoquinoline ring
 849 to any extent, including, but not limited to:
 850 (I) PB-22 (8-Quinolinyndyl 1-pentylindole-3-carboxylate).
 851 (II) Fluoro PB-22 (8-Quinolinyndyl 1-(fluoropentyl)indole-3-
 852 carboxylate).
 853 (III) BB-22 (8-Quinolinyndyl 1-(cyclohexylmethyl)indole-3-
 854 carboxylate).
 855 (IV) FUB-PB-22 (8-Quinolinyndyl 1-(4-fluorobenzyl)indole-3-
 856 carboxylate).
 857 (V) NPB-22 (8-Quinolinyndyl 1-pentylindazole-3-carboxylate).
 858 (VI) Fluoro NPB-22 (8-Quinolinyndyl 1-(fluoropentyl)indazole-
 859 3-carboxylate).
 860 (VII) FUB-NPB-22 (8-Quinolinyndyl 1-(4-fluorobenzyl)indazole-
 861 3-carboxylate).
 862 (VIII) THJ (8-Quinolinyndyl 1-pentylindazole-3-carboxamide).
 863 (IX) Fluoro THJ (8-Quinolinyndyl 1-(fluoropentyl)indazole-3-
 864 carboxamide).
 865 k. Naphthylindolecarboxylates and
 866 Naphthylindazolecarboxylates.—Any compound containing a
 867 naphthylindole carboxylate or naphthylindazole carboxylate
 868 structure, with or without substitution on the indole or
 869 indazole ring to any extent, whether or not substituted on the
 870 naphthyl ring to any extent, including, but not limited to:

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871 (I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-
 872 carboxylate).

873 (II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-
 874 carboxylate).

875 (III) Fluoro SDB-005 (1-Naphthalenyl 1-
 876 (fluoropentyl)indazole-3-carboxylate).

877 (IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-
 878 carboxylate).

879 (V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-
 880 carboxylate).

881 l. Naphthylindole carboxamides and Naphthylindazole
 882 carboxamides.—Any compound containing a naphthylindole
 883 carboxamide or naphthylindazole carboxamide structure, with or
 884 without substitution on the indole or indazole ring to any
 885 extent, whether or not substituted on the naphthyl ring to any
 886 extent, including, but not limited to:

887 (I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

888 (II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-
 889 3-carboxamide).

890 (III) Chloro-NNEI (N-Naphthalen-1-yl 1-
 891 (chloropentyl)indole-3-carboxamide).

892 (IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-
 893 carboxamide).

894 (V) Fluoro MN-18 (N-Naphthalen-1-yl 1-
 895 (fluoropentyl)indazole-3-carboxamide).

896 m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl
 897 indazole carboxamides, Alkylcarbonyl indole carboxylates, and
 898 Alkylcarbonyl indazole carboxylates.—Any compound containing an
 899 alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl,

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900 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-
 901 phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an
 902 indole carboxamide, indazole carboxamide, indole carboxylate, or
 903 indazole carboxylate, with or without substitution on the indole
 904 or indazole ring to any extent, whether or not substituted on
 905 the alkylcarbonyl group to any extent, including, but not
 906 limited to:

907 (I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-
 908 pentylindole-3-carboxamide).

909 (II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 910 yl)-1-(fluoropentyl)indole-3-carboxamide).

911 (III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 912 (fluoropentyl)indole-3-carboxamide).

913 (IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 914 pentylindazole-3-carboxamide).

915 (V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-
 916 1-(fluoropentyl)indazole-3-carboxamide).

917 (VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-
 918 1-pentylindazole-3-carboxamide).

919 (VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-
 920 oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

921 (VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 922 (4-fluorobenzyl)indazole-3-carboxamide).

923 (IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 924 yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

925 (X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 926 (cyclohexylmethyl)indazole-3-carboxamide).

927 (XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
 928 (cyclohexylmethyl)indazole-3-carboxamide).

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929 (XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 930 yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

931 (XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
 932 pentyndazole-3-carboxamide).

933 (XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
 934 (fluoropentyl)indazole-3-carboxamide).

935 (XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-
 936 fluorobenzyl)indazole-3-carboxamide).

937 (XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 938 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

939 (XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 940 2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

941 (XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 942 2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

943 (XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-
 944 fluoropentyl)indole-3-carboxamide).

945 (XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-
 946 fluoropentyl)indazole-3-carboxamide).

947 (XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-
 948 (cyclohexylmethyl)indazole-3-carboxamide).

949 (XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-
 950 fluorobenzyl)indazole-3-carboxamide).

951 (XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 952 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

953 n. Cumylindolecarboxamides and Cumylindazolecarboxamides.—
 954 Any compound containing a N-(2-phenylpropan-2-yl) indole
 955 carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide
 956 structure, with or without substitution on the indole or
 957 indazole ring to any extent, whether or not substituted on the

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958 phenyl ring of the cumyl group to any extent, including, but not
 959 limited to:

960 (I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-
 961 carboxamide).

962 (II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-
 963 (fluoropentyl)indole-3-carboxamide).

964 o. Other Synthetic Cannabinoids.—Any material, compound,
 965 mixture, or preparation that contains any quantity of a
 966 Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

967 (I) With or without modification or replacement of a
 968 carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage
 969 between either two core rings, or linkage between a core ring
 970 and group structure, with or without the addition of a carbon or
 971 replacement of a carbon;

972 (II) With or without replacement of a core ring or group
 973 structure, whether or not substituted on the ring or group
 974 structures to any extent; and

975 (III) Is a cannabinoid receptor agonist, unless
 976 specifically excepted or unless listed in another schedule or
 977 contained within a pharmaceutical product approved by the United
 978 States Food and Drug Administration.

979 191. Substituted Cathinones.—Unless specifically excepted,
 980 listed in another schedule, or contained within a pharmaceutical
 981 product approved by the United States Food and Drug
 982 Administration, any material, compound, mixture, or preparation,
 983 including its salts, isomers, esters, or ethers, and salts of
 984 isomers, esters, or ethers, whenever the existence of such salts
 985 is possible within any of the following specific chemical
 986 designations:

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- 987 a. Any compound containing a 2-amino-1-phenyl-1-propanone
988 structure;
- 989 b. Any compound containing a 2-amino-1-naphthyl-1-propanone
990 structure; or
- 991 c. Any compound containing a 2-amino-1-thiophenyl-1-
992 propanone structure,
993 whether or not the compound is further modified:
- 994 (I) With or without substitution on the ring system to any
995 extent with alkyl, alkylthio, thio, fused alkylendioxy, alkoxy,
996 haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused
997 dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide
998 substituents;
- 999 (II) With or without substitution at the 3-propanone
1000 position with an alkyl substituent or removal of the methyl
1001 group at the 3-propanone position;
- 1002 (III) With or without substitution at the 2-amino nitrogen
1003 atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or
1004 not further substituted in the ring system; or
- 1005 (IV) With or without inclusion of the 2-amino nitrogen atom
1006 in a cyclic structure, including, but not limited to:
- 1007 (A) Methcathinone.
1008 (B) Ethcathinone.
1009 (C) Methylone (3,4-Methylenedioxy-methcathinone).
1010 (D) 2,3-Methylenedioxy-methcathinone.
1011 (E) MDPV (3,4-Methylenedioxy-pyrovalerone).
1012 (F) Methylmethcathinone.
1013 (G) Methoxymethcathinone.
1014 (H) Fluoromethcathinone.
1015 (I) Methylethcathinone.

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- 1016 (J) Butylone (3,4-Methylenedioxy-alpha-
1017 methylaminobutyrophenone).
- 1018 (K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
1019 (L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).
1020 (M) Naphyrone (Naphthylpyrovalerone).
1021 (N) Bromomethcathinone.
1022 (O) Buphedrone (alpha-Methylaminobutyrophenone).
1023 (P) Eutylone (3,4-Methylenedioxy-alpha-
1024 ethylaminobutyrophenone).
- 1025 (Q) Dimethylcathinone.
1026 (R) Dimethylmethcathinone.
1027 (S) Pentylone (3,4-Methylenedioxy-alpha-
1028 methylaminovalerophenone).
- 1029 (T) Pentadrone (alpha-Methylaminovalerophenone).
1030 (U) MDPVP (3,4-Methylenedioxy-alpha-
1031 pyrrolidinopropiophenone).
1032 (V) MDPBP (3,4-Methylenedioxy-alpha-
1033 pyrrolidinobutyrophenone).
1034 (W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).
1035 (X) PPP (Pyrrolidinopropiophenone).
1036 (Y) PVP (Pyrrolidinovalerophenone) or
1037 (Pyrrolidinopentiophenone).
1038 (Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
1039 (AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).
1040 (BB) F-MABP (Fluoromethylaminobutyrophenone).
1041 (CC) Me-EABP (Methylethylaminobutyrophenone).
1042 (DD) PBP (Pyrrolidinobutyrophenone).
1043 (EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).
1044 (FF) Et-PBP (Ethylpyrrolidinobutyrophenone).

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1045 (GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
 1046 (HH) Dimethylone (3,4-Methylenedioxy-N,N-
 1047 dimethylcathinone).
 1048 (II) 3,4-Methylenedioxy-N,N-diethylcathinone.
 1049 (JJ) 3,4-Methylenedioxy-N-acetylcathinone.
 1050 (KK) 3,4-Methylenedioxy-N-acetylmethcathinone.
 1051 (LL) 3,4-Methylenedioxy-N-acetylcathinone.
 1052 (MM) Methylbuphedrone (Methyl-alpha-
 1053 methylaminobutyrophenone).
 1054 (NN) Methyl-alpha-methylaminohexanophenone.
 1055 (OO) N-Ethyl-N-methylcathinone.
 1056 (PP) PHP (Pyrrolidinohexanophenone).
 1057 (QQ) PV8 (Pyrrolidinoheptanophenone).
 1058 (RR) Chloromethcathinone.
 1059 (SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.
 1060 192. Substituted Phenethylamines.—Unless specifically
 1061 excepted or unless listed in another schedule, or contained
 1062 within a pharmaceutical product approved by the United States
 1063 Food and Drug Administration, any material, compound, mixture,
 1064 or preparation, including its salts, isomers, esters, or ethers,
 1065 and salts of isomers, esters, or ethers, whenever the existence
 1066 of such salts is possible within any of the following specific
 1067 chemical designations, any compound containing a phenethylamine
 1068 structure, without a beta-keto group, and without a benzyl group
 1069 attached to the amine group, whether or not the compound is
 1070 further modified with or without substitution on the phenyl ring
 1071 to any extent with alkyl, alkylthio, nitro, alkoxy, thio,
 1072 halide, fused alkylenedioxy, fused furan, fused benzofuran,
 1073 fused dihydrofuran, or fused tetrahydropyran substituents,

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1074 whether or not further substituted on a ring to any extent, with
 1075 or without substitution at the alpha or beta position by any
 1076 alkyl substituent, with or without substitution at the nitrogen
 1077 atom, and with or without inclusion of the 2-amino nitrogen atom
 1078 in a cyclic structure, including, but not limited to:
 1079 a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
 1080 b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
 1081 c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
 1082 d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 1083 e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
 1084 f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
 1085 g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
 1086 h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 1087 i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
 1088 j. 2C-H (2,5-Dimethoxyphenethylamine).
 1089 k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
 1090 l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
 1091 m. MDMA (3,4-Methylenedioxyamphetamin).
 1092 n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
 1093 Methylenedioxy-N-methylbutanamine).
 1094 o. MDA (3,4-Methylenedioxyamphetamin).
 1095 p. 2,5-Dimethoxyamphetamin.
 1096 q. Fluoroamphetamin.
 1097 r. Fluoromethamphetamin.
 1098 s. MDEA (3,4-Methylenedioxy-N-ethylamphetamin).
 1099 t. DOB (4-Bromo-2,5-dimethoxyamphetamin).
 1100 u. DOC (4-Chloro-2,5-dimethoxyamphetamin).
 1101 v. DOET (4-Ethyl-2,5-dimethoxyamphetamin).
 1102 w. DOI (4-Iodo-2,5-dimethoxyamphetamin).

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1103 x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
 1104 y. PMA (4-Methoxyamphetamine).
 1105 z. N-Ethylamphetamine.
 1106 aa. 3,4-Methylenedioxy-N-hydroxyamphetamine.
 1107 bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
 1108 cc. PMMA (4-Methoxymethamphetamine).
 1109 dd. N,N-Dimethylamphetamine.
 1110 ee. 3,4,5-Trimethoxyamphetamine.
 1111 ff. 4-APB (4-(2-Aminopropyl)benzofuran).
 1112 gg. 5-APB (5-(2-Aminopropyl)benzofuran).
 1113 hh. 6-APB (6-(2-Aminopropyl)benzofuran).
 1114 ii. 7-APB (7-(2-Aminopropyl)benzofuran).
 1115 jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
 1116 kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
 1117 ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
 1118 mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
 1119 nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
 1120 oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
 1121 pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
 1122 qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).
 1123 rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).
 1124 ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-
 1125 dihydrobenzofuran),
 1126
 1127 which does not include phenethylamine, mescaline as described in
 1128 subparagraph 20., substituted cathinones as described in
 1129 subparagraph 191., N-Benzyl phenethylamine compounds as
 1130 described in subparagraph 193., or methamphetamine as described
 1131 in subparagraph (2)(c)4.

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1132 193. N-Benzyl Phenethylamine Compounds.—Unless specifically
 1133 excepted or unless listed in another schedule, or contained
 1134 within a pharmaceutical product approved by the United States
 1135 Food and Drug Administration, any material, compound, mixture,
 1136 or preparation, including its salts, isomers, esters, or ethers,
 1137 and salts of isomers, esters, or ethers, whenever the existence
 1138 of such salts is possible within any of the following specific
 1139 chemical designations, any compound containing a phenethylamine
 1140 structure without a beta-keto group, with substitution on the
 1141 nitrogen atom of the amino group with a benzyl substituent, with
 1142 or without substitution on the phenyl or benzyl ring to any
 1143 extent with alkyl, alkoxy, thio, alkylthio, halide, fused
 1144 alkylenedioxy, fused furan, fused benzofuran, or fused
 1145 tetrahydropyran substituents, whether or not further substituted
 1146 on a ring to any extent, with or without substitution at the
 1147 alpha position by any alkyl substituent, including, but not
 1148 limited to:
 1149 a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-
 1150 methoxybenzyl)]phenethylamine).
 1151 b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-
 1152 hydroxybenzyl)]phenethylamine).
 1153 c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-
 1154 fluorobenzyl)]phenethylamine).
 1155 d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-
 1156 methylenedioxybenzyl)]phenethylamine).
 1157 e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-
 1158 methoxybenzyl)]phenethylamine).
 1159 f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-
 1160 hydroxybenzyl)]phenethylamine).

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1161 g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-
 1162 fluorobenzyl)]phenethylamine).
 1163 h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-
 1164 methylenedioxybenzyl)]phenethylamine).
 1165 i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-
 1166 methoxybenzyl)]phenethylamine).
 1167 j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-
 1168 methoxybenzyl)]phenethylamine).
 1169 k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-
 1170 methoxybenzyl)]phenethylamine).
 1171 l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-
 1172 methoxybenzyl)]phenethylamine).
 1173 m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-
 1174 hydroxybenzyl)]phenethylamine).
 1175 n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-
 1176 fluorobenzyl)]phenethylamine).
 1177 o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-
 1178 methylenedioxybenzyl)]phenethylamine).
 1179 p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-
 1180 methoxybenzyl)]phenethylamine).
 1181 q. 25H-NBOH (2,5-Dimethoxy-[N-(2-
 1182 hydroxybenzyl)]phenethylamine).
 1183 r. 25H-NBF (2,5-Dimethoxy-[N-(2-
 1184 fluorobenzyl)]phenethylamine).
 1185 s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-
 1186 methoxybenzyl)]phenethylamine),
 1187
 1188 which does not include substituted cathinones as described in
 1189 subparagraph 191.

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1190 194. Substituted Tryptamines.—Unless specifically excepted
 1191 or unless listed in another schedule, or contained within a
 1192 pharmaceutical product approved by the United States Food and
 1193 Drug Administration, any material, compound, mixture, or
 1194 preparation containing a 2-(1H-indol-3-yl)ethanamine, for
 1195 example tryptamine, structure with or without mono- or di-
 1196 substitution of the amine nitrogen with alkyl or alkenyl groups,
 1197 or by inclusion of the amino nitrogen atom in a cyclic
 1198 structure, whether or not substituted at the alpha position with
 1199 an alkyl group, whether or not substituted on the indole ring to
 1200 any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy
 1201 groups, including, but not limited to:
 1202 a. Alpha-Ethyltryptamine.
 1203 b. Bufotenine.
 1204 c. DET (Diethyltryptamine).
 1205 d. DMT (Dimethyltryptamine).
 1206 e. MET (N-Methyl-N-ethyltryptamine).
 1207 f. DALT (N,N-Diallyltryptamine).
 1208 g. EiPT (N-Ethyl-N-isopropyltryptamine).
 1209 h. MiPT (N-Methyl-N-isopropyltryptamine).
 1210 i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
 1211 j. 5-Hydroxy-N-methyltryptamine.
 1212 k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
 1213 l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
 1214 m. Methyltryptamine.
 1215 n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
 1216 o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
 1217 p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
 1218 q. DiPT (N,N-Diisopropyltryptamine).

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1219 r. DPT (N,N-Dipropyltryptamine).

1220 s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).

1221 t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).

1222 u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).

1223 v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).

1224 w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).

1225 x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).

1226 y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-

1227 isopropyltryptamine).

1228 z. Methyl-alpha-ethyltryptamine.

1229 aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

1230

1231 which does not include tryptamine, psilocyn as described in

1232 subparagraph 34., or psilocybin as described in subparagraph 33.

1233 195. Substituted Phenylcyclohexylamines.—Unless

1234 specifically excepted or unless listed in another schedule, or

1235 contained within a pharmaceutical product approved by the United

1236 States Food and Drug Administration, any material, compound,

1237 mixture, or preparation containing a phenylcyclohexylamine

1238 structure, with or without any substitution on the phenyl ring,

1239 any substitution on the cyclohexyl ring, any replacement of the

1240 phenyl ring with a thiophenyl or benzothiophenyl ring, with or

1241 without substitution on the amine with alkyl, dialkyl, or alkoxy

1242 substituents, inclusion of the nitrogen in a cyclic structure,

1243 or any combination of the above, including, but not limited to:

1244 a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP

1245 (Benocyclidine).

1246 b. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog

1247 of phencyclidine).

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1248 c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine

1249 analog of phencyclidine).

1250 d. PCPr (Phenylcyclohexylpropylamine).

1251 e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene

1252 analog of phencyclidine).

1253 f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).

1254 g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).

1255 h. Methoxetamine.

1256 i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).

1257 j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).

1258 k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).

1259 l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).

1260 m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).

1261 n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).

1262 o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).

1263 p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).

1264 q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).

1265 r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).

1266 196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-

1267 piperidinylidene]-benzenesulfonamide.

1268 197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-

1269 piperidinylidene]-benzenesulfonamide.

1270 198. AH-7921, 3,4-dichloro-N-[[1-

1271 (dimethylamino)cyclohexyl]methyl]-benzamide.

1272 199. U47700, trans-3,4-dichloro-N-[2-

1273 (dimethylamino)cyclohexyl]-N-methyl-benzamide.

1274 200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine,

1275 dihydrochloride.

1276 Section 5. Paragraph (c) of subsection (6) of section

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1277 893.13, Florida Statutes, is amended to read:

1278 893.13 Prohibited acts; penalties.—

1279 (6)

1280 (c) Except as provided in this chapter, a person may not
1281 possess more than 10 grams of any substance named or described
1282 in s. 893.03(1)(a), ~~or~~ (1)(b), or (2)(b), or any combination
1283 thereof, or any mixture containing any such substance. A person
1284 who violates this paragraph commits a felony of the first
1285 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1286 775.084.

1287 Section 6. Paragraphs (c), (d), and (k) of subsection (1)
1288 of section 893.135, Florida Statutes, are amended, and
1289 paragraphs (m) and (n) are added to that subsection, and a new
1290 subsection (8) is added to that section, to read:

1291 893.135 Trafficking; mandatory sentences; suspension or
1292 reduction of sentences; conspiracy to engage in trafficking.—

1293 (1) Except as authorized in this chapter or in chapter 499
1294 and notwithstanding the provisions of s. 893.13:

1295 (c)1. A person who knowingly sells, purchases,
1296 manufactures, delivers, or brings into this state, or who is
1297 knowingly in actual or constructive possession of, 4 grams or
1298 more of any morphine, opium, hydromorphone, or any salt,
1299 derivative, isomer, or salt of an isomer thereof, including
1300 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
1301 (3)(c)4., or 4 grams or more of any mixture containing any such
1302 substance, but less than 30 kilograms of such substance or
1303 mixture, commits a felony of the first degree, which felony
1304 shall be known as "trafficking in illegal drugs," punishable as
1305 provided in s. 775.082, s. 775.083, or s. 775.084. If the

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1306 quantity involved:

1307 a. Is 4 grams or more, but less than 14 grams, such person
1308 shall be sentenced to a mandatory minimum term of imprisonment
1309 of 3 years and shall be ordered to pay a fine of \$50,000.

1310 b. Is 14 grams or more, but less than 28 grams, such person
1311 shall be sentenced to a mandatory minimum term of imprisonment
1312 of 15 years and shall be ordered to pay a fine of \$100,000.

1313 c. Is 28 grams or more, but less than 30 kilograms, such
1314 person shall be sentenced to a mandatory minimum term of
1315 imprisonment of 25 years and shall be ordered to pay a fine of
1316 \$500,000.

1317 2. A person who knowingly sells, purchases, manufactures,
1318 delivers, or brings into this state, or who is knowingly in
1319 actual or constructive possession of, 14 grams or more of
1320 hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as
1321 described in s. 893.03(2)(a)1.g., or any salt, ~~derivative,~~
1322 ~~isomer, or salt of an isomer~~ thereof, or 14 grams or more of any
1323 mixture containing any such substance, commits a felony of the
1324 first degree, which felony shall be known as "trafficking in
1325 hydrocodone," punishable as provided in s. 775.082, s. 775.083,
1326 or s. 775.084. If the quantity involved:

1327 a. Is 14 grams or more, but less than 28 grams, such person
1328 shall be sentenced to a mandatory minimum term of imprisonment
1329 of 3 years and shall be ordered to pay a fine of \$50,000.

1330 b. Is 28 grams or more, but less than 50 grams, such person
1331 shall be sentenced to a mandatory minimum term of imprisonment
1332 of 7 years and shall be ordered to pay a fine of \$100,000.

1333 c. Is 50 grams or more, but less than 200 grams, such
1334 person shall be sentenced to a mandatory minimum term of

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1335 imprisonment of 15 years and shall be ordered to pay a fine of
1336 \$500,000.

1337 d. Is 200 grams or more, but less than 30 kilograms, such
1338 person shall be sentenced to a mandatory minimum term of
1339 imprisonment of 25 years and shall be ordered to pay a fine of
1340 \$750,000.

1341 3. A person who knowingly sells, purchases, manufactures,
1342 delivers, or brings into this state, or who is knowingly in
1343 actual or constructive possession of, 7 grams or more of
1344 oxycodone, as described in s. 893.03(2)(a)1.o., or any salt,
1345 ~~derivative, isomer, or salt of an isomer~~ thereof, or 7 grams or
1346 more of any mixture containing any such substance, commits a
1347 felony of the first degree, which felony shall be known as
1348 "trafficking in oxycodone," punishable as provided in s.
1349 775.082, s. 775.083, or s. 775.084. If the quantity involved:

1350 a. Is 7 grams or more, but less than 14 grams, such person
1351 shall be sentenced to a mandatory minimum term of imprisonment
1352 of 3 years and shall be ordered to pay a fine of \$50,000.

1353 b. Is 14 grams or more, but less than 25 grams, such person
1354 shall be sentenced to a mandatory minimum term of imprisonment
1355 of 7 years and shall be ordered to pay a fine of \$100,000.

1356 c. Is 25 grams or more, but less than 100 grams, such
1357 person shall be sentenced to a mandatory minimum term of
1358 imprisonment of 15 years and shall be ordered to pay a fine of
1359 \$500,000.

1360 d. Is 100 grams or more, but less than 30 kilograms, such
1361 person shall be sentenced to a mandatory minimum term of
1362 imprisonment of 25 years and shall be ordered to pay a fine of
1363 \$750,000.

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1364 4.a. A person who knowingly sells, purchases, manufactures,
1365 delivers, or brings into this state, or who is knowingly in
1366 actual or constructive possession of, 4 grams or more of:
1367 (I) Alfentanil, as described in s. 893.03(2)(b)1.;
1368 (II) Carfentanil, as described in s. 893.03(2)(b)6.;
1369 (III) Fentanyl, as described in s. 893.03(2)(b)9.;
1370 (IV) Sufentanil, as described in s. 893.03(2)(b)29.;
1371 (V) A fentanyl derivative, as described in s.
1372 893.03(1)(a)62.;
1373 (VI) A controlled substance analog, as described in s.
1374 893.0356, of any substance described in sub-sub-subparagraphs
1375 (I)-(V); or
1376 (VII) A mixture containing any substance described in sub-
1377 sub-subparagraphs (I)-(VI),
1378 commits a felony of the first degree, which felony shall be
1379 known as "trafficking in fentanyl," punishable as provided in s.
1380 775.082, s. 775.083, or s. 775.084.

1382 b. If the quantity involved under sub-subparagraph a.:
1383 (I) Is 4 grams or more, but less than 14 grams, such person
1384 shall be sentenced to a mandatory minimum term of imprisonment
1385 of 3 years, and shall be ordered to pay a fine of \$50,000.
1386 (II) Is 14 grams or more, but less than 28 grams, such
1387 person shall be sentenced to a mandatory minimum term of
1388 imprisonment of 15 years, and shall be ordered to pay a fine of
1389 \$100,000.

1390 (III) Is 28 grams or more, such person shall be sentenced
1391 to a mandatory minimum term of imprisonment of 25 years, and
1392 shall be ordered to pay a fine of \$500,000.

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1393 ~~5.4-~~ A person who knowingly sells, purchases, manufactures,
 1394 delivers, or brings into this state, or who is knowingly in
 1395 actual or constructive possession of, 30 kilograms or more of
 1396 any morphine, opium, oxycodone, hydrocodone, codeine,
 1397 hydromorphone, or any salt, derivative, isomer, or salt of an
 1398 isomer thereof, including heroin, as described in s.
 1399 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
 1400 more of any mixture containing any such substance, commits the
 1401 first degree felony of trafficking in illegal drugs. A person
 1402 who has been convicted of the first degree felony of trafficking
 1403 in illegal drugs under this subparagraph shall be punished by
 1404 life imprisonment and is ineligible for any form of
 1405 discretionary early release except pardon or executive clemency
 1406 or conditional medical release under s. 947.149. However, if the
 1407 court determines that, in addition to committing any act
 1408 specified in this paragraph:

1409 a. The person intentionally killed an individual or
 1410 counseled, commanded, induced, procured, or caused the
 1411 intentional killing of an individual and such killing was the
 1412 result; or

1413 b. The person's conduct in committing that act led to a
 1414 natural, though not inevitable, lethal result,
 1415 such person commits the capital felony of trafficking in illegal
 1416 drugs, punishable as provided in ss. 775.082 and 921.142. A
 1417 person sentenced for a capital felony under this paragraph shall
 1418 also be sentenced to pay the maximum fine provided under
 1419 subparagraph 1.

1421 ~~6.5-~~ A person who knowingly brings into this state 60

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1422 kilograms or more of any morphine, opium, oxycodone,
 1423 hydrocodone, codeine, hydromorphone, or any salt, derivative,
 1424 isomer, or salt of an isomer thereof, including heroin, as
 1425 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
 1426 60 kilograms or more of any mixture containing any such
 1427 substance, and who knows that the probable result of such
 1428 importation would be the death of a person, commits capital
 1429 importation of illegal drugs, a capital felony punishable as
 1430 provided in ss. 775.082 and 921.142. A person sentenced for a
 1431 capital felony under this paragraph shall also be sentenced to
 1432 pay the maximum fine provided under subparagraph 1.

1433 (d)1. Any person who knowingly sells, purchases,
 1434 manufactures, delivers, or brings into this state, or who is
 1435 knowingly in actual or constructive possession of, 28 grams or
 1436 more of phencyclidine, as described in s. 893.03(2)(b)23., a
 1437 substituted phenylcyclohexylamine, as described in s.
 1438 893.03(1)(c)195., or a substance described in s.
 1439 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
 1440 containing phencyclidine, as described in s. 893.03(2)(b)23.
 1441 ~~893.03(2)(b),~~ a substituted phenylcyclohexylamine, as described
 1442 in s. 893.03(1)(c)195., or a substance described in s.
 1443 893.03(1)(c)13., 32., 38., 103., or 146., commits a felony of
 1444 the first degree, which felony shall be known as "trafficking in
 1445 phencyclidine," punishable as provided in s. 775.082, s.
 1446 775.083, or s. 775.084. If the quantity involved:

1447 a. Is 28 grams or more, but less than 200 grams, such
 1448 person shall be sentenced to a mandatory minimum term of
 1449 imprisonment of 3 years, and the defendant shall be ordered to
 1450 pay a fine of \$50,000.

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1451 b. Is 200 grams or more, but less than 400 grams, such
1452 person shall be sentenced to a mandatory minimum term of
1453 imprisonment of 7 years, and the defendant shall be ordered to
1454 pay a fine of \$100,000.

1455 c. Is 400 grams or more, such person shall be sentenced to
1456 a mandatory minimum term of imprisonment of 15 calendar years
1457 and pay a fine of \$250,000.

1458 2. Any person who knowingly brings into this state 800
1459 grams or more of phencyclidine, as described in s.
1460 893.03(2)(b)23., a substituted phenylcyclohexylamine, as
1461 described in s. 893.03(1)(c)195., or a substance described in s.
1462 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
1463 containing phencyclidine, as described in s. 893.03(2)(b)23.
1464 893.03(2)(b), a substituted phenylcyclohexylamine, as described
1465 in s. 893.03(1)(c)195., or a substance described in s.
1466 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the
1467 probable result of such importation would be the death of any
1468 person commits capital importation of phencyclidine, a capital
1469 felony punishable as provided in ss. 775.082 and 921.142. Any
1470 person sentenced for a capital felony under this paragraph shall
1471 also be sentenced to pay the maximum fine provided under
1472 subparagraph 1.

1473 (k)1. A person who knowingly sells, purchases,
1474 manufactures, delivers, or brings into this state, or who is
1475 knowingly in actual or constructive possession of, 10 grams or
1476 more of a any of the following substances described in s.
1477 893.03(1)(c):

1478 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,
1479 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,

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1480 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,
1481 165., or 187.-189., a substituted cathinone, as described in s.
1482 893.03(1)(c)191., or substituted phenethylamine, as described in
1483 s. 893.03(1)(c)192.;

1484 b. Mixture containing any substance described in sub-
1485 subparagraph a.; or
1486 c. Salt, isomer, ester, or ether or salt of an isomer,
1487 ester, or ether of a substance described in sub-subparagraph a.,

1488 a. (MDMA) 3,4-Methylenedioxyamphetamine;
1489 b. DOB (4-Bromo-2,5-dimethoxyamphetamine);
1490 e. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);
1491 d. 2,5-Dimethoxyamphetamine;
1492 e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);
1493 f. N-ethylamphetamine;
1494 g. 3,4-Methylenedioxy-N-hydroxyamphetamine;
1495 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
1496 i. PMA (4-methoxyamphetamine);
1497 j. PMMA (4-methoxymethamphetamine);
1498 k. DOM (4-Methyl-2,5-dimethoxyamphetamine);
1499 l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);
1500 m. MDA (3,4-Methylenedioxyamphetamine);
1501 n. N,N-dimethylamphetamine;
1502 o. 3,4,5-Trimethoxyamphetamine;
1503 p. Methylone (3,4-Methylenedioxy-methcathinone);
1504 q. MDPV (3,4-Methylenedioxy-pyrovalerone); or
1505 r. Methylmethcathinone;

1506
1507 individually or analogs thereto or isomers thereto or in any
1508 combination of or any mixture containing any substance listed in

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1509 ~~sub-subparagraphs a.-f.~~, commits a felony of the first degree,
1510 which felony shall be known as "trafficking in phenethylamines,"
1511 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1512 2. If the quantity involved under subparagraph 1.:

1513 a. Is 10 grams or more, but less than 200 grams, such
1514 person shall be sentenced to a mandatory minimum term of
1515 imprisonment of 3 years and shall be ordered to pay a fine of
1516 \$50,000.

1517 b. Is 200 grams or more, but less than 400 grams, such
1518 person shall be sentenced to a mandatory minimum term of
1519 imprisonment of 7 years and shall be ordered to pay a fine of
1520 \$100,000.

1521 c. Is 400 grams or more, such person shall be sentenced to
1522 a mandatory minimum term of imprisonment of 15 years and shall
1523 be ordered to pay a fine of \$250,000.

1524 3. A person who knowingly manufactures or brings into this
1525 state 30 kilograms or more of a substance described in sub-
1526 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,
1527 or a salt, isomer, ester, or ether or a salt of an isomer,
1528 ester, or ether described in sub-subparagraph 1.c., any of the
1529 following substances described in s. 893.03(1)(e):

- 1530 a. ~~MDMA (3,4-Methylenedioxyamphetamine);~~
- 1531 b. ~~DOB (4-Bromo-2,5-dimethoxyamphetamine);~~
- 1532 c. ~~2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~
- 1533 d. ~~2,5-Dimethoxyamphetamine;~~
- 1534 e. ~~DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~
- 1535 f. ~~N-ethylamphetamine;~~
- 1536 g. ~~N-Hydroxy-3,4-methylenedioxyamphetamine;~~
- 1537 h. ~~5-Methoxy-3,4-methylenedioxyamphetamine;~~

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- 1538 i. ~~PMA (4-methoxyamphetamine);~~
- 1539 j. ~~PMMA (4-methoxymethamphetamine);~~
- 1540 k. ~~DOM (4-Methyl-2,5-dimethoxyamphetamine);~~
- 1541 l. ~~MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~
- 1542 m. ~~MDA (3,4-Methylenedioxyamphetamine);~~
- 1543 n. ~~N,N-dimethylamphetamine;~~
- 1544 o. ~~3,4,5-Trimethoxyamphetamine;~~
- 1545 p. ~~Methylone (3,4-Methylenedioxyethcathinone);~~
- 1546 q. ~~MDPV (3,4-Methylenedioxypropylvalerone);~~ ~~or~~
- 1547 r. ~~Methylmethcathinone;~~

1548
1549 individually or analogs thereto or isomers thereto or in any
1550 combination of or any mixture containing any substance listed in
1551 sub-subparagraphs a.-f., and who knows that the probable result
1552 of such manufacture or importation would be the death of any
1553 person commits capital manufacture or importation of
1554 phenethylamines, a capital felony punishable as provided in ss.
1555 775.082 and 921.142. A person sentenced for a capital felony
1556 under this paragraph shall also be sentenced to pay the maximum
1557 fine ~~provided~~ under subparagraph 2. ~~1.~~

1558 (m)1. A person who knowingly sells, purchases,
1559 manufactures, delivers, or brings into this state, or who is
1560 knowingly in actual or constructive possession of, 280 grams or
1561 more of a:

- 1562 a. Substance described in s. 893.03(1)(c)30., 46.-50.,
1563 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic
1564 cannabinoid, as described in s. 893.03(1)(c)190.; or
- 1565 b. Mixture containing any substance described in sub-
1566 subparagraph a.,

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1567
 1568 commits a felony of the first degree, which felony shall be
 1569 known as "trafficking in synthetic cannabinoids," punishable as
 1570 provided in s. 775.082, s. 775.083, or s. 775.084.
 1571 2. If the quantity involved under subparagraph 1.:
 1572 a. Is 280 grams or more, but less than 500 grams, such
 1573 person shall be sentenced to a mandatory minimum term of
 1574 imprisonment of 3 years, and the defendant shall be ordered to
 1575 pay a fine of \$50,000.
 1576 b. Is 500 grams or more, but less than 1,000 grams, such
 1577 person shall be sentenced to a mandatory minimum term of
 1578 imprisonment of 7 years, and the defendant shall be ordered to
 1579 pay a fine of \$100,000.
 1580 c. Is 1,000 grams or more, but less than 30 kilograms, such
 1581 person shall be sentenced to a mandatory minimum term of
 1582 imprisonment of 15 years, and the defendant shall be ordered to
 1583 pay a fine of \$200,000.
 1584 d. Is 30 kilograms or more, such person shall be sentenced
 1585 to a mandatory minimum term of imprisonment of 25 years, and the
 1586 defendant shall be ordered to pay a fine of \$750,000.
 1587 (n)1. A person who knowingly sells, purchases,
 1588 manufactures, delivers, or brings into this state, or who is
 1589 knowingly in actual or constructive possession of, 14 grams or
 1590 more of:
 1591 a. A substance described in s. 893.03(1)(c)164., 174., or
 1592 175., a n-benzyl phenethylamine compound, as described in s.
 1593 893.03(1)(c)193.; or
 1594 b. A mixture containing any substance described in sub-
 1595 subparagraph a.,

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1596
 1597 commits a felony of the first degree, which felony shall be
 1598 known as "trafficking in n-benzyl phenethylamines," punishable
 1599 as provided in s. 775.082, s. 775.083, or s. 775.084.
 1600 2. If the quantity involved under subparagraph 1.:
 1601 a. Is 14 grams or more, but less than 100 grams, such
 1602 person shall be sentenced to a mandatory minimum term of
 1603 imprisonment of 3 years, and the defendant shall be ordered to
 1604 pay a fine of \$50,000.
 1605 b. Is 100 grams or more, but less than 200 grams, such
 1606 person shall be sentenced to a mandatory minimum term of
 1607 imprisonment of 7 years, and the defendant shall be ordered to
 1608 pay a fine of \$100,000.
 1609 c. Is 200 grams or more, such person shall be sentenced to
 1610 a mandatory minimum term of imprisonment of 15 years , and the
 1611 defendant shall be ordered to pay a fine of \$500,000.
 1612 3. A person who knowingly manufactures or brings into this
 1613 state 400 grams or more of a substance described in sub-
 1614 subparagraph 1.a. or a mixture described in sub-subparagraph
 1615 1.b., and who knows that the probable result of such manufacture
 1616 or importation would be the death of any person commits capital
 1617 manufacture or importation of a n-benzyl phenethylamine
 1618 compound, a capital felony punishable as provided in ss. 775.082
 1619 and 921.142. A person sentenced for a capital felony under this
 1620 paragraph shall also be sentenced to pay the maximum fine under
 1621 subparagraph 2.
 1622 (8) For an offense listed under this section committed on
 1623 or after October 1, 2017, which carries a mandatory minimum
 1624 sentence, a court may depart from the applicable mandatory

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1625 minimum sentence if, in giving due regard to the nature of the
 1626 crime, history, and character of the defendant, and the
 1627 defendant's chances of successful rehabilitation, the court
 1628 finds compelling reasons on the record that imposition of the
 1629 mandatory minimum is not necessary for the protection of the
 1630 public. Each month, a court shall submit to the Office of
 1631 Economic and Demographic Research of the Legislature the written
 1632 reasons in each case in which the court departed from the
 1633 mandatory minimum sentence.

1634 Section 7. For the purpose of incorporating the amendments
 1635 made by this act to sections 893.03, 893.13, and 893.135,
 1636 Florida Statutes, in references thereto, paragraphs (a), (b),
 1637 (c), (d), and (e) of subsection (3) of section 921.0022, Florida
 1638 Statutes, are reenacted, and paragraphs (g), (h), and (i) of
 1639 subsection (3) of that section are amended, to read:

1640 921.0022 Criminal Punishment Code; offense severity ranking
 1641 chart.-

1642 (3) OFFENSE SEVERITY RANKING CHART
 1643 (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.

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1647	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
1648	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
1649	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
1650	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
1651	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
1652	322.212(1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
1653	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
1654			

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1655	322.212(5)(a)	3rd	False application for driver license or identification card.
1656	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
1657	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
1658	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
1659	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
1660	562.27(1)	3rd	Possess still or still apparatus.
1661	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
	812.014(3)(c)	3rd	Petit theft (3rd conviction);

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1662			theft of any property not specified in subsection (2).
1663	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
1664	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
1665	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
1666	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
1667	826.01	3rd	Bigamy.
1668	828.122(3)	3rd	Fighting or baiting animals.
1669	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.

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1670	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
1671	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
1672	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.
1673	838.15(2)	3rd	Commercial bribe receiving.
1674	838.16	3rd	Commercial bribery.
1675	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
1676	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
1677	849.01	3rd	Keeping gambling house.
	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or

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1678			advertise drawing for prizes, or dispose of property or money by means of lottery.
1679	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
1680	849.25(2)	3rd	Engaging in bookmaking.
1681	860.08	3rd	Interfere with a railroad signal.
1682	860.13(1)(a)	3rd	Operate aircraft while under the influence.
1683	893.13(2)(a)2.	3rd	Purchase of cannabis.
1684	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
1685	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
1686	(b) LEVEL 2		
1687	Florida Statute	Felony Degree	Description

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1688	379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
1689	379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
1690	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.
1691	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
1692	590.28(1)	3rd	Intentional burning of lands.
1693	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
1694	787.04(1)	3rd	In violation of court order, take, entice, etc., minor

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	590-04115-17		2017150c2
			beyond state limits.
1695	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
1696	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
1697	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
1698	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
1699	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
1700	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
1701			

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	590-04115-17		2017150c2
1702	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
1703	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
1704	817.52(3)	3rd	Failure to redeliver hired vehicle.
1705	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
1706	817.60(5)	3rd	Dealing in credit cards of another.
1707	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
1708	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
1709	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.

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	590-04115-17		2017150c2
1710	831.01	3rd	Forgery.
1711	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
1712	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
1713	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
1714	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
1715	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
1716	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
1717	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.,

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	590-04115-17		2017150c2	(2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs other than cannabis.
1718	893.147(2)	3rd		Manufacture or delivery of drug paraphernalia.
1719				
1720	(c) LEVEL 3			
1721				
	Florida	Felony		Description
	Statute	Degree		
1722	119.10(2) (b)	3rd		Unlawful use of confidential information from police reports.
1723				
	316.066	3rd		Unlawfully obtaining or using confidential crash reports.
1724	(3) (b) - (d)			
1725	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.
1726				
	319.30(4)	3rd		Possession by junkyard of motor vehicle with identification number plate removed.

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1727	319.33(1) (a)	3rd		Alter or forge any certificate of title to a motor vehicle or mobile home.
1728				
	319.33(1) (c)	3rd		Procure or pass title on stolen vehicle.
1729				
	319.33(4)	3rd		With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
1730				
	327.35(2) (b)	3rd		Felony BUI.
1731				
	328.05(2)	3rd		Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1732				
	328.07(4)	3rd		Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1733				
	376.302(5)	3rd		Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
1734				
	379.2431	3rd		Taking, disturbing, mutilating,

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	(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.
1735	379.2431 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
1736	400.9935(4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
1737	400.9935(4) (e)	3rd	Filing a false license application or other required information or failing to report information.
1738	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
1739	501.001(2) (b)	2nd	Tampers with a consumer product

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			or the container using materially false/misleading information.
1740	624.401(4) (a)	3rd	Transacting insurance without a certificate of authority.
1741	624.401(4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1742	626.902(1) (a) & (b)	3rd	Representing an unauthorized insurer.
1743	697.08	3rd	Equity skimming.
1744	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1745	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1746	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
1747			

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1748	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
1749	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
1750	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
1751	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
1752	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
1753	817.233	3rd	Burning to defraud insurer.
1754	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
1755	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.

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1756	817.236	3rd	Filing a false motor vehicle insurance application.
1757	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
1758	817.413(2)	3rd	Sale of used goods as new.
1759	817.505(4)	3rd	Patient brokering.
1760	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
1761	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
1762	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
1763	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.

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1764	843.19	3rd	Injure, disable, or kill police dog or horse.
1765	860.15(3)	3rd	Overcharging for repairs and parts.
1766	870.01(2)	3rd	Riot; inciting or encouraging.
1767	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).
1768	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

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1769			housing facility.
1770	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
1771	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
1772	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
1773	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
1774	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
1775	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.

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1776 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.

1777 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.

1778 893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.

1779 893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

918.13(1)(a) 3rd Alter, destroy, or conceal

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1780 investigation evidence.

944.47 3rd Introduce contraband to
 1781 (1)(a)1. & 2. correctional facility.

944.47(1)(c) 2nd Possess contraband while upon
 1782 the grounds of a correctional institution.

985.721 3rd Escapes from a juvenile
 facility (secure detention or residential commitment facility).

1783 (d) LEVEL 4

1784

1785

Florida Statute	Felony Degree	Description
1786 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.
1787 499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or

	590-04115-17		2017150c2	transaction statements.
1788				
	499.0051(5)	2nd		Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
1789				
	517.07(1)	3rd		Failure to register securities.
1790				
	517.12(1)	3rd		Failure of dealer, associated person, or issuer of securities to register.
1791				
	784.07(2)(b)	3rd		Battery of law enforcement officer, firefighter, etc.
1792				
	784.074(1)(c)	3rd		Battery of sexually violent predators facility staff.
1793				
	784.075	3rd		Battery on detention or commitment facility staff.
1794				
	784.078	3rd		Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
1795				
	784.08(2)(c)	3rd		Battery on a person 65 years of age or older.
1796				
	784.081(3)	3rd		Battery on specified official

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

	590-04115-17		2017150c2	or employee.
1797				
	784.082(3)	3rd		Battery by detained person on visitor or other detainee.
1798				
	784.083(3)	3rd		Battery on code inspector.
1799				
	784.085	3rd		Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
1800				
	787.03(1)	3rd		Interference with custody; wrongly takes minor from appointed guardian.
1801				
	787.04(2)	3rd		Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
1802				
	787.04(3)	3rd		Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
1803				
	787.07	3rd		Human smuggling.
1804				

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

	590-04115-17		2017150c2
1805	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
1806	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
1807	790.115(2)(c)	3rd	Possessing firearm on school property.
1808	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
1809	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
1810	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
1811	810.06	3rd	Burglary; possession of tools.
	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.

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

	590-04115-17		2017150c2
1812	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
1813	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
1814	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
1815	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
1816	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
1817	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
1818	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
1819	837.02(1)	3rd	Perjury in official

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

	590-04115-17		2017150c2	proceedings.
1820				
	837.021(1)	3rd		Make contradictory statements in official proceedings.
1821				
	838.022	3rd		Official misconduct.
1822				
	839.13(2)(a)	3rd		Falsifying records of an individual in the care and custody of a state agency.
1823				
	839.13(2)(c)	3rd		Falsifying records of the Department of Children and Families.
1824				
	843.021	3rd		Possession of a concealed handcuff key by a person in custody.
1825				
	843.025	3rd		Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
1826				
	843.15(1)(a)	3rd		Failure to appear while on bail for felony (bond estreature or bond jumping).
1827				
	847.0135(5)(c)	3rd		Lewd or lascivious exhibition

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	590-04115-17		2017150c2	using computer; offender less than 18 years.
1828				
	874.05(1)(a)	3rd		Encouraging or recruiting another to join a criminal gang.
1829				
	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).
1830				
	914.14(2)	3rd		Witnesses accepting bribes.
1831				
	914.22(1)	3rd		Force, threaten, etc., witness, victim, or informant.
1832				
	914.23(2)	3rd		Retaliation against a witness, victim, or informant, no bodily injury.
1833				
	918.12	3rd		Tampering with jurors.
1834				
	934.215	3rd		Use of two-way communications device to facilitate commission of a crime.
1835				
1836	(e)	LEVEL 5		
1837				

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	590-04115-17		2017150c2
	Florida Statute	Felony Degree	Description
1838	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
1839	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
1840	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
1841	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
1842	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
1843	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

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	590-04115-17		2017150c2
			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.
1844	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
1845	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
1846	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
1847	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
1848	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
1849	440.381(2)	2nd	Submission of false,

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	590-04115-17		2017150c2	
				misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1850	624.401(4)(b)2.	2nd		Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
1851	626.902(1)(c)	2nd		Representing an unauthorized insurer; repeat offender.
1852	790.01(2)	3rd		Carrying a concealed firearm.
1853	790.162	2nd		Threat to throw or discharge destructive device.
1854	790.163(1)	2nd		False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
1855	790.221(1)	2nd		Possession of short-barreled shotgun or machine gun.
1856	790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.

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

	590-04115-17		2017150c2	
1857	796.05(1)	2nd		Live on earnings of a prostitute; 1st offense.
1858	800.04(6)(c)	3rd		Lewd or lascivious conduct; offender less than 18 years of age.
1859	800.04(7)(b)	2nd		Lewd or lascivious exhibition; offender 18 years of age or older.
1860	806.111(1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
1861	812.0145(2)(b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
1862	812.015(8)	3rd		Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
1863	812.019(1)	2nd		Stolen property; dealing in or trafficking in.
1864	812.131(2)(b)	3rd		Robbery by sudden snatching.

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	590-04115-17		2017150c2
1865	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
1866	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
1867	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
1868	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.
1869	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.
1870	817.611(2)(a)	2nd	Traffic in or possess 5 to 14

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

	590-04115-17		2017150c2
			counterfeit credit cards or related documents.
1871	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
1872	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
1873	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1874	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1875	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.
1876			

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	590-04115-17		2017150c2
1877	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
1878	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
1879	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
1880	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
1881	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
1882	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).

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

	590-04115-17		2017150c2
1883	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.
1884	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.
1885	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

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religious services or a specified business site.

1886

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.

1887

893.13(4)(b) 2nd Use or hire of minor; deliver to minor other controlled substance.

1888

893.1351(1) 3rd Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

1889

1890 (g) LEVEL 7

1891

Florida Statute	Felony Degree	Description
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1892

316.027(2)(c) 1st Accident involving death, failure to stop; leaving scene.

1893

316.193(3)(c)2. 3rd DUI resulting in serious bodily injury.

1894

590-04115-17 2017150c2

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.

1895

327.35(3)(c)2. 3rd Vessel BUI resulting in serious bodily injury.

1896

402.319(2) 2nd Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfigurement, permanent disability, or death.

1897

409.920 3rd Medicaid provider fraud; (2)(b)1.a. \$10,000 or less.

1898

409.920 2nd Medicaid provider fraud; more than \$10,000, but less than \$50,000.

1899

456.065(2) 3rd Practicing a health care profession without a license.

1900

456.065(2) 2nd Practicing a health care

	590-04115-17		2017150c2	
			profession without a license	
			which results in serious bodily	
1901			injury.	
	458.327(1)	3rd	Practicing medicine without a	
			license.	
1902				
	459.013(1)	3rd	Practicing osteopathic medicine	
			without a license.	
1903				
	460.411(1)	3rd	Practicing chiropractic	
			medicine without a license.	
1904				
	461.012(1)	3rd	Practicing podiatric medicine	
			without a license.	
1905				
	462.17	3rd	Practicing naturopathy without	
			a license.	
1906				
	463.015(1)	3rd	Practicing optometry without a	
			license.	
1907				
	464.016(1)	3rd	Practicing nursing without a	
			license.	
1908				
	465.015(2)	3rd	Practicing pharmacy without a	
			license.	
1909				
	466.026(1)	3rd	Practicing dentistry or dental	

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

	590-04115-17		2017150c2	
			hygiene without a license.	
1910				
	467.201	3rd	Practicing midwifery without a	
			license.	
1911				
	468.366	3rd	Delivering respiratory care	
			services without a license.	
1912				
	483.828(1)	3rd	Practicing as clinical	
			laboratory personnel without a	
			license.	
1913				
	483.901(7)	3rd	Practicing medical physics	
			without a license.	
1914				
	484.013(1)(c)	3rd	Preparing or dispensing optical	
			devices without a prescription.	
1915				
	484.053	3rd	Dispensing hearing aids without	
			a license.	
1916				
	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.	
1917				
	560.123(8)(b)1.	3rd	Failure to report currency or	

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

	590-04115-17		2017150c2
			payment instruments exceeding \$300 but less than \$20,000 by a money services business.
1918	560.125(5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
1919	655.50(10) (b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
1920	775.21(10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
1921	775.21(10) (b)	3rd	Sexual predator working where children regularly congregate.
1922	775.21(10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
1923			

	590-04115-17		2017150c2
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
1924	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
1925	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
1926	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
1927	784.045(1) (a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
1928	784.045(1) (a)2.	2nd	Aggravated battery; using deadly weapon.
1929			

	590-04115-17		2017150c2
1930	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1931	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
1932	784.048(7)	3rd	Aggravated stalking; violation of court order.
1933	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
1934	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
1935	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
1936	784.081(1)	1st	Aggravated battery on specified official or employee.
1937	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
1938	784.083(1)	1st	Aggravated battery on code inspector.

	590-04115-17		2017150c2
1939	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
1940	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.
1941	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
1942	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
1943	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1944	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.

	590-04115-17		2017150c2
1945	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1946	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
1947	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.
1948	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
1949	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
1950	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.

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	590-04115-17		2017150c2
1951	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.
1952	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.
1953	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
1954	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
1955	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
1956	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
1957	810.02(3)(e)	2nd	Burglary of authorized

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	590-04115-17		2017150c2
			emergency vehicle.
1958	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.
1959	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
1960	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
1961	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
1962	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
1963	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

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	590-04115-17		2017150c2
1964	812.131(2)(a)	2nd	Robbery by sudden snatching.
1965	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1966	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
1967	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1968	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1969	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
1970	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.
1971	817.535(2)(a)	3rd	Filing false lien or other

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

	590-04115-17		2017150c2	unauthorized document.
1972	817.611(2)(b)	2nd		Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
1973	825.102(3)(b)	2nd		Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1974	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.
1975	827.03(2)(b)	2nd		Neglect of a child causing great bodily harm, disability, or disfigurement.
1976	827.04(3)	3rd		Impregnation of a child under 16 years of age by person 21 years of age or older.
1977	837.05(2)	3rd		Giving false information about alleged capital felony to a law enforcement officer.
1978	838.015	2nd		Bribery.

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	590-04115-17		2017150c2	
1979	838.016	2nd		Unlawful compensation or reward for official behavior.
1980	838.021(3)(a)	2nd		Unlawful harm to a public servant.
1981	838.22	2nd		Bid tampering.
1982	843.0855(2)	3rd		Impersonation of a public officer or employee.
1983	843.0855(3)	3rd		Unlawful simulation of legal process.
1984	843.0855(4)	3rd		Intimidation of a public officer or employee.
1985	847.0135(3)	3rd		Solicitation of a child, via a computer service, to commit an unlawful sex act.
1986	847.0135(4)	2nd		Traveling to meet a minor to commit an unlawful sex act.
1987	872.06	2nd		Abuse of a dead human body.
1988	874.05(2)(b)	1st		Encouraging or recruiting person under 13 to join a

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	590-04115-17		2017150c2	
			criminal gang; second or subsequent offense.	
1989	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.	
1990	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.	
1991	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.	
1992				

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	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.	
1993	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.	
1994	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.	
1995	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.	
1996	893.135(1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.	
1997	893.135(1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.	
1998	893.135(1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.	
1999	893.135	1st	Trafficking in oxycodone, 14	

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	(1) (c) 3.b.		grams or more, less than 25 grams.
2000	<u>893.135</u>	<u>1st</u>	<u>Trafficking in fentanyl, 4 grams or more, less than 14 grams.</u>
	<u>(1) (c) 4.b. (I)</u>		
2001	<u>893.135(1) (d) 1.a.</u>	<u>1st</u>	<u>Trafficking in phencyclidine, more than 28 grams or more, less than 200 grams.</u>
	893.135(1) (d) 1.		
2002	893.135(1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams or more, less than 5 kilograms.
2003	893.135(1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams or more, less than 28 grams.
2004	893.135	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
	(1) (g) 1.a.		
2005	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
	(1) (h) 1.a.		
2006	893.135	1st	Trafficking in 1,4-Butanediol,

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	(1) (j) 1.a.		1 kilogram or more, less than 5 kilograms.
2007	893.135	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
	(1) (k) 2.a.		
2008	<u>893.135(1) (m) 2.a.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.</u>
2009	<u>893.135(1) (m) 2.b.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.</u>
2010	<u>893.135(1) (n) 2.a.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.</u>
2011	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
2012	896.101(5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
2013	896.104(4) (a) 1.	3rd	Structuring transactions to evade reporting or registration

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	590-04115-17		2017150c2
			requirements, financial transactions exceeding \$300 but less than \$20,000.
2014	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
2015	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
2016	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
2017	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2018	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2019			

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	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.
2020	944.607 (10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2021	944.607 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2022	944.607 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2023	985.4815 (10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2024	985.4815 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2025	985.4815 (13)	3rd	Sexual offender; failure to

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report and reregister; failure to respond to address verification; providing false registration information.

2026

2027 (h) LEVEL 8

2028

Florida Statute	Felony Degree	Description
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2029

316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
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2030

316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
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2031

327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
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2032

499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
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2033

499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
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2034

560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less
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than \$100,000 by money transmitter.

2035

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.
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2036

655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
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2037

777.03 (2) (a)	1st	Accessory after the fact, capital felony.
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2038

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.
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2039

782.051 (2)	1st	Attempted felony murder while
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perpetrating or attempting to
perpetrate a felony not
enumerated in s. 782.04(3).

2040

782.071(1)(b) 1st Committing vehicular homicide
and failing to render aid or
give information.

2041

782.072(2) 1st Committing vessel homicide and
failing to render aid or give
information.

2042

787.06(3)(a)1. 1st Human trafficking for labor and
services of a child.

2043

787.06(3)(b) 1st Human trafficking using
coercion for commercial sexual
activity of an adult.

2044

787.06(3)(c)2. 1st Human trafficking using
coercion for labor and services
of an unauthorized alien adult.

2045

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.

2046

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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.

2047

790.161(3) 1st Discharging a destructive
device which results in bodily
harm or property damage.

2048

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.

2049

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.

2050

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.

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2051	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.
2052	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
2053	800.04(4)(b)	2nd	Lewd or lascivious battery.
2054	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
2055	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
2056	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
2057	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.

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2058	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
2059	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
2060	812.13(2)(b)	1st	Robbery with a weapon.
2061	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
2062	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
2063	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
2064	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.

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2065	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.
2066	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
2067	817.611(2) (c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
2068	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
2069	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
2070	825.103(3) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
2071	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a

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	590-04115-17		2017150c2
2072			capital felony.
	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
2073	860.121(2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
2074	860.16	1st	Aircraft piracy.
2075	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).
2076	893.13(2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
2077	893.13(6) (c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
2078	893.135(1) (a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than

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	590-04115-17		2017150c2	
			10,000 lbs.	
2079	893.135	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.	
	(1) (b) 1.b.			
2080	893.135	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.	
	(1) (c) 1.b.			
2081	893.135	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.	
	(1) (c) 2.c.			
2082	893.135	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.	
	(1) (c) 3.c.			
2083	<u>893.135</u>	<u>1st</u>	<u>Trafficking in fentanyl, 14 grams or more, less than 28 grams.</u>	
	<u>(1) (c) 4.b. (II)</u>			
2084	893.135	1st	Trafficking in phencyclidine, more than 200 grams <u>or more</u> , less than 400 grams.	
	(1) (d) 1.b.			
2085	893.135	1st	Trafficking in methaqualone, more than 5 kilograms <u>or more</u> , less than 25 kilograms.	
	(1) (e) 1.b.			

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2086	893.135	1st	Trafficking in amphetamine, more than 28 grams <u>or more</u> , less than 200 grams.	
	(1) (f) 1.b.			
2087	893.135	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.	
	(1) (g) 1.b.			
2088	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.	
	(1) (h) 1.b.			
2089	893.135	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.	
	(1) (j) 1.b.			
2090	893.135	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.	
	(1) (k) 2.b.			
2091	<u>893.135(1) (m) 2.c.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.</u>	
2092	<u>893.135(1) (n) 2.b.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.</u>	

2093	590-04115-17	2017150c2	
	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
2094	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
2095	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
2096	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
2097	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
2098	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than

2099	590-04115-17	2017150c2	
			\$100,000.
2100	(i)	LEVEL 9	
2101	Florida Statute	Felony Degree	Description
2102	316.193(3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
2103	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
2104	409.920(2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
2105	499.0051(8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
2106	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
2107	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.

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2108	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
2109	775.0844	1st	Aggravated white collar crime.
2110	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
2111	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.
2112	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
2113	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
2114	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or

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			reward or as a shield or hostage.
2115	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
2116	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
2117	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.
2118	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
2119	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
2120			

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	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.
2121	790.161	1st	Attempted capital destructive device offense.
2122	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
2123	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
2124	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
2125	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.
2126	794.011(4)(b)	1st	Sexual battery, certain

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			circumstances; victim and offender 18 years of age or older.
2127	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
2128	794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
2129	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.
2130	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
2131	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
2132	812.13(2)(a)	1st,PBL	Robbery with firearm or other

	590-04115-17		2017150c2	
				deadly weapon.
2133	812.133(2)(a)	1st, PBL		Carjacking; firearm or other deadly weapon.
2134	812.135(2)(b)	1st		Home-invasion robbery with weapon.
2135	817.535(3)(b)	1st		Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
2136	817.535(4)(a)2.	1st		Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
2137	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.
2138	817.568(7)	2nd, PBL		Fraudulent use of personal identification information of an individual under the age of

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	590-04115-17		2017150c2	
				18 by his or her parent, legal guardian, or person exercising custodial authority.
2139	827.03(2)(a)	1st		Aggravated child abuse.
2140	847.0145(1)	1st		Selling, or otherwise transferring custody or control, of a minor.
2141	847.0145(2)	1st		Purchasing, or otherwise obtaining custody or control, of a minor.
2142	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.
2143	893.135	1st		Attempted capital trafficking offense.
2144	893.135(1)(a)3.	1st		Trafficking in cannabis, more than 10,000 lbs.
2145	893.135	1st		Trafficking in cocaine, more

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	(1) (b) 1.c.		than 400 grams, less than 150 kilograms.
2146	893.135	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
	(1) (c) 1.c.		
2147	893.135	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
	(1) (c) 2.d.		
2148	893.135	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
	(1) (c) 3.d.		
2149	<u>893.135</u>	<u>1st</u>	<u>Trafficking in fentanyl, 28 grams or more.</u>
	<u>(1) (c) 4.b. (III)</u>		
2150	893.135	1st	Trafficking in phencyclidine, more than 400 grams <u>or more</u> .
	(1) (d) 1.c.		
2151	893.135	1st	Trafficking in methaqualone, more than 25 kilograms <u>or more</u> .
	(1) (e) 1.c.		
2152	893.135	1st	Trafficking in amphetamine, more than 200 grams <u>or more</u> .
	(1) (f) 1.c.		
2153	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10
	(1) (h) 1.c.		

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	590-04115-17		2017150c2
			kilograms or more.
2154	893.135	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
	(1) (j) 1.c.		
2155	893.135	1st	Trafficking in Phenethylamines, 400 grams or more.
	(1) (k) 2.c.		
2156	<u>893.135</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 30 kilograms or more.</u>
	<u>(1) (m) 2.d.</u>		
2157	<u>893.135 (1) (n) 2.c.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 200 grams or more.</u>
2158	896.101 (5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
2159	896.104 (4) (a) 3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.
2160			
2161			Section 8. Present subsection (11) of section 775.082,
2162			Florida Statutes, is redesignated as subsection (12), and a new
2163			subsection (11) is added to that section, to read:

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2164 775.082 Penalties; applicability of sentencing structures;
 2165 mandatory minimum sentences for certain reoffenders previously
 2166 released from prison.-

2167 (11) If a defendant is sentenced for a primary offense of
 2168 possession of a controlled substance committed on or after
 2169 October 1, 2017, and if the total sentence points pursuant to s.
 2170 921.0024 are 60 points or fewer, the court must sentence the
 2171 offender to a nonstate prison sanction. However, if the court
 2172 makes written findings that a nonstate prison sanction could
 2173 present a danger to the public, the court may sentence the
 2174 offender to a state correctional facility pursuant to this
 2175 section. As used in this subsection, the term "possession of a
 2176 controlled substance" means possession of a controlled substance
 2177 in violation of s. 893.13, but does not include possession with
 2178 intent to sell, manufacture, or deliver a controlled substance
 2179 or possession of a controlled substance in violation of s.
 2180 893.135.

2181 Section 9. Section 921.0026, Florida Statutes, is amended
 2182 to read:

2183 921.0026 Mitigating circumstances.—This section applies to
 2184 any felony offense, except any capital felony, committed on or
 2185 after October 1, 1998.

2186 (1) A downward departure from the lowest permissible
 2187 sentence, as calculated according to the total sentence points
 2188 pursuant to s. 921.0024, is prohibited unless there are
 2189 circumstances or factors that reasonably justify the downward
 2190 departure. Mitigating factors to be considered include, but are
 2191 not limited to, those listed in subsection (2). The imposition
 2192 of a sentence below the lowest permissible sentence is subject

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2193 to appellate review under chapter 924, but the extent of
 2194 downward departure is not subject to appellate review.

2195 (2) Mitigating circumstances under which a departure from
 2196 the lowest permissible sentence is reasonably justified include,
 2197 but are not limited to:

2198 (a) The departure results from a legitimate, uncoerced plea
 2199 bargain.

2200 (b) The defendant was an accomplice to the offense and was
 2201 a relatively minor participant in the criminal conduct.

2202 (c) The capacity of the defendant to appreciate the
 2203 criminal nature of the conduct or to conform that conduct to the
 2204 requirements of law was substantially impaired.

2205 (d) For an offense committed on or after October 1, 1998,
 2206 but before October 1, 2017, the defendant requires specialized
 2207 treatment for a mental disorder that is unrelated to substance
 2208 abuse or addiction or for a physical disability, and the
 2209 defendant is amenable to treatment.

2210 (e) For an offense committed on or after October 1, 2017,
 2211 the defendant requires specialized treatment for an addiction, a
 2212 mental disorder, or a physical disability, and the defendant is
 2213 amenable to treatment.

2214 ~~(f)-(e)~~ The need for payment of restitution to the victim
 2215 outweighs the need for a prison sentence.

2216 ~~(g)-(f)~~ The victim was an initiator, willing participant,
 2217 aggressor, or provoker of the incident.

2218 ~~(h)-(g)~~ The defendant acted under extreme duress or under
 2219 the domination of another person.

2220 ~~(i)-(h)~~ Before the identity of the defendant was determined,
 2221 the victim was substantially compensated.

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2222 (j)~~(i)~~ The defendant cooperated with the state to resolve
2223 the current offense or any other offense.

2224 (k)~~(j)~~ The offense was committed in an unsophisticated
2225 manner and was an isolated incident for which the defendant has
2226 shown remorse.

2227 (l)~~(k)~~ At the time of the offense the defendant was too
2228 young to appreciate the consequences of the offense.

2229 (m)~~(l)~~ The defendant is to be sentenced as a youthful
2230 offender.

2231 (n)~~(m)~~ The defendant's offense is a nonviolent felony, the
2232 defendant's Criminal Punishment Code scoresheet total sentence
2233 points under s. 921.0024 are 60 points or fewer, and the court
2234 determines that the defendant is amenable to the services of a
2235 postadjudicatory treatment-based drug court program and is
2236 otherwise qualified to participate in the program as part of the
2237 sentence. Except as provided in this paragraph, the defendant's
2238 substance abuse or addiction, including intoxication at the time
2239 of the offense, is not a mitigating factor for an offense
2240 committed on or after October 1, 1998, but before October 1,
2241 2017, and does not, under any circumstance, justify a downward
2242 departure from the permissible sentencing range For purposes of
2243 this paragraph, the term "nonviolent felony" has the same
2244 meaning as provided in s. 948.08(6).

2245 (o)~~(n)~~ The defendant was making a good faith effort to
2246 obtain or provide medical assistance for an individual
2247 experiencing a drug-related overdose.

2248 (3) As used in subsection (2), the term "nonviolent felony"
2249 has the same meaning as provided in s. 948.08 ~~Except as provided~~
2250 ~~in paragraph (2) (m), the defendant's substance abuse or~~

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2251 ~~addiction, including intoxication at the time of the offense, is~~
2252 ~~not a mitigating factor under subsection (2) and does not, under~~
2253 ~~any circumstances, justify a downward departure from the~~
2254 ~~permissible sentencing range.~~

2255 Section 10. Subsection (7) of section 948.01, Florida
2256 Statutes, is amended to read:

2257 948.01 When court may place defendant on probation or into
2258 community control.—

2259 (7) (a) Notwithstanding s. 921.0024 and effective for
2260 offenses committed on or after July 1, 2009, the sentencing
2261 court may place the defendant into a postadjudicatory treatment-
2262 based drug court program if the defendant's Criminal Punishment
2263 Code scoresheet total sentence points under s. 921.0024 are 60
2264 points or fewer, the offense is a nonviolent felony, the
2265 defendant is amenable to substance abuse treatment, and the
2266 defendant otherwise qualifies under s. 397.334(3). The
2267 satisfactory completion of the program shall be a condition of
2268 the defendant's probation or community control. ~~As used in this~~
2269 ~~subsection, the term "nonviolent felony" means a third degree~~
2270 ~~felony violation under chapter 810 or any other felony offense~~
2271 ~~that is not a forcible felony as defined in s. 776.08.~~

2272 (b) Notwithstanding s. 921.0024 and effective for offenses
2273 committed on or after October 1, 2017, the sentencing court must
2274 place the defendant into a postadjudicatory treatment-based drug
2275 court program, into residential drug treatment, or on drug
2276 offender probation if the defendant's Criminal Punishment Code
2277 scoresheet total sentence points under s. 921.0024 are 60 points
2278 or fewer, the offense is a nonviolent felony, the defendant is
2279 amenable to substance abuse treatment, the defendant's criminal

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2280 behavior is related to substance abuse or addiction, and the
 2281 defendant otherwise qualifies under s. 397.334(3). The
 2282 satisfactory completion of the program must be a condition of
 2283 the defendant's probation or community control.

2284 ~~(c)~~ (b) In order to be placed in a postadjudicatory
 2285 treatment-based drug court program under paragraph (a) or
 2286 paragraph (b), the defendant must be fully advised of the
 2287 purpose of the program, and the defendant must agree to enter
 2288 the program. The original sentencing court shall relinquish
 2289 jurisdiction of the defendant's case to the postadjudicatory
 2290 drug court program until the defendant is no longer active in
 2291 the program, the case is returned to the sentencing court due to
 2292 the defendant's termination from the program for failure to
 2293 comply with the terms thereof, or the defendant's sentence is
 2294 completed.

2295 (d) As used in this subsection, the term "nonviolent
 2296 felony" means a third degree felony violation under chapter 810
 2297 or any other felony offense that is not a forcible felony as
 2298 defined in s. 776.08.

2299 Section 11. For the purpose of incorporating the amendment
 2300 made by this act to section 921.0026, Florida Statutes, in
 2301 references thereto, paragraphs (b) and (c) of subsection (1) of
 2302 section 775.08435, Florida Statutes, are reenacted to read:

2303 775.08435 Prohibition on withholding adjudication in felony
 2304 cases.—

2305 (1) Notwithstanding the provisions of s. 948.01, the court
 2306 may not withhold adjudication of guilt upon the defendant for:

2307 (b) A second degree felony offense unless:

2308 1. The state attorney requests in writing that adjudication

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2309 be withheld; or

2310 2. The court makes written findings that the withholding of
 2311 adjudication is reasonably justified based on circumstances or
 2312 factors in accordance with those set forth in s. 921.0026.

2313
 2314 Notwithstanding any provision of this section, no adjudication
 2315 of guilt shall be withheld for a second degree felony offense if
 2316 the defendant has a prior withholding of adjudication for a
 2317 felony that did not arise from the same transaction as the
 2318 current felony offense.

2319 (c) A third degree felony offense if the defendant has a
 2320 prior withholding of adjudication for a felony offense that did
 2321 not arise from the same transaction as the current felony
 2322 offense unless:

2323 1. The state attorney requests in writing that adjudication
 2324 be withheld; or

2325 2. The court makes written findings that the withholding of
 2326 adjudication is reasonably justified based on circumstances or
 2327 factors in accordance with those set forth in s. 921.0026.

2328
 2329 Notwithstanding any provision of this section, no adjudication
 2330 of guilt shall be withheld for a third degree felony offense if
 2331 the defendant has two or more prior withholdings of adjudication
 2332 for a felony that did not arise from the same transaction as the
 2333 current felony offense.

2334 Section 12. For the purpose of incorporating the amendment
 2335 made by this act to section 921.0026, Florida Statutes, in a
 2336 reference thereto, subsection (3) of section 921.002, Florida
 2337 Statutes, is reenacted to read:

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2338 921.002 The Criminal Punishment Code.—The Criminal
 2339 Punishment Code shall apply to all felony offenses, except
 2340 capital felonies, committed on or after October 1, 1998.

2341 (3) A court may impose a departure below the lowest
 2342 permissible sentence based upon circumstances or factors that
 2343 reasonably justify the mitigation of the sentence in accordance
 2344 with s. 921.0026. The level of proof necessary to establish
 2345 facts supporting the mitigation of a sentence is a preponderance
 2346 of the evidence. When multiple reasons exist to support the
 2347 mitigation, the mitigation shall be upheld when at least one
 2348 circumstance or factor justifies the mitigation regardless of
 2349 the presence of other circumstances or factors found not to
 2350 justify mitigation. Any sentence imposed below the lowest
 2351 permissible sentence must be explained in writing by the trial
 2352 court judge.

2353 Section 13. For the purpose of incorporating the amendment
 2354 made by this act to section 921.0026, Florida Statutes, in a
 2355 reference thereto, subsection (1) of section 921.00265, Florida
 2356 Statutes, is reenacted to read:

2357 921.00265 Recommended sentences; departure sentences;
 2358 mandatory minimum sentences.—This section applies to any felony
 2359 offense, except any capital felony, committed on or after
 2360 October 1, 1998.

2361 (1) The lowest permissible sentence provided by
 2362 calculations from the total sentence points pursuant to s.
 2363 921.0024(2) is assumed to be the lowest appropriate sentence for
 2364 the offender being sentenced. A departure sentence is prohibited
 2365 unless there are mitigating circumstances or factors present as
 2366 provided in s. 921.0026 which reasonably justify a departure.

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2367 Section 14. For the purpose of incorporating the amendment
 2368 made by this act to section 948.01, Florida Statutes, in
 2369 references thereto, subsection (2) and paragraph (a) of
 2370 subsection (4) of section 394.47892, Florida Statutes, are
 2371 reenacted to read:

2372 394.47892 Mental health court programs.—

2373 (2) Mental health court programs may include pretrial
 2374 intervention programs as provided in ss. 948.08, 948.16, and
 2375 985.345, postadjudicatory mental health court programs as
 2376 provided in ss. 948.01 and 948.06, and review of the status of
 2377 compliance or noncompliance of sentenced defendants through a
 2378 mental health court program.

2379 (4) (a) Entry into a postadjudicatory mental health court
 2380 program as a condition of probation or community control
 2381 pursuant to s. 948.01 or s. 948.06 must be based upon the
 2382 sentencing court's assessment of the defendant's criminal
 2383 history, mental health screening outcome, amenability to the
 2384 services of the program, and total sentence points; the
 2385 recommendation of the state attorney and the victim, if any; and
 2386 the defendant's agreement to enter the program.

2387 Section 15. For the purpose of incorporating the amendment
 2388 made by this act to section 948.01, Florida Statutes, in
 2389 references thereto, paragraph (a) of subsection (3) and
 2390 subsection (5) of section 397.334, Florida Statutes, are
 2391 reenacted to read:

2392 397.334 Treatment-based drug court programs.—

2393 (3) (a) Entry into any postadjudicatory treatment-based drug
 2394 court program as a condition of probation or community control
 2395 pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based

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2396 upon the sentencing court's assessment of the defendant's
 2397 criminal history, substance abuse screening outcome, amenability
 2398 to the services of the program, total sentence points, the
 2399 recommendation of the state attorney and the victim, if any, and
 2400 the defendant's agreement to enter the program.

2401 (5) Treatment-based drug court programs may include
 2402 pretrial intervention programs as provided in ss. 948.08,
 2403 948.16, and 985.345, treatment-based drug court programs
 2404 authorized in chapter 39, postadjudicatory programs as provided
 2405 in ss. 948.01, 948.06, and 948.20, and review of the status of
 2406 compliance or noncompliance of sentenced offenders through a
 2407 treatment-based drug court program. While enrolled in a
 2408 treatment-based drug court program, the participant is subject
 2409 to a coordinated strategy developed by a drug court team under
 2410 subsection (4). The coordinated strategy may include a protocol
 2411 of sanctions that may be imposed upon the participant for
 2412 noncompliance with program rules. The protocol of sanctions may
 2413 include, but is not limited to, placement in a substance abuse
 2414 treatment program offered by a licensed service provider as
 2415 defined in s. 397.311 or in a jail-based treatment program or
 2416 serving a period of secure detention under chapter 985 if a
 2417 child or a period of incarceration within the time limits
 2418 established for contempt of court if an adult. The coordinated
 2419 strategy must be provided in writing to the participant before
 2420 the participant agrees to enter into a treatment-based drug
 2421 court program.

2422 Section 16. For the purpose of incorporating the amendment
 2423 made by this act to section 948.01, Florida Statutes, in a
 2424 reference thereto, paragraph (a) of subsection (5) of section

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2425 910.035, Florida Statutes, is reenacted to read:

2426 910.035 Transfer from county for plea, sentence, or
 2427 participation in a problem-solving court.—

2428 (5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

2429 (a) For purposes of this subsection, the term "problem-
 2430 solving court" means a drug court pursuant to s. 948.01, s.
 2431 948.06, s. 948.08, s. 948.16, or s. 948.20; a military veterans'
 2432 and servicemembers' court pursuant to s. 394.47891, s. 948.08,
 2433 s. 948.16, or s. 948.21; a mental health court program pursuant
 2434 to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16;
 2435 or a delinquency pretrial intervention court program pursuant to
 2436 s. 985.345.

2437 Section 17. For the purpose of incorporating the amendment
 2438 made by this act to section 948.01, Florida Statutes, in a
 2439 reference thereto, paragraph (c) of subsection (1) of section
 2440 921.187, Florida Statutes, is reenacted to read:

2441 921.187 Disposition and sentencing; alternatives;
 2442 restitution.—

2443 (1) The alternatives provided in this section for the
 2444 disposition of criminal cases shall be used in a manner that
 2445 will best serve the needs of society, punish criminal offenders,
 2446 and provide the opportunity for rehabilitation. If the offender
 2447 does not receive a state prison sentence, the court may:

2448 (c) Place the offender on probation with or without an
 2449 adjudication of guilt pursuant to s. 948.01.

2450 Section 18. For the purpose of incorporating the amendment
 2451 made by this act to section 948.01, Florida Statutes, in a
 2452 reference thereto, section 943.04352, Florida Statutes, is
 2453 reenacted to read:

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2454 943.04352 Search of registration information regarding
 2455 sexual predators and sexual offenders required when placement on
 2456 misdemeanor probation.—When the court places a defendant on
 2457 misdemeanor probation pursuant to ss. 948.01 and 948.15, the
 2458 public or private entity providing probation services must
 2459 conduct a search of the probationer's name or other identifying
 2460 information against the registration information regarding
 2461 sexual predators and sexual offenders maintained by the
 2462 Department of Law Enforcement under s. 943.043. The probation
 2463 services provider may conduct the search using the Internet site
 2464 maintained by the Department of Law Enforcement. Also, a
 2465 national search must be conducted through the Dru Sjodin
 2466 National Sex Offender Public Website maintained by the United
 2467 States Department of Justice.

2468 Section 19. For the purpose of incorporating the amendment
 2469 made by this act to section 782.04, Florida Statutes, in a
 2470 reference thereto, paragraph (d) of subsection (1) of section
 2471 39.806, Florida Statutes, is reenacted to read:

2472 39.806 Grounds for termination of parental rights.—

2473 (1) Grounds for the termination of parental rights may be
 2474 established under any of the following circumstances:

2475 (d) When the parent of a child is incarcerated and either:

2476 1. The period of time for which the parent is expected to
 2477 be incarcerated will constitute a significant portion of the
 2478 child's minority. When determining whether the period of time is
 2479 significant, the court shall consider the child's age and the
 2480 child's need for a permanent and stable home. The period of time
 2481 begins on the date that the parent enters into incarceration;

2482 2. The incarcerated parent has been determined by the court

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2483 to be a violent career criminal as defined in s. 775.084, a
 2484 habitual violent felony offender as defined in s. 775.084, or a
 2485 sexual predator as defined in s. 775.21; has been convicted of
 2486 first degree or second degree murder in violation of s. 782.04
 2487 or a sexual battery that constitutes a capital, life, or first
 2488 degree felony violation of s. 794.011; or has been convicted of
 2489 an offense in another jurisdiction which is substantially
 2490 similar to one of the offenses listed in this paragraph. As used
 2491 in this section, the term "substantially similar offense" means
 2492 any offense that is substantially similar in elements and
 2493 penalties to one of those listed in this subparagraph, and that
 2494 is in violation of a law of any other jurisdiction, whether that
 2495 of another state, the District of Columbia, the United States or
 2496 any possession or territory thereof, or any foreign
 2497 jurisdiction; or

2498 3. The court determines by clear and convincing evidence
 2499 that continuing the parental relationship with the incarcerated
 2500 parent would be harmful to the child and, for this reason, that
 2501 termination of the parental rights of the incarcerated parent is
 2502 in the best interest of the child. When determining harm, the
 2503 court shall consider the following factors:

2504 a. The age of the child.

2505 b. The relationship between the child and the parent.

2506 c. The nature of the parent's current and past provision
 2507 for the child's developmental, cognitive, psychological, and
 2508 physical needs.

2509 d. The parent's history of criminal behavior, which may
 2510 include the frequency of incarceration and the unavailability of
 2511 the parent to the child due to incarceration.

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2512 e. Any other factor the court deems relevant.

2513 Section 20. For the purpose of incorporating the amendment
2514 made by this act to section 782.04, Florida Statutes, in a
2515 reference thereto, paragraph (b) of subsection (4) of section
2516 63.089, Florida Statutes, is reenacted to read:

2517 63.089 Proceeding to terminate parental rights pending
2518 adoption; hearing; grounds; dismissal of petition; judgment.—

2519 (4) FINDING OF ABANDONMENT.—A finding of abandonment
2520 resulting in a termination of parental rights must be based upon
2521 clear and convincing evidence that a parent or person having
2522 legal custody has abandoned the child in accordance with the
2523 definition contained in s. 63.032. A finding of abandonment may
2524 also be based upon emotional abuse or a refusal to provide
2525 reasonable financial support, when able, to a birth mother
2526 during her pregnancy or on whether the person alleged to have
2527 abandoned the child, while being able, failed to establish
2528 contact with the child or accept responsibility for the child's
2529 welfare.

2530 (b) The child has been abandoned when the parent of a child
2531 is incarcerated on or after October 1, 2001, in a federal,
2532 state, or county correctional institution and:

2533 1. The period of time for which the parent has been or is
2534 expected to be incarcerated will constitute a significant
2535 portion of the child's minority. In determining whether the
2536 period of time is significant, the court shall consider the
2537 child's age and the child's need for a permanent and stable
2538 home. The period of time begins on the date that the parent
2539 enters into incarceration;

2540 2. The incarcerated parent has been determined by a court

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2541 of competent jurisdiction to be a violent career criminal as
2542 defined in s. 775.084, a habitual violent felony offender as
2543 defined in s. 775.084, convicted of child abuse as defined in s.
2544 827.03, or a sexual predator as defined in s. 775.21; has been
2545 convicted of first degree or second degree murder in violation
2546 of s. 782.04 or a sexual battery that constitutes a capital,
2547 life, or first degree felony violation of s. 794.011; or has
2548 been convicted of a substantially similar offense in another
2549 jurisdiction. As used in this section, the term "substantially
2550 similar offense" means any offense that is substantially similar
2551 in elements and penalties to one of those listed in this
2552 subparagraph, and that is in violation of a law of any other
2553 jurisdiction, whether that of another state, the District of
2554 Columbia, the United States or any possession or territory
2555 thereof, or any foreign jurisdiction; or

2556 3. The court determines by clear and convincing evidence
2557 that continuing the parental relationship with the incarcerated
2558 parent would be harmful to the child and, for this reason,
2559 termination of the parental rights of the incarcerated parent is
2560 in the best interests of the child.

2561 Section 21. For the purpose of incorporating the amendment
2562 made by this act to section 782.04, Florida Statutes, in a
2563 reference thereto, subsection (10) of section 95.11, Florida
2564 Statutes, is reenacted to read:

2565 95.11 Limitations other than for the recovery of real
2566 property.—Actions other than for recovery of real property shall
2567 be commenced as follows:

2568 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
2569 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph

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2570 (4) (d), an action for wrongful death seeking damages authorized
 2571 under s. 768.21 brought against a natural person for an
 2572 intentional tort resulting in death from acts described in s.
 2573 782.04 or s. 782.07 may be commenced at any time. This
 2574 subsection shall not be construed to require an arrest, the
 2575 filing of formal criminal charges, or a conviction for a
 2576 violation of s. 782.04 or s. 782.07 as a condition for filing a
 2577 civil action.

2578 Section 22. For the purpose of incorporating the amendment
 2579 made by this act to section 782.04, Florida Statutes, in
 2580 references thereto, paragraph (b) of subsection (1) and
 2581 paragraphs (a), (b), and (c) of subsection (3) of section
 2582 775.082, Florida Statutes, are reenacted to read:

2583 775.082 Penalties; applicability of sentencing structures;
 2584 mandatory minimum sentences for certain reoffenders previously
 2585 released from prison.—

2586 (1)

2587 (b)1. A person who actually killed, intended to kill, or
 2588 attempted to kill the victim and who is convicted under s.
 2589 782.04 of a capital felony, or an offense that was reclassified
 2590 as a capital felony, which was committed before the person
 2591 attained 18 years of age shall be punished by a term of
 2592 imprisonment for life if, after a sentencing hearing conducted
 2593 by the court in accordance with s. 921.1401, the court finds
 2594 that life imprisonment is an appropriate sentence. If the court
 2595 finds that life imprisonment is not an appropriate sentence,
 2596 such person shall be punished by a term of imprisonment of at
 2597 least 40 years. A person sentenced pursuant to this subparagraph
 2598 is entitled to a review of his or her sentence in accordance

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2599 with s. 921.1402(2) (a).

2600 2. A person who did not actually kill, intend to kill, or
 2601 attempt to kill the victim and who is convicted under s. 782.04
 2602 of a capital felony, or an offense that was reclassified as a
 2603 capital felony, which was committed before the person attained
 2604 18 years of age may be punished by a term of imprisonment for
 2605 life or by a term of years equal to life if, after a sentencing
 2606 hearing conducted by the court in accordance with s. 921.1401,
 2607 the court finds that life imprisonment is an appropriate
 2608 sentence. A person who is sentenced to a term of imprisonment of
 2609 more than 15 years is entitled to a review of his or her
 2610 sentence in accordance with s. 921.1402(2) (c).

2611 3. The court shall make a written finding as to whether a
 2612 person is eligible for a sentence review hearing under s.
 2613 921.1402(2) (a) or (c). Such a finding shall be based upon
 2614 whether the person actually killed, intended to kill, or
 2615 attempted to kill the victim. The court may find that multiple
 2616 defendants killed, intended to kill, or attempted to kill the
 2617 victim.

2618 (3) A person who has been convicted of any other designated
 2619 felony may be punished as follows:

2620 (a)1. For a life felony committed before October 1, 1983,
 2621 by a term of imprisonment for life or for a term of at least 30
 2622 years.

2623 2. For a life felony committed on or after October 1, 1983,
 2624 by a term of imprisonment for life or by a term of imprisonment
 2625 not exceeding 40 years.

2626 3. Except as provided in subparagraph 4., for a life felony
 2627 committed on or after July 1, 1995, by a term of imprisonment

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2628 for life or by imprisonment for a term of years not exceeding
2629 life imprisonment.

2630 4.a. Except as provided in sub-subparagraph b., for a life
2631 felony committed on or after September 1, 2005, which is a
2632 violation of s. 800.04(5)(b), by:

2633 (I) A term of imprisonment for life; or

2634 (II) A split sentence that is a term of at least 25 years'
2635 imprisonment and not exceeding life imprisonment, followed by
2636 probation or community control for the remainder of the person's
2637 natural life, as provided in s. 948.012(4).

2638 b. For a life felony committed on or after July 1, 2008,
2639 which is a person's second or subsequent violation of s.
2640 800.04(5)(b), by a term of imprisonment for life.

2641 5. Notwithstanding subparagraphs 1.-4., a person who is
2642 convicted under s. 782.04 of an offense that was reclassified as
2643 a life felony which was committed before the person attained 18
2644 years of age may be punished by a term of imprisonment for life
2645 or by a term of years equal to life imprisonment if the judge
2646 conducts a sentencing hearing in accordance with s. 921.1401 and
2647 finds that life imprisonment or a term of years equal to life
2648 imprisonment is an appropriate sentence.

2649 a. A person who actually killed, intended to kill, or
2650 attempted to kill the victim and is sentenced to a term of
2651 imprisonment of more than 25 years is entitled to a review of
2652 his or her sentence in accordance with s. 921.1402(2)(b).

2653 b. A person who did not actually kill, intend to kill, or
2654 attempt to kill the victim and is sentenced to a term of
2655 imprisonment of more than 15 years is entitled to a review of
2656 his or her sentence in accordance with s. 921.1402(2)(c).

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2657 c. The court shall make a written finding as to whether a
2658 person is eligible for a sentence review hearing under s.
2659 921.1402(2)(b) or (c). Such a finding shall be based upon
2660 whether the person actually killed, intended to kill, or
2661 attempted to kill the victim. The court may find that multiple
2662 defendants killed, intended to kill, or attempted to kill the
2663 victim.

2664 6. For a life felony committed on or after October 1, 2014,
2665 which is a violation of s. 787.06(3)(g), by a term of
2666 imprisonment for life.

2667 (b)1. For a felony of the first degree, by a term of
2668 imprisonment not exceeding 30 years or, when specifically
2669 provided by statute, by imprisonment for a term of years not
2670 exceeding life imprisonment.

2671 2. Notwithstanding subparagraph 1., a person convicted
2672 under s. 782.04 of a first degree felony punishable by a term of
2673 years not exceeding life imprisonment, or an offense that was
2674 reclassified as a first degree felony punishable by a term of
2675 years not exceeding life, which was committed before the person
2676 attained 18 years of age may be punished by a term of years
2677 equal to life imprisonment if the judge conducts a sentencing
2678 hearing in accordance with s. 921.1401 and finds that a term of
2679 years equal to life imprisonment is an appropriate sentence.

2680 a. A person who actually killed, intended to kill, or
2681 attempted to kill the victim and is sentenced to a term of
2682 imprisonment of more than 25 years is entitled to a review of
2683 his or her sentence in accordance with s. 921.1402(2)(b).

2684 b. A person who did not actually kill, intend to kill, or
2685 attempt to kill the victim and is sentenced to a term of

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2686 imprisonment of more than 15 years is entitled to a review of
 2687 his or her sentence in accordance with s. 921.1402(2)(c).

2688 c. The court shall make a written finding as to whether a
 2689 person is eligible for a sentence review hearing under s.
 2690 921.1402(2)(b) or (c). Such a finding shall be based upon
 2691 whether the person actually killed, intended to kill, or
 2692 attempted to kill the victim. The court may find that multiple
 2693 defendants killed, intended to kill, or attempted to kill the
 2694 victim.

2695 (c) Notwithstanding paragraphs (a) and (b), a person
 2696 convicted of an offense that is not included in s. 782.04 but
 2697 that is an offense that is a life felony or is punishable by a
 2698 term of imprisonment for life or by a term of years not
 2699 exceeding life imprisonment, or an offense that was reclassified
 2700 as a life felony or an offense punishable by a term of
 2701 imprisonment for life or by a term of years not exceeding life
 2702 imprisonment, which was committed before the person attained 18
 2703 years of age may be punished by a term of imprisonment for life
 2704 or a term of years equal to life imprisonment if the judge
 2705 conducts a sentencing hearing in accordance with s. 921.1401 and
 2706 finds that life imprisonment or a term of years equal to life
 2707 imprisonment is an appropriate sentence. A person who is
 2708 sentenced to a term of imprisonment of more than 20 years is
 2709 entitled to a review of his or her sentence in accordance with
 2710 s. 921.1402(2)(d).

2711 Section 23. For the purpose of incorporating the amendment
 2712 made by this act to section 782.04, Florida Statutes, in
 2713 references thereto, subsections (1) and (2) of section 775.0823,
 2714 Florida Statutes, are reenacted to read:

Page 149 of 155

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

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2715 775.0823 Violent offenses committed against law enforcement
 2716 officers, correctional officers, state attorneys, assistant
 2717 state attorneys, justices, or judges.—The Legislature does
 2718 hereby provide for an increase and certainty of penalty for any
 2719 person convicted of a violent offense against any law
 2720 enforcement or correctional officer, as defined in s. 943.10(1),
 2721 (2), (3), (6), (7), (8), or (9); against any state attorney
 2722 elected pursuant to s. 27.01 or assistant state attorney
 2723 appointed under s. 27.181; or against any justice or judge of a
 2724 court described in Art. V of the State Constitution, which
 2725 offense arises out of or in the scope of the officer's duty as a
 2726 law enforcement or correctional officer, the state attorney's or
 2727 assistant state attorney's duty as a prosecutor or investigator,
 2728 or the justice's or judge's duty as a judicial officer, as
 2729 follows:

2730 (1) For murder in the first degree as described in s.
 2731 782.04(1), if the death sentence is not imposed, a sentence of
 2732 imprisonment for life without eligibility for release.

2733 (2) For attempted murder in the first degree as described
 2734 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
 2735 or s. 775.084.

2736
 2737 Notwithstanding the provisions of s. 948.01, with respect to any
 2738 person who is found to have violated this section, adjudication
 2739 of guilt or imposition of sentence shall not be suspended,
 2740 deferred, or withheld.

2741 Section 24. For the purpose of incorporating the amendment
 2742 made by this act to section 782.04, Florida Statutes, in a
 2743 reference thereto, subsection (1) of section 921.16, Florida

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2744 Statutes, is reenacted to read:

2745 921.16 When sentences to be concurrent and when
2746 consecutive.—

2747 (1) A defendant convicted of two or more offenses charged
2748 in the same indictment, information, or affidavit or in
2749 consolidated indictments, informations, or affidavits shall
2750 serve the sentences of imprisonment concurrently unless the
2751 court directs that two or more of the sentences be served
2752 consecutively. Sentences of imprisonment for offenses not
2753 charged in the same indictment, information, or affidavit shall
2754 be served consecutively unless the court directs that two or
2755 more of the sentences be served concurrently. Any sentence for
2756 sexual battery as defined in chapter 794 or murder as defined in
2757 s. 782.04 must be imposed consecutively to any other sentence
2758 for sexual battery or murder which arose out of a separate
2759 criminal episode or transaction.

2760 Section 25. For the purpose of incorporating the amendment
2761 made by this act to section 782.04, Florida Statutes, in a
2762 reference thereto, paragraph (c) of subsection (8) of section
2763 948.06, Florida Statutes, is reenacted to read:

2764 948.06 Violation of probation or community control;
2765 revocation; modification; continuance; failure to pay
2766 restitution or cost of supervision.—

2767 (8)

2768 (c) For purposes of this section, the term "qualifying
2769 offense" means any of the following:

2770 1. Kidnapping or attempted kidnapping under s. 787.01,
2771 false imprisonment of a child under the age of 13 under s.
2772 787.02(3), or luring or enticing a child under s. 787.025(2) (b)

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2773 or (c).

2774 2. Murder or attempted murder under s. 782.04, attempted
2775 felony murder under s. 782.051, or manslaughter under s. 782.07.

2776 3. Aggravated battery or attempted aggravated battery under
2777 s. 784.045.

2778 4. Sexual battery or attempted sexual battery under s.
2779 794.011(2), (3), (4), or (8)(b) or (c).

2780 5. Lewd or lascivious battery or attempted lewd or
2781 lascivious battery under s. 800.04(4), lewd or lascivious
2782 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
2783 conduct under s. 800.04(6)(b), lewd or lascivious exhibition
2784 under s. 800.04(7)(b), or lewd or lascivious exhibition on
2785 computer under s. 847.0135(5)(b).

2786 6. Robbery or attempted robbery under s. 812.13, carjacking
2787 or attempted carjacking under s. 812.133, or home invasion
2788 robbery or attempted home invasion robbery under s. 812.135.

2789 7. Lewd or lascivious offense upon or in the presence of an
2790 elderly or disabled person or attempted lewd or lascivious
2791 offense upon or in the presence of an elderly or disabled person
2792 under s. 825.1025.

2793 8. Sexual performance by a child or attempted sexual
2794 performance by a child under s. 827.071.

2795 9. Computer pornography under s. 847.0135(2) or (3),
2796 transmission of child pornography under s. 847.0137, or selling
2797 or buying of minors under s. 847.0145.

2798 10. Poisoning food or water under s. 859.01.

2799 11. Abuse of a dead human body under s. 872.06.

2800 12. Any burglary offense or attempted burglary offense that
2801 is either a first degree felony or second degree felony under s.

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

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2802 810.02(2) or (3).

2803 13. Arson or attempted arson under s. 806.01(1).

2804 14. Aggravated assault under s. 784.021.

2805 15. Aggravated stalking under s. 784.048(3), (4), (5), or

2806 (7).

2807 16. Aircraft piracy under s. 860.16.

2808 17. Unlawful throwing, placing, or discharging of a

2809 destructive device or bomb under s. 790.161(2), (3), or (4).

2810 18. Treason under s. 876.32.

2811 19. Any offense committed in another jurisdiction which

2812 would be an offense listed in this paragraph if that offense had

2813 been committed in this state.

2814 Section 26. For the purpose of incorporating the amendment

2815 made by this act to section 782.04, Florida Statutes, in a

2816 reference thereto, paragraph (a) of subsection (1) of section

2817 948.062, Florida Statutes, is reenacted to read:

2818 948.062 Reviewing and reporting serious offenses committed

2819 by offenders placed on probation or community control.—

2820 (1) The department shall review the circumstances related

2821 to an offender placed on probation or community control who has

2822 been arrested while on supervision for the following offenses:

2823 (a) Any murder as provided in s. 782.04;

2824 Section 27. For the purpose of incorporating the amendment

2825 made by this act to section 782.04, Florida Statutes, in a

2826 reference thereto, paragraph (b) of subsection (3) of section

2827 985.265, Florida Statutes, is reenacted to read:

2828 985.265 Detention transfer and release; education; adult

2829 jails.—

2830 (3)

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2831 (b) When a juvenile is released from secure detention or

2832 transferred to nonsecure detention, detention staff shall

2833 immediately notify the appropriate law enforcement agency,

2834 school personnel, and victim if the juvenile is charged with

2835 committing any of the following offenses or attempting to commit

2836 any of the following offenses:

2837 1. Murder, under s. 782.04;

2838 2. Sexual battery, under chapter 794;

2839 3. Stalking, under s. 784.048; or

2840 4. Domestic violence, as defined in s. 741.28.

2841 Section 28. For the purpose of incorporating the amendment

2842 made by this act to section 782.04, Florida Statutes, in a

2843 reference thereto, paragraph (d) of subsection (1) of section

2844 1012.315, Florida Statutes, is reenacted to read:

2845 1012.315 Disqualification from employment.—A person is

2846 ineligible for educator certification, and instructional

2847 personnel and school administrators, as defined in s. 1012.01,

2848 are ineligible for employment in any position that requires

2849 direct contact with students in a district school system,

2850 charter school, or private school that accepts scholarship

2851 students under s. 1002.39 or s. 1002.395, if the person,

2852 instructional personnel, or school administrator has been

2853 convicted of:

2854 (1) Any felony offense prohibited under any of the

2855 following statutes:

2856 (d) Section 782.04, relating to murder.

2857 Section 29. For the purpose of incorporating the amendment

2858 made by this act to section 782.04, Florida Statutes, in a

2859 reference thereto, paragraph (g) of subsection (2) of section

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2860 1012.467, Florida Statutes, is reenacted to read:

2861 1012.467 Noninstructional contractors who are permitted
2862 access to school grounds when students are present; background
2863 screening requirements.—

2864 (2)

2865 (g) A noninstructional contractor for whom a criminal
2866 history check is required under this section may not have been
2867 convicted of any of the following offenses designated in the
2868 Florida Statutes, any similar offense in another jurisdiction,
2869 or any similar offense committed in this state which has been
2870 redesignated from a former provision of the Florida Statutes to
2871 one of the following offenses:

2872 1. Any offense listed in s. 943.0435(1)(h)1., relating to
2873 the registration of an individual as a sexual offender.

2874 2. Section 393.135, relating to sexual misconduct with
2875 certain developmentally disabled clients and the reporting of
2876 such sexual misconduct.

2877 3. Section 394.4593, relating to sexual misconduct with
2878 certain mental health patients and the reporting of such sexual
2879 misconduct.

2880 4. Section 775.30, relating to terrorism.

2881 5. Section 782.04, relating to murder.

2882 6. Section 787.01, relating to kidnapping.

2883 7. Any offense under chapter 800, relating to lewdness and
2884 indecent exposure.

2885 8. Section 826.04, relating to incest.

2886 9. Section 827.03, relating to child abuse, aggravated
2887 child abuse, or neglect of a child.

2888 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,

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

W. Gregory Steube, District 23

REPLY TO:

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

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-25-17
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

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.

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~~ 355094
Amendment Barcode (if applicable)

Topic Controlled Substances

Name Andrew Fay

Job Title Special Counsel

Address PL 02

Phone 248-0155

Street Tallahassee

FL

Email Andrew.Fay@myfloridalegal.com

City State Zip

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25/17

Meeting Date

150

Bill Number (if applicable)

145864

Amendment Barcode (if applicable)

Topic Controlled Substances

Name Andrew Fay

Job Title Special Counsel

Address PL 02

Street

Phone 248-0155

Tallahassee

City

State

Zip

Email Andrew.Fay@nyfloridalegal.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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 25, 2017
Meeting Date

150

14 5864
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Controlled Substances

Name Chief Jeffrey Chudnew

Job Title Chief of Police

Address 2636 Mitcham Drive

Street

Phone 880-219-3631

Tallahassee FL 32308

City

State

Zip

Email bhoward@fpa.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.

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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

Phone 727-582-6200

Street

Largo

FL

33778

Email _____

City

State

Zip

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.

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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

SR 150
Bill Number (if applicable)

Topic Drug Tax Policy

Amendment Barcode (if applicable)

Name Buddy JACOBS

531844
145864

Job Title General Counsel Fla. Prosecuting Attorneys Association

Address 961687 Gateway Blvd.

Phone _____

Street

Fernandina Beach FLA

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

SB 150
Bill Number (if applicable)

Meeting Date _____

Topic Drug Trafficking

Amendment Barcode (if applicable)

Name Buddy JACOBS

531844
145-864

Job Title General Counsel Fla. Prosecuting Attorneys Assoc.

Address 961687 Gateway Blvd.

Phone 904 261 3693

Street
Fernandina Bch FL 32034
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.

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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

150

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone _____

Street

Tall

FL

Email _____

City

State

Zip

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.

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 Dr

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.

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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)

4/25/2017

Meeting Date

150

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Bob Gualtieri

Job Title Sheriff

Address 10750 Ulmerton Road

Phone 727-582-6200

Street

Largo

FL

33778

Email _____

City

State

Zip

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)

Topic CONTROLLED SUBSTANCES

Amendment Barcode (if applicable)

Name LISA HURLEY

Job Title _____

Address 311 E. PARK AVE

Phone 850.924.5081

Street LANAHASSE, FL

Email lhurley@southfloridaplayers.com

City LANAHASSE State FL Zip 32301

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

4-25-17

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

150

Meeting Date

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Policy Director

Address 2808 Mahan Dr

Phone 850 878 2196

Street

City

Tallahassee FL

State

32308

Zip

Email jill@myAlpha.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 561687 Gateway Blvd.

Phone _____

Street

Fernandina Bch FL

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 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.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<u>Recommend: Fav/CS</u>
3.	<u>Babin</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 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.



921336

576-03803-17

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.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Recommend: Fav/CS
3.	<u>Babin</u>	<u>Hansen</u>	<u>AP</u>	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

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.

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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 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

1 A bill to be entitled
 2 An act relating to local business taxes; creating s.
 3 205.055, F.S.; providing an exemption from the
 4 business tax, subject to certain conditions, to
 5 specified veterans, spouses of veterans and active
 6 servicemembers, and low-income individuals; repealing
 7 s. 205.171, F.S., relating to exemptions allowed
 8 disabled veterans of any war or their unremarried
 9 spouses; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 205.055, Florida Statutes, is created to
 14 read:

15 205.055 Exemptions; veterans, certain spouses, and low-
 16 income individuals.—On or after July 1, 2016, a veteran or the
 17 surviving spouse of a veteran of the United States Armed Forces;
 18 the spouse of an active military servicemember who has relocated
 19 to the county or municipality pursuant to a permanent change of
 20 station order; an individual who is receiving public assistance,
 21 as that term is defined in s. 409.2554; or an individual whose
 22 household income is less than 130 percent of the federal poverty
 23 level based on the current year's federal poverty guidelines is
 24 entitled to an exemption from the business tax and any fees
 25 imposed under this chapter, if such individual completes and
 26 signs, under penalty of perjury, a Request for Fee Exemption to
 27 be furnished by the local governing authority and provides
 28 written documentation in support of his or her request.

29 Section 2. Section 205.171, Florida Statutes, is repealed.

Page 1 of 2

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

578-02730-17

2017330c1

30 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

April 13, 2017

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

Dear Senator Latvala,

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

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

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

Very respectfully yours,

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

W. Gregory Steube, District 23

REPLY TO:

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

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25/2017

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

Meeting Date

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

330

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

Tallahassee, FL 32301
City State Zip

Email jorge@flapartners.com

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.

The Florida Senate
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://revenue.law.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.

\$60/\$50	License fee: new applicant/renewal ⁷
\$42	Fingerprint processing fee through DACS or an approved tax collector. Distribution: ⁸
	\$15 Florida Department of Law Enforcement
	\$12 Federal Bureau of Investigation
	\$15 Licensing Trust Fund
\$35 ⁹	Fingerprint processing fee through a sheriff's office. ¹⁰ Distribution:
	\$15 Florida Department of Law Enforcement
	\$12 Federal Bureau of Investigation
	Remainder received by sheriff's office. ¹¹
\$5	Sheriff's offices may charge a convenience fee of up to \$5. ¹²
\$22/\$12	Tax collector convenience fee: new applicant/renewal. ¹³

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__

1 A bill to be entitled
 2 An act relating to the sales and use tax on
 3 investigation and detective services; amending ss.
 4 212.05, 790.06, and 790.062, F.S.; providing that
 5 fingerprint services required for a license to carry a
 6 concealed weapon or firearm are not subject to the
 7 tax; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraph (i) of subsection (1) of section
 12 212.05, Florida Statutes, is amended to read:

13 212.05 Sales, storage, use tax.—It is hereby declared to be
 14 the legislative intent that every person is exercising a taxable
 15 privilege who engages in the business of selling tangible
 16 personal property at retail in this state, including the
 17 business of making mail order sales, or who rents or furnishes
 18 any of the things or services taxable under this chapter, or who
 19 stores for use or consumption in this state any item or article
 20 of tangible personal property as defined herein and who leases
 21 or rents such property within the state.

22 (1) For the exercise of such privilege, a tax is levied on
 23 each taxable transaction or incident, which tax is due and
 24 payable as follows:

25 (i)1. At the rate of 6 percent on charges for all:

26 a. Detective, burglar protection, and other protection
 27 services (NAICS National Numbers 561611, 561612, 561613, and
 28 561621). Fingerprint services required under s. 790.06 or s.
 29 790.062 are not subject to the tax. Any law enforcement officer,
 30 as defined in s. 943.10, who is performing approved duties as
 31 determined by his or her local law enforcement agency in his or
 32 her capacity as a law enforcement officer, and who is subject to

Page 1 of 4

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23-00149-17

2017524__

33 the direct and immediate command of his or her law enforcement
 34 agency, and in the law enforcement officer's uniform as
 35 authorized by his or her law enforcement agency, is performing
 36 law enforcement and public safety services and is not performing
 37 detective, burglar protection, or other protective services, if
 38 the law enforcement officer is performing his or her approved
 39 duties in a geographical area in which the law enforcement
 40 officer has arrest jurisdiction. Such law enforcement and public
 41 safety services are not subject to tax irrespective of whether
 42 the duty is characterized as "extra duty," "off-duty," or
 43 "secondary employment," and irrespective of whether the officer
 44 is paid directly or through the officer's agency by an outside
 45 source. The term "law enforcement officer" includes full-time or
 46 part-time law enforcement officers, and any auxiliary law
 47 enforcement officer, when such auxiliary law enforcement officer
 48 is working under the direct supervision of a full-time or part-
 49 time law enforcement officer.

50 b. Nonresidential cleaning, excluding cleaning of the
 51 interiors of transportation equipment, and nonresidential
 52 building pest control services (NAICS National Numbers 561710
 53 and 561720).

54 2. As used in this paragraph, "NAICS" means those
 55 classifications contained in the North American Industry
 56 Classification System, as published in 2007 by the Office of
 57 Management and Budget, Executive Office of the President.

58 3. Charges for detective, burglar protection, and other
 59 protection security services performed in this state but used
 60 outside this state are exempt from taxation. Charges for
 61 detective, burglar protection, and other protection security

Page 2 of 4

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23-00149-17 2017524__

62 services performed outside this state and used in this state are
63 subject to tax.

64 4. If a transaction involves both the sale or use of a
65 service taxable under this paragraph and the sale or use of a
66 service or any other item not taxable under this chapter, the
67 consideration paid must be separately identified and stated with
68 respect to the taxable and exempt portions of the transaction or
69 the entire transaction shall be presumed taxable. The burden
70 shall be on the seller of the service or the purchaser of the
71 service, whichever applicable, to overcome this presumption by
72 providing documentary evidence as to which portion of the
73 transaction is exempt from tax. The department is authorized to
74 adjust the amount of consideration identified as the taxable and
75 exempt portions of the transaction; however, a determination
76 that the taxable and exempt portions are inaccurately stated and
77 that the adjustment is applicable must be supported by
78 substantial competent evidence.

79 5. Each seller of services subject to sales tax pursuant to
80 this paragraph shall maintain a monthly log showing each
81 transaction for which sales tax was not collected because the
82 services meet the requirements of subparagraph 3. for out-of-
83 state use. The log must identify the purchaser's name, location
84 and mailing address, and federal employer identification number,
85 if a business, or the social security number, if an individual,
86 the service sold, the price of the service, the date of sale,
87 the reason for the exemption, and the sales invoice number. The
88 monthly log shall be maintained pursuant to the same
89 requirements and subject to the same penalties imposed for the
90 keeping of similar records pursuant to this chapter.

Page 3 of 4

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23-00149-17 2017524__

91 Section 2. Paragraph (c) of subsection (5) of section
92 790.06, Florida Statutes, is amended to read:

93 790.06 License to carry concealed weapon or firearm.—

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

97 (c) A full set of fingerprints of the applicant
98 administered by a law enforcement agency or the Division of
99 Licensing of the Department of Agriculture and Consumer Services
100 or an approved tax collector pursuant to s. 790.0625 together
101 with any personal identifying information required by federal
102 law to process fingerprints. Charges for fingerprint services
103 under this paragraph are not subject to the sales tax on
104 fingerprint services imposed in s. 212.05(1)(i).

105 Section 3. Subsection (2) of section 790.062, Florida
106 Statutes, is amended to read:

107 790.062 Members and veterans of United States Armed Forces;
108 exceptions from licensure provisions.—

109 (2) The Department of Agriculture and Consumer Services
110 shall accept fingerprints of an applicant under this section
111 administered by any law enforcement agency, military provost, or
112 other military unit charged with law enforcement duties or as
113 otherwise provided for in s. 790.06(5)(c). Charges for
114 fingerprint services under this subsection are not subject to
115 the sales tax on fingerprint services imposed in s.
116 212.05(1)(i).

117 Section 4. This act shall take effect July 1, 2017.

Page 4 of 4

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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,

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

W. Gregory Steube, District 23

REPLY TO:

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

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
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 direct² and indirect³ 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

1 A bill to be entitled
 2 An act relating to physician assistant workforce
 3 surveys; amending ss. 458.347 and 459.022, F.S.;
 4 requiring that a physician assistant license renewal
 5 include the submission of a physician assistant
 6 workforce survey; requiring the Department of Health
 7 to report the data collected from such surveys to the
 8 boards; providing rulemaking authority; providing an
 9 effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Paragraph (b) of subsection (7) of section
 14 458.347, Florida Statutes, is amended to read:
 15 458.347 Physician assistants.—
 16 (7) PHYSICIAN ASSISTANT LICENSURE.—
 17 (b)1. The license must be renewed biennially. Each renewal
 18 must include:
 19 a.1 A renewal fee not to exceed \$500 as set by the boards.
 20 b.2 Acknowledgment of no felony convictions in the
 21 previous 2 years.
 22 c. A completed physician assistant workforce survey, which
 23 shall be administered in the same manner as the physician survey
 24 established in s. 458.3191 and must contain the same information
 25 required in s. 458.3191(1) and (2).
 26 2. Beginning July 1, 2018, and every 2 years thereafter,
 27 the department shall report the data collected from the
 28 physician assistant workforce surveys to the boards.
 29 3. The department shall adopt rules to implement this

Page 1 of 2

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

588-03384-17

2017732c1

30 ~~paragraph.~~
 31 Section 2. Paragraph (b) of subsection (7) of section
 32 459.022, Florida Statutes, is amended to read:
 33 459.022 Physician assistants.—
 34 (7) PHYSICIAN ASSISTANT LICENSURE.—
 35 (b)1. The licensure must be renewed biennially. Each
 36 renewal must include:
 37 a.1 A renewal fee not to exceed \$500 as set by the boards.
 38 b.2 Acknowledgment of no felony convictions in the
 39 previous 2 years.
 40 c. A completed physician assistant workforce survey, which
 41 shall be administered in the same manner as the physician survey
 42 established in s. 459.0081 and must contain the same information
 43 required in s. 459.0081(1) and (2).
 44 2. Beginning July 1, 2018, and every 2 years thereafter,
 45 the department shall report the data collected from the
 46 physician assistant workforce surveys to the boards.
 47 3. The department shall adopt rules to implement this
 48 paragraph.
 49 Section 3. This act shall take effect upon becoming a law.
 50

Page 2 of 2

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,

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

W. Gregory Steube, District 23

REPLY TO:

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

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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)

Topic PA's

Amendment Barcode (if applicable)

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.

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

Name BRIAN PITTS

(if applicable)

Job Title TRUSTEE

Amendment Barcode _____

(if applicable)

Address 1119 NEWTON AVNUE SOUTH

Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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/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.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Favorable</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/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 through 12. 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

11 And the title is amended as follows:
12 Delete line 10
13 and insert:
14 expiration; providing an appropriation; providing an
15 effective date.



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



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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:



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- 57 1. Alignment of elementary and middle grades expectations
58 with high school graduation requirements;
59 2. Research-based instructional practices in reading and
60 mathematics, including those targeting low-performing and high-
61 performing students;
62 3. The rigor of the curriculum and courses and the
63 availability of accelerated courses;
64 4. The availability of student support services;
65 5. The sequence of courses and the prerequisites required
66 for advanced courses;
67 6. The availability of before- and after-school programs,
68 and efforts to address the summer gap between school years,
69 including related funding; and
70 7. The availability of other academic and noncore classes,
71 and electives.
72 (b) Attendance policies and student mobility issues.
73 (c) Teacher quality, including:
74 1. Teacher certification and recertification requirements;
75 2. Teacher preparedness to teach rigorous courses;
76 3. Teacher preparation specific to teaching middle school
77 students;
78 4. Teacher recruitment and vacancy issues;
79 5. Staff development requirements and the availability of
80 effective training;
81 6. Teacher collaboration and planning at the school and
82 district levels; and
83 7. Student performance data collection and dissemination.
84 (d) Middle school administrator leadership and performance.
85 (e) Parental and community involvement.



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- 86 (3) The department shall submit a report on the findings of
87 the comprehensive study and make recommendations to improve
88 middle school student performance to the Governor, the State
89 Board of Education, the President of the Senate, and the Speaker
90 of the House of Representatives by December 2017.
91 (4) This section expires upon submission of the final
92 report.
93 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.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Fav/CS
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 through 12. 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

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.

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

By Senator Stargel

22-00378A-17

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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

Page 1 of 3

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

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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.

Page 2 of 3

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62 (b) Attendance policies and student mobility issues.
63 (c) Teacher quality, including:
64 1. Teacher certification and recertification requirements;
65 2. Teacher preparedness to teach rigorous courses;
66 3. Teacher recruitment and vacancy issues; and
67 4. Staff development requirements and the availability of
68 effective training.
69 (d) Middle school administrator leadership and performance.
70 (e) Parental and community involvement.
71 (3) The department shall submit a report on its findings
72 and make recommendations to improve middle school student
73 performance to the Governor, the State Board of Education, the
74 President of the Senate, and the Speaker of the House of
75 Representatives by December 2017.
76 (4) This section expires upon submission of the final
77 report.
78 Section 2. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

April 17, 2017

The Honorable Jack Latvala
Senate Committee on Appropriations, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

I respectfully request that the following bills be placed on the next committee agenda:

- SB 360, related to *Middle School Study*; the House companion CS/HB 635 is on Special Order Calendar in the House.
- CS/SB 682, related to *Medicaid Managed Care*.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25
Meeting Date

~~112~~ 360
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 570 Beverly Ct

Phone 772 204 1792

Street

Tallahassee FL 32301

City

State

Zip

Email lwvadvocacy@

email.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 ~~Florid~~ Cathy Boehme

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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.

The Florida Senate
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.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Fav/CS
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting
4.	_____	_____	<u>RC</u>	_____

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 cause¹² 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 standards¹⁸ 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 Research²⁹ 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

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 University³¹ 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. 1002.53, 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.



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LEGISLATIVE ACTION

Senate

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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),



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11 and technology tools to improve student reading performance.
12 Contingent upon legislative appropriation, this training must be
13 designed to be consistently delivered statewide in an
14 appropriate format. The office shall collaborate with the Office
15 of Early Learning and the Florida Center for Reading Research to
16 develop the training. For secondary teachers, emphasis shall be
17 on technical text. These strategies must be developed for all
18 content areas in the grade 4-12 ~~K-12~~ curriculum.

19 (7) Work with the Florida Center for Reading Research to
20 identify evidence-based reading instructional and intervention
21 programs that incorporate explicit, systematic, and sequential
22 approaches to teaching phonemic awareness, phonics, vocabulary,
23 fluency, and text comprehension and incorporate decodable or
24 phonetic text instructional ~~to provide information on research-~~
25 ~~based reading programs and effective reading in the content area~~
26 strategies.

27 (8) Work with the Florida Center for Reading Research to
28 develop and provide access to sequenced curriculum programming,
29 instructional practices, and resources that help elementary
30 schools use state-adopted instructional materials and content-
31 rich texts to increase students' background knowledge and
32 literacy skills consistent with the state academic standards.

33 (9) ~~(8)~~ Periodically review the Next Generation Sunshine
34 State Standards for reading at all grade levels.

35 (10) ~~(9)~~ Periodically review teacher certification
36 examinations, including alternative certification exams, to
37 ascertain whether the examinations measure the skills needed for
38 research-based reading instruction ~~and instructional strategies~~
39 ~~for teaching reading in the content areas.~~



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40 Section 2. Subsection (8) is added to section 1002.51,
41 Florida Statutes, to read:

42 1002.51 Definitions.—As used in this part, the term:
43 (8) "Public school prekindergarten provider" includes a
44 charter school that is

45
46 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

47 And the directory clause is amended as follows:

48 Delete lines 35 - 36

49 and insert:

50 Section 1. Present subsections (8) through (11) of section
51 1001.215, Florida Statutes, are redesignated as subsections (9)
52 through (12), respectively, subsections (3) and (7) and present
53 subsections (8) and (9) of that section are amended, and a new
54 subsection (8) is added to that section, to read:

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

57 And the title is amended as follows:

58 Delete line 6

59 and insert:

60 through grade 5 with specified training; requiring the



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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 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



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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



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57 strategies must be developed for all content areas in the grade
58 4-12 ~~K-12~~ curriculum.

59 ~~(5)(4)~~ Provide parents with information and strategies for
60 assisting their children in reading in the content area.

61 ~~(6)(5)~~ Provide technical assistance to school districts in
62 the development and implementation of district plans for use of
63 the research-based reading instruction allocation provided in s.
64 1011.62(9) and annually review and approve such plans.

65 ~~(7)(6)~~ Review, evaluate, and provide technical assistance
66 to school districts' implementation of the K-12 comprehensive
67 reading plan required in s. 1011.62(9).

68 ~~(8)(7)~~ Work with the Florida Center for Reading Research to
69 provide information on research-based reading programs and
70 effective reading in the content area strategies.

71 ~~(9)~~ Work with the Florida Center for Reading Research to
72 develop and provide access to sequenced curriculum programming,
73 instructional practices, and resources that help elementary
74 schools use state-adopted instructional materials and content-
75 rich texts to increase students' background knowledge and
76 literacy skills consistent with the state academic standards.

77 ~~(10)(8)~~ Periodically review the Next Generation Sunshine
78 State Standards for reading at all grade levels.

79 ~~(11)(9)~~ Periodically review teacher certification
80 examinations, including alternative certification exams, to
81 ascertain whether the examinations measure the skills needed for
82 research-based reading instruction ~~and instructional strategies~~
83 ~~for teaching reading in the content areas.~~

84 ~~(12)(10)~~ Work with teacher preparation programs approved
85 pursuant to s. 1004.04 to integrate research-based reading



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86 instructional strategies and reading in the content area
87 instructional strategies into teacher preparation programs.

88 ~~(13)(11)~~ Administer grants and perform other functions as
89 necessary to meet the goal that all students read at grade
90 level.

91 Section 2. Subsection (8) is added to section 1002.51,
92 Florida Statutes, to read:

93 1002.51 Definitions.—As used in this part, the term:

94 ~~(8)~~ "Public school prekindergarten provider" includes a
95 charter school that is authorized to provide a prekindergarten
96 program in its charter consistent with s. 1002.33 and that is
97 eligible to deliver the school-year prekindergarten program
98 under s. 1002.63 or the summer prekindergarten program under s.
99 1002.61.

100 Section 3. Paragraph (d) is added to subsection (4) of
101 section 1002.53, Florida Statutes, to read:

102 1002.53 Voluntary Prekindergarten Education Program;
103 eligibility and enrollment.—

104 (4)

105 (d) Each early learning coalition shall coordinate with the
106 Office of Early Learning to assign student identification
107 numbers to each student who enrolls in the Voluntary
108 Prekindergarten Education Program.

109 Section 4. Paragraphs (a) and (c) of subsection (2) of
110 section 1002.67, Florida Statutes, are amended, paragraphs (d)
111 and (e) are added to subsection (3) of that section, present
112 subsection (4) of that section is redesignated as subsection
113 (5), and a new subsection (4) is added to that section, to read:

114 1002.67 Performance standards; curricula and



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115 accountability.-

116 (2) (a) Each private prekindergarten provider and public
117 school may select or design the curriculum that the provider or
118 school uses to implement the Voluntary Prekindergarten Education
119 Program, except as otherwise required for a provider or school
120 that is placed on probation under paragraph (5) (c) (4) (e).

121 (c) The office shall review and approve curricula for use
122 by private prekindergarten providers and public schools that are
123 placed on probation under paragraph (5) (c) (4) (e). The office
124 shall maintain a list of the curricula approved under this
125 paragraph. Each approved curriculum must meet the requirements
126 of paragraph (b).

127 (3)

128 (d) Each private prekindergarten provider and public school
129 in the Voluntary Prekindergarten Education Program shall provide
130 parents with the results of the pre- and post-assessments,
131 including any resources that might be helpful for their
132 students, within 10 days after administration of the assessment.

133 (e) The results of the pre- and post-assessments must be
134 reported at the aggregate level, distributed to the respective
135 early learning coalitions and school districts, and displayed on
136 the office's website within 30 days after administration of the
137 assessment.

138 (4) The office shall determine the eligibility criteria for
139 enrollment, as authorized by s. 1002.71(4)(c), and for
140 reenrollment in the school year Voluntary Prekindergarten
141 Education Program.

142 Section 5. Subsections (1) and (2) and paragraphs (a), (e),
143 and (f) of subsection (7) of section 1002.69, Florida Statutes,



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144 are amended to read:

145 1002.69 Statewide kindergarten screening; kindergarten
146 readiness rates; state-approved prekindergarten enrollment
147 screening; good cause exemption.-

148 (1) The department shall adopt a single statewide
149 kindergarten screening that assesses the readiness of each
150 student for kindergarten based upon the performance standards
151 adopted by the department under s. 1002.67(1) for the Voluntary
152 Prekindergarten Education Program. The department shall require
153 that each school district administer the statewide kindergarten
154 screening to each kindergarten student in the school district
155 within the first 30 school days of each school year. Nonpublic
156 schools may administer the statewide kindergarten screening to
157 each kindergarten student in a nonpublic school who was enrolled
158 in the Voluntary Prekindergarten Education Program.

159 (2) The statewide kindergarten screening must ~~shall~~ provide
160 objective data concerning each student's readiness for
161 kindergarten and progress in attaining the performance standards
162 adopted by the office under s. 1002.67(1), with an emphasis on
163 early literacy and numeracy skills. The screening must be a
164 direct assessment of these skills.

165 (7) (a) Notwithstanding s. 1002.67(5)(c)3. ~~s.~~
166 ~~1002.67(4)(c)3.~~, the office, upon the request of a private
167 prekindergarten provider or public school that remains on
168 probation for 2 consecutive years or more and subsequently fails
169 to meet the minimum rate adopted under subsection (6) and for
170 good cause shown, may grant to the provider or school an
171 exemption from being determined ineligible to deliver the
172 Voluntary Prekindergarten Education Program and receive state



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173 funds for the program. Such exemption is valid for 1 year and,
174 upon the request of the private prekindergarten provider or
175 public school and for good cause shown, may be renewed.

176 (e) A private prekindergarten provider or public school
177 granted a good cause exemption shall continue to implement its
178 improvement plan and continue the corrective actions required
179 under s. 1002.67(5)(c)1. ~~s. 1002.67(4)(e)1.~~, including the use
180 of a curriculum approved by the office, until the provider or
181 school meets the minimum rate adopted under subsection (6).

182 (f) If a good cause exemption is granted to a private
183 prekindergarten provider who remains on probation for 2
184 consecutive years, the office shall notify the early learning
185 coalition of the good cause exemption and direct that the
186 coalition, notwithstanding s. 1002.67(5)(c)3. ~~s.~~
187 ~~1002.67(4)(e)3.~~, not remove the provider from eligibility to
188 deliver the Voluntary Prekindergarten Education Program or to
189 receive state funds for the program, if the provider meets all
190 other applicable requirements of this part.

191 Section 6. Paragraph (c) is added to subsection (4) of
192 section 1002.71, Florida Statutes, to read:

193 1002.71 Funding; financial and attendance reporting.—

194 (4) Notwithstanding s. 1002.53(3) and subsection (2):

195 (c) Beginning in the 2018-2019 school year, a child who has
196 completed a school-year Voluntary Prekindergarten Education
197 Program but is determined to be at risk of not attaining the
198 performance standards specified by s. 1002.67(1) may reenroll in
199 one of the school-year programs, which is offered by a provider
200 that has met the adopted minimum readiness rate provided under
201 s. 1002.69(6), for the subsequent year at the request of the



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202 child's parent. The prekindergarten program may report the child
203 for funding purposes as a full-time equivalent student in the
204 school-year program for which he or she is enrolled.

205
206 A child may reenroll only once in a prekindergarten program
207 under this section. A child who reenrolls in a prekindergarten
208 program under this subsection may not subsequently withdraw from
209 the program and reenroll, unless the child is granted a good
210 cause exemption under this subsection. The Office of Early
211 Learning shall establish criteria specifying whether a good
212 cause exists for a child to withdraw from a program under
213 paragraph (a), whether a child has substantially completed a
214 program under paragraph (b), and whether an extreme hardship
215 exists which is beyond the child's or parent's control under
216 paragraph (b).

217 Section 7. Paragraph (d) of subsection (9) of section
218 1011.62, Florida Statutes, is amended to read:

219 1011.62 Funds for operation of schools.—If the annual
220 allocation from the Florida Education Finance Program to each
221 district for operation of schools is not determined in the
222 annual appropriations act or the substantive bill implementing
223 the annual appropriations act, it shall be determined as
224 follows:

225 (9) RESEARCH-BASED READING INSTRUCTION ALLOCATION.—

226 (d) Annually, by a date determined by the Department of
227 Education but before May 1, school districts shall submit a K-12
228 comprehensive reading plan for the specific use of the research-
229 based reading instruction allocation in the format prescribed by
230 the department for review and approval by the Just Read,



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231 Florida! Office created pursuant to s. 1001.215. The plan
232 annually submitted by school districts shall be deemed approved
233 unless the department rejects the plan on or before June 1. If a
234 school district and the Just Read, Florida! Office cannot reach
235 agreement on the contents of the plan, the school district may
236 appeal to the State Board of Education for resolution. School
237 districts shall be allowed reasonable flexibility in designing
238 their plans and shall be encouraged to offer reading
239 intervention through innovative methods, including career
240 academies. The plan format shall be developed with input from
241 school district personnel, including teachers and principals,
242 and shall allow courses in core, career, and alternative
243 programs that deliver intensive reading remediation through
244 integrated curricula, provided that the teacher is deemed highly
245 qualified to teach reading or is working toward that status. No
246 later than July 1 annually, the department shall release the
247 school district's allocation of appropriated funds to those
248 districts having approved plans. A school district that spends
249 100 percent of this allocation on its approved plan shall be
250 deemed to have been in compliance with the plan. The department
251 may withhold funds upon a determination that reading instruction
252 allocation funds are not being used to implement the approved
253 plan. The department shall monitor and track the implementation
254 of each district plan, including conducting site visits and
255 collecting specific data on expenditures and reading improvement
256 results. By ~~December~~ February 1 of each year, the department
257 shall report its findings from the previous school year to the
258 Legislature.

259 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.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Fav/CS
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting
4.	_____	_____	<u>RC</u>	_____

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

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 cause¹² 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 standards¹⁸ 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

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 Research²⁹ 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.

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.

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

By Senator Stargel

22-00377B-17

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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)

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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.

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62 Section 3. Paragraphs (a) and (c) of subsection (2) of
 63 section 1002.67, Florida Statutes, are amended, paragraphs (d)
 64 and (e) are added to subsection (3) of that section, present
 65 subsection (4) of that section is redesignated as subsection
 66 (5), and a new subsection (4) is added to that section, to read:
 67 1002.67 Performance standards; curricula and
 68 accountability.—

69 (2) (a) Each private prekindergarten provider and public
 70 school may select or design the curriculum that the provider or
 71 school uses to implement the Voluntary Prekindergarten Education
 72 Program, except as otherwise required for a provider or school
 73 that is placed on probation under paragraph (5) (c) ~~(4) (e)~~.

74 (c) The office shall review and approve curricula for use
 75 by private prekindergarten providers and public schools that are
 76 placed on probation under paragraph (5) (c) ~~(4) (e)~~. The office
 77 shall maintain a list of the curricula approved under this
 78 paragraph. Each approved curriculum must meet the requirements
 79 of paragraph (b).

80 (3)

81 (d) Each private prekindergarten provider and public school
 82 in the Voluntary Prekindergarten Education Program shall provide
 83 parents with the results of the pre- and post-assessments,
 84 including any resources that might be helpful for their
 85 students, within 10 days after administration of the assessment.

86 (e) The results of the pre- and post-assessments must be
 87 reported at the aggregate level, distributed to the respective
 88 early learning coalitions and school districts, and displayed on
 89 the office's website within 30 days after administration of the
 90 assessment.

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91 (4) The office shall determine the eligibility criteria for
 92 enrollment, as authorized by s. 1002.71(4) (c), and for
 93 reenrollment in the school year Voluntary Prekindergarten
 94 Education Program.

95 Section 4. Subsections (1) and (2) and paragraphs (a), (e),
 96 and (f) of subsection (7) of section 1002.69, Florida Statutes,
 97 are amended to read:

98 1002.69 Statewide kindergarten screening; kindergarten
 99 readiness rates; state-approved prekindergarten enrollment
 100 screening; good cause exemption.—

101 (1) The department shall adopt a single statewide
 102 kindergarten screening that assesses the readiness of each
 103 student for kindergarten based upon the performance standards
 104 adopted by the department under s. 1002.67(1) for the Voluntary
 105 Prekindergarten Education Program. The department shall require
 106 that each school district administer the statewide kindergarten
 107 screening to each kindergarten student in the school district
 108 within the first 30 school days of each school year. Nonpublic
 109 schools may administer the statewide kindergarten screening to
 110 each kindergarten student in a nonpublic school who was enrolled
 111 in the Voluntary Prekindergarten Education Program.

112 (2) The statewide kindergarten screening must ~~shall~~ provide
 113 objective data concerning each student's readiness for
 114 kindergarten and progress in attaining the performance standards
 115 adopted by the office under s. 1002.67(1), with an emphasis on
 116 early literacy and numeracy skills. The screening must be a
 117 direct assessment of these skills.

118 (7) (a) Notwithstanding s. 1002.67(5) (c) 3. ~~3.~~
 119 ~~1002.67(4) (e) 3.~~, the office, upon the request of a private

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120 prekindergarten provider or public school that remains on
 121 probation for 2 consecutive years or more and subsequently fails
 122 to meet the minimum rate adopted under subsection (6) and for
 123 good cause shown, may grant to the provider or school an
 124 exemption from being determined ineligible to deliver the
 125 Voluntary Prekindergarten Education Program and receive state
 126 funds for the program. Such exemption is valid for 1 year and,
 127 upon the request of the private prekindergarten provider or
 128 public school and for good cause shown, may be renewed.

129 (e) A private prekindergarten provider or public school
 130 granted a good cause exemption shall continue to implement its
 131 improvement plan and continue the corrective actions required
 132 under s. 1002.67(5)(c)1. ~~s. 1002.67(4)(c)1.~~, including the use
 133 of a curriculum approved by the office, until the provider or
 134 school meets the minimum rate adopted under subsection (6).

135 (f) If a good cause exemption is granted to a private
 136 prekindergarten provider who remains on probation for 2
 137 consecutive years, the office shall notify the early learning
 138 coalition of the good cause exemption and direct that the
 139 coalition, notwithstanding s. 1002.67(5)(c)3. ~~s.~~
 140 ~~1002.67(4)(c)3.~~, not remove the provider from eligibility to
 141 deliver the Voluntary Prekindergarten Education Program or to
 142 receive state funds for the program, if the provider meets all
 143 other applicable requirements of this part.

144 Section 5. Paragraph (c) is added to subsection (4) of
 145 section 1002.71, Florida Statutes, to read:

146 1002.71 Funding; financial and attendance reporting.—

147 (4) Notwithstanding s. 1002.53(3) and subsection (2):

148 (c) A child who is at risk of not attaining the performance

22-00377B-17

2017468__

149 standards specified by s. 1002.67(1) may reenroll in one of the
 150 school-year programs, which is offered by a provider that has
 151 met the adopted minimum readiness rate provided under s.
 152 1002.69(6), for the subsequent year at the request of the
 153 child's parent. The prekindergarten program may report the child
 154 for funding purposes as a full-time equivalent student in the
 155 school-year program for which he or she is enrolled.

156
 157 A child may reenroll only once in a prekindergarten program
 158 under this section. A child who reenrolls in a prekindergarten
 159 program under this subsection may not subsequently withdraw from
 160 the program and reenroll, unless the child is granted a good
 161 cause exemption under this subsection. The Office of Early
 162 Learning shall establish criteria specifying whether a good
 163 cause exists for a child to withdraw from a program under
 164 paragraph (a), whether a child has substantially completed a
 165 program under paragraph (b), and whether an extreme hardship
 166 exists which is beyond the child's or parent's control under
 167 paragraph (b).

168 Section 6. Paragraph (d) of subsection (9) of section
 169 1011.62, Florida Statutes, is amended to read:

170 1011.62 Funds for operation of schools.—If the annual
 171 allocation from the Florida Education Finance Program to each
 172 district for operation of schools is not determined in the
 173 annual appropriations act or the substantive bill implementing
 174 the annual appropriations act, it shall be determined as
 175 follows:

176 (9) RESEARCH-BASED READING INSTRUCTION ALLOCATION.—

177 (d) Annually, by a date determined by the Department of

22-00377B-17

2017468__

178 Education but before May 1, school districts shall submit a K-12
 179 comprehensive reading plan for the specific use of the research-
 180 based reading instruction allocation in the format prescribed by
 181 the department for review and approval by the Just Read,
 182 Florida! Office created pursuant to s. 1001.215. The plan
 183 annually submitted by school districts shall be deemed approved
 184 unless the department rejects the plan on or before June 1. If a
 185 school district and the Just Read, Florida! Office cannot reach
 186 agreement on the contents of the plan, the school district may
 187 appeal to the State Board of Education for resolution. School
 188 districts shall be allowed reasonable flexibility in designing
 189 their plans and shall be encouraged to offer reading
 190 intervention through innovative methods, including career
 191 academies. The plan format shall be developed with input from
 192 school district personnel, including teachers and principals,
 193 and shall allow courses in core, career, and alternative
 194 programs that deliver intensive reading remediation through
 195 integrated curricula, provided that the teacher is deemed highly
 196 qualified to teach reading or is working toward that status. No
 197 later than July 1 annually, the department shall release the
 198 school district's allocation of appropriated funds to those
 199 districts having approved plans. A school district that spends
 200 100 percent of this allocation on its approved plan shall be
 201 deemed to have been in compliance with the plan. The department
 202 may withhold funds upon a determination that reading instruction
 203 allocation funds are not being used to implement the approved
 204 plan. The department shall monitor and track the implementation
 205 of each district plan, including conducting site visits and
 206 collecting specific data on expenditures and reading improvement

Page 7 of 8

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

22-00377B-17

2017468__

207 results. By ~~December~~ February 1 of each year, the department
 208 shall report its findings from the previous school year to the
 209 Legislature.

210 Section 7. For the 2017-2018 fiscal year, the sum of \$10
 211 million from the General Revenue Fund is appropriated to the
 212 Department of Education for the development of training for
 213 Voluntary Prekindergarten through grade 3 teachers, reading
 214 coaches, and school principals on research-based reading
 215 instructional strategies and interventions.

216 Section 8. This act shall take effect July 1, 2017.

Page 8 of 8

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL

22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

April 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,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25

Meeting Date

4108

Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct

Phone 772-204-1792

Street

Tallahassee

City

FL

State

32301

Zip

Email lwvadvocacy@

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.

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

486 468
Bill Number (if applicable)

Topic Voluntary Pre-K

Amendment Barcode (if applicable)

Name Beth Overholt

Job Title _____

Address 4130 Faulkner Lane

Phone 728-0587

Street

Tallahassee

City

State

32311

Zip

Email overholtbeth2@gmail.com

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.

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)

Topic VPK

Amendment Barcode (if applicable)

Name Brittney Hunt

Job Title Policy Director

Address 136 S. Bronough St.

Phone (850) 521-1200

Street

Tallahassee 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

4.25.17

Meeting Date

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

468

Bill Number (if applicable)

Topic Voluntary Pre K

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituency Services

Address 401 S. Magnolia DR

Phone 850-425-2600

Street

City Tallahassee

State

Zip

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.

The Florida Senate
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.	<u>Androff</u>	<u>Graf</u>	<u>ED</u>	Fav/CS
2.	<u>Sneed</u>	<u>Williams</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Sneed</u>	<u>Hansen</u>	<u>AP</u>	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.

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

Page 1 of 3

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581-02685-17

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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

Page 2 of 3

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581-02685-17

2017780c1

59 shall transfer funds from the department to a state university,
60 Florida College System institution, school district unit,
61 charter school, the Florida Virtual School, or water management
62 district, as appropriate, to enable payment to the qualifying
63 adoptive employee through the payroll systems as long as funds
64 are available for such purpose.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

April 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,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
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.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Shettle, McVaney</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

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 programs⁴ 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.

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

Counties²⁷ and municipalities²⁸ 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)~~(e)~~ No one, whether traveling out of state or in state, shall be reimbursed for any meal or lodging included in a



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11 convention or conference registration fee paid by the state.

12 (16) STATEWIDE TRAVEL MANAGEMENT SYSTEM.-

13 (a) For purposes of this subsection, "statewide travel
14 management system" means the system acquired by the Executive
15 Office of the Governor to:

16 1. Standardize and automate agency travel management;

17 2. Allow for travel planning and approval, expense
18 reporting, and reimbursement; and

19 3. Allow a person to query travel information by public
20 employee or officer name and position title, purpose of travel,
21 dates and location of travel, mode of travel, confirmation of
22 agency head or designee authorization if required, and total
23 travel cost.

24 (b) All agencies and the judicial branch must report public
25 officer and employee travel information in the statewide travel
26 management system, including, but not limited to, officer or
27 employee name and position title, purpose of travel, dates and
28 location of travel, mode of travel, confirmation of agency head
29 or designee authorization if required, and total travel cost. At
30 a minimum, such information must be reported in the statewide
31 travel management system on a monthly basis.

32 (c) All executive branch state agencies and the judicial
33 branch must use the statewide travel management system for
34 purposes of travel authorization and reimbursement.

35
36 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

37 And the directory clause is amended as follows:

38 Delete line 355

39 and insert:



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40 Statutes, is amended, and subsection (16) is added to that
41 section, to read:

42

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

44 And the title is amended as follows:

45 Between lines 29 and 30

46 insert:

47 defining the term "statewide travel management
48 system"; requiring agencies and the judicial branch to
49 report certain travel information of public officers
50 and employees in the statewide travel management
51 system; requiring executive branch state agencies and
52 the judicial branch to use the statewide travel
53 management system for certain purposes;



678562

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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11 (b) The first fiscal year for which the auditor conducted
12 the audit under the most recently executed contract pursuant to
13 subsection (7); and

14 (c) The contract period, including renewals, and conditions
15 under which the contract may be terminated or renewed.

16 (10) On each occasion that an entity contracts with an
17 auditor to conduct an audit pursuant to s. 218.39, an affidavit
18 shall be executed by the chair of the entity's governing body in
19 a format prescribed in accordance with rules adopted by the
20 Auditor General, affirming that the auditor was selected in
21 compliance with the requirements of subsections (3)-(6). The
22 affidavit must accompany the entity's first audit report
23 prepared by the auditor under the most recently executed
24 contract pursuant to subsection (7). The affidavit shall include
25 the following information:

26 (a) The date the entity's governing body approved the
27 selection of the auditor;

28 (b) The first fiscal year for which the auditor conducted
29 the audit; and

30 (c) The contract period, including renewals, and conditions
31 under which the contract may be terminated or renewed.

32 (11) If the entity fails to select the auditor in
33 accordance with the requirements of subsections (3)-(6), the
34 entity shall again perform the auditor selection process in
35 accordance with this section to select an auditor to conduct
36 audits for subsequent fiscal years if the original audit was
37 performed under a multiyear contract.

38 (a) If performing the auditor selection process again in
39 accordance with this section would preclude the entity from



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40 timely completing the annual financial audit required by s.
41 218.39, the entity shall again perform the auditor selection
42 process in accordance with this section for the subsequent
43 annual financial audit. A multiyear contract entered into
44 between an entity and an auditor after the effective date of
45 this act may not prohibit or restrict an entity from complying
46 with the section.

47 (b) If the entity fails to perform the auditor selection
48 process again, pursuant to this subsection, the Legislative
49 Auditing Committee shall determine whether the entity should be
50 subject to state action pursuant to s. 11.40(2).

51 (12) If the entity fails to provide the Auditor General
52 with the affidavit required by subsection (10), the Auditor
53 General shall request that the entity provide the affidavit. The
54 affidavit must be provided within 45 days after the date of the
55 request. If the entity does not comply with the Auditor
56 General's request, the Legislative Auditing Committee shall
57 determine whether the entity should be subject to state action
58 pursuant to s. 11.40(2).

59 (13) If the entity provides the Auditor General with the
60 affidavit required in subsection (10) but failed to select the
61 auditor in accordance with the requirements of subsections (3)-
62 (6), the Legislative Auditing Committee shall determine whether
63 the entity should be subject to state action pursuant to s.
64 11.40(2).

65
66 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====
67 And the directory clause is amended as follows:

68 Delete line 589



678562

69 and insert:

70 Statutes, is amended, and subsections (9) through (13) are added
71 to that section, to read:

72

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

74 And the title is amended as follows:

75 Delete line 59

76 and insert:

77 entity; requiring an auditor to include certain
78 information in a management letter; requiring the
79 chair of a governmental entity's governing body to
80 submit an affidavit containing certain information
81 when the entity contracts with an auditor to conduct
82 an audit; providing requirements and procedures for
83 selecting an auditor; requiring the Legislative
84 Auditing Committee to determine whether a governmental
85 entity should be subject to state action under certain
86 circumstances; amending s. 286.0114, F.S.; prohibiting
87 a

By the Committee on Community Affairs; and Senator Stargel

578-02410-17

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1 A bill to be entitled
 2 An act relating to government accountability; amending
 3 s. 11.40, F.S.; specifying that the Governor, the
 4 Commissioner of Education, or the designee of the
 5 Governor or of the commissioner may notify the
 6 Legislative Auditing Committee of an entity's failure
 7 to comply with certain auditing and financial
 8 reporting requirements; amending s. 11.45, F.S.;
 9 defining the terms "abuse," "fraud," and "waste";
 10 revising the definition of the term "local
 11 governmental entity"; excluding water management
 12 districts from certain audit requirements; removing a
 13 cross-reference; authorizing the Auditor General to
 14 conduct audits of tourist development councils and
 15 county tourism promotion agencies; revising reporting
 16 requirements applicable to the Auditor General;
 17 amending s. 28.35, F.S.; revising reporting
 18 requirements applicable to the Florida Clerks of Court
 19 Operations Corporation; amending s. 43.16, F.S.;
 20 revising the responsibilities of the Justice
 21 Administrative Commission, each state attorney, each
 22 public defender, the criminal conflict and civil
 23 regional counsel, the capital collateral regional
 24 counsel, and the Guardian Ad Litem Program, to include
 25 the establishment and maintenance of certain internal
 26 controls; amending s. 112.061, F.S.; revising certain
 27 lodging rates for the purpose of reimbursement to
 28 specified employees; authorizing an employee to expend
 29 his or her funds for certain lodging expenses;

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30 amending ss. 129.03, 129.06, and 166.241, F.S.;
 31 requiring counties and municipalities to maintain
 32 certain budget documents on the entities' websites for
 33 a specified period; amending s. 215.86, F.S.; revising
 34 the purposes for which management systems and internal
 35 controls must be established and maintained by each
 36 state agency and the judicial branch; amending s.
 37 215.97, F.S.; revising certain audit threshold
 38 requirements; amending s. 215.985, F.S.; revising the
 39 requirements for a monthly financial statement
 40 provided by a water management district; amending s.
 41 218.32, F.S.; revising the requirements for the annual
 42 financial audit report of a local governmental entity;
 43 authorizing the Department of Financial Services to
 44 request additional information from a local
 45 governmental entity; requiring a local governmental
 46 entity to respond to such requests within a specified
 47 timeframe; requiring the department to notify the
 48 Legislative Auditing Committee of noncompliance;
 49 amending s. 218.33, F.S.; requiring local governmental
 50 entities to establish and maintain internal controls
 51 to achieve specified purposes; amending s. 218.39,
 52 F.S.; requiring an audited entity to respond to audit
 53 recommendations under specified circumstances;
 54 amending s. 218.391, F.S.; revising the membership of
 55 the audit committee of certain governing bodies;
 56 prohibiting an audit committee member from being an
 57 employee, a chief executive officer, or a chief
 58 financial officer of the respective governmental

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59 entity; amending s. 286.0114, F.S.; prohibiting a
 60 board or commission from requiring an advance copy of
 61 testimony or comments from a member of the public as a
 62 precondition to being given the opportunity to be
 63 heard at a public meeting; amending s. 373.536, F.S.;
 64 deleting obsolete language; requiring water management
 65 districts to maintain certain budget documents on the
 66 districts' websites for a specified period; amending
 67 s. 1001.42, F.S.; authorizing additional internal
 68 audits as directed by the district school board;
 69 amending s. 1002.33, F.S.; revising the
 70 responsibilities of the governing board of a charter
 71 school to include the establishment and maintenance of
 72 internal controls; removing obsolete provisions;
 73 amending s. 1002.37, F.S.; requiring completion of an
 74 annual financial audit of the Florida Virtual School;
 75 specifying audit requirements; requiring an audit
 76 report to be submitted to the board of trustees of the
 77 Florida Virtual School and the Auditor General;
 78 deleting obsolete provisions; amending s. 1010.01,
 79 F.S.; requiring each school district, Florida College
 80 System institution, and state university to establish
 81 and maintain certain internal controls; amending s.
 82 1010.30, F.S.; requiring a district school board,
 83 Florida College System institution board of trustees,
 84 or university board of trustees to respond to audit
 85 recommendations under certain circumstances; amending
 86 ss. 218.503 and 1002.455, F.S.; conforming provisions
 87 and cross-references to changes made by the act;

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88 declaring that the act fulfills an important state
 89 interest; providing an effective date.
 90
 91 Be It Enacted by the Legislature of the State of Florida:
 92
 93 Section 1. Subsection (2) of section 11.40, Florida
 94 Statutes, is amended to read:
 95 11.40 Legislative Auditing Committee.—
 96 (2) Following notification by the Auditor General, the
 97 Department of Financial Services, ~~or~~ the Division of Bond
 98 Finance of the State Board of Administration, the Governor or
 99 his or her designee, or the Commissioner of Education or his or
 100 her designee of the failure of a local governmental entity,
 101 district school board, charter school, or charter technical
 102 career center to comply with the applicable provisions within s.
 103 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the
 104 Legislative Auditing Committee may schedule a hearing to
 105 determine if the entity should be subject to further state
 106 action. If the committee determines that the entity should be
 107 subject to further state action, the committee shall:
 108 (a) In the case of a local governmental entity or district
 109 school board, direct the Department of Revenue and the
 110 Department of Financial Services to withhold any funds not
 111 pledged for bond debt service satisfaction which are payable to
 112 such entity until the entity complies with the law. The
 113 committee shall specify the date that such action must ~~shall~~
 114 begin, and the directive must be received by the Department of
 115 Revenue and the Department of Financial Services 30 days before
 116 the date of the distribution mandated by law. The Department of

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117 Revenue and the Department of Financial Services may implement
118 ~~the provisions of this paragraph.~~

119 (b) In the case of a special district created by:

120 1. A special act, notify the President of the Senate, the
121 Speaker of the House of Representatives, the standing committees
122 of the Senate and the House of Representatives charged with
123 special district oversight as determined by the presiding
124 officers of each respective chamber, the legislators who
125 represent a portion of the geographical jurisdiction of the
126 special district, and the Department of Economic Opportunity
127 that the special district has failed to comply with the law.
128 Upon receipt of notification, the Department of Economic
129 Opportunity shall proceed pursuant to s. 189.062 or s. 189.067.
130 If the special district remains in noncompliance after the
131 process set forth in s. 189.0651, or if a public hearing is not
132 held, the Legislative Auditing Committee may request the
133 department to proceed pursuant to s. 189.067(3).

134 2. A local ordinance, notify the chair or equivalent of the
135 local general-purpose government pursuant to s. 189.0652 and the
136 Department of Economic Opportunity that the special district has
137 failed to comply with the law. Upon receipt of notification, the
138 department shall proceed pursuant to s. 189.062 or s. 189.067.
139 If the special district remains in noncompliance after the
140 process set forth in s. 189.0652, or if a public hearing is not
141 held, the Legislative Auditing Committee may request the
142 department to proceed pursuant to s. 189.067(3).

143 3. Any manner other than a special act or local ordinance,
144 notify the Department of Economic Opportunity that the special
145 district has failed to comply with the law. Upon receipt of

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146 notification, the department shall proceed pursuant to s.
147 189.062 or s. 189.067(3).

148 (c) In the case of a charter school or charter technical
149 career center, notify the appropriate sponsoring entity, which
150 may terminate the charter pursuant to ss. 1002.33 and 1002.34.

151 Section 2. Subsection (1), paragraph (j) of subsection (2),
152 paragraph (u) of subsection (3), and paragraph (i) of subsection
153 (7) of section 11.45, Florida Statutes, are amended, and
154 paragraph (x) is added to subsection (3) of that section, to
155 read:

156 11.45 Definitions; duties; authorities; reports; rules.—

157 (1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

158 (a) "Abuse" means behavior that is deficient or improper
159 when compared with behavior that a prudent person would consider
160 a reasonable and necessary operational practice given the facts
161 and circumstances. The term includes the misuse of authority or
162 position for personal gain.

163 (b)(a) "Audit" means a financial audit, operational audit,
164 or performance audit.

165 (c)(b) "County agency" means a board of county
166 commissioners or other legislative and governing body of a
167 county, however styled, including that of a consolidated or
168 metropolitan government, a clerk of the circuit court, a
169 separate or ex officio clerk of the county court, a sheriff, a
170 property appraiser, a tax collector, a supervisor of elections,
171 or any other officer in whom any portion of the fiscal duties of
172 a body or officer expressly stated in this paragraph ~~the above~~
173 ~~are under law~~ separately placed by law.

174 (d)(e) "Financial audit" means an examination of financial

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175 statements in order to express an opinion on the fairness with
 176 which they are presented in conformity with generally accepted
 177 accounting principles and an examination to determine whether
 178 operations are properly conducted in accordance with legal and
 179 regulatory requirements. Financial audits must be conducted in
 180 accordance with auditing standards generally accepted in the
 181 United States and government auditing standards as adopted by
 182 the Board of Accountancy. When applicable, the scope of
 183 financial audits must ~~shall~~ encompass the additional activities
 184 necessary to establish compliance with the Single Audit Act
 185 Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other
 186 applicable federal law.

187 (e) "Fraud" means obtaining something of value through
 188 willful misrepresentation, including, but not limited to, the
 189 intentional misstatements or intentional omissions of amounts or
 190 disclosures in financial statements to deceive users of
 191 financial statements, theft of an entity's assets, bribery, or
 192 the use of one's position for personal enrichment through the
 193 deliberate misuse or misapplication of an organization's
 194 resources.

195 (f)-(d) "Governmental entity" means a state agency, a county
 196 agency, or any other entity, however styled, that independently
 197 exercises any type of state or local governmental function.

198 (g)-(e) "Local governmental entity" means a county agency,
 199 municipality, tourist development council, county tourism
 200 promotion agency, or special district as defined in s. 189.012.
 201 The term, ~~but~~ does not include any housing authority established
 202 under chapter 421.

203 (h)-(f) "Management letter" means a statement of the

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204 auditor's comments and recommendations.

205 (i)-(g) "Operational audit" means an audit whose purpose is
 206 to evaluate management's performance in establishing and
 207 maintaining internal controls, including controls designed to
 208 prevent and detect fraud, waste, and abuse, and in administering
 209 assigned responsibilities in accordance with applicable laws,
 210 administrative rules, contracts, grant agreements, and other
 211 guidelines. Operational audits must be conducted in accordance
 212 with government auditing standards. Such audits examine internal
 213 controls that are designed and placed in operation to promote
 214 and encourage the achievement of management's control objectives
 215 in the categories of compliance, economic and efficient
 216 operations, reliability of financial records and reports, and
 217 safeguarding of assets, and identify weaknesses in those
 218 internal controls.

219 (j)-(h) "Performance audit" means an examination of a
 220 program, activity, or function of a governmental entity,
 221 conducted in accordance with applicable government auditing
 222 standards or auditing and evaluation standards of other
 223 appropriate authoritative bodies. The term includes an
 224 examination of issues related to:

- 225 1. Economy, efficiency, or effectiveness of the program.
- 226 2. Structure or design of the program to accomplish its
- 227 goals and objectives.
- 228 3. Adequacy of the program to meet the needs identified by
- 229 the Legislature or governing body.
- 230 4. Alternative methods of providing program services or
- 231 products.
- 232 5. Goals, objectives, and performance measures used by the

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233 agency to monitor and report program accomplishments.

234 6. The accuracy or adequacy of public documents, reports,
235 or requests prepared under the program by state agencies.

236 7. Compliance of the program with appropriate policies,
237 rules, or laws.

238 8. Any other issues related to governmental entities as
239 directed by the Legislative Auditing Committee.

240 ~~(k)-(i)~~ "Political subdivision" means a separate agency or
241 unit of local government created or established by law and
242 includes, but is not limited to, the following and the officers
243 thereof: authority, board, branch, bureau, city, commission,
244 consolidated government, county, department, district,
245 institution, metropolitan government, municipality, office,
246 officer, public corporation, town, or village.

247 ~~(l)-(j)~~ "State agency" means a separate agency or unit of
248 state government created or established by law and includes, but
249 is not limited to, the following and the officers thereof:
250 authority, board, branch, bureau, commission, department,
251 division, institution, office, officer, or public corporation,
252 as the case may be, except any such agency or unit within the
253 legislative branch of state government other than the Florida
254 Public Service Commission.

255 (m) "Waste" means the act of using or expending resources
256 unreasonably, carelessly, extravagantly, or for no useful
257 purpose.

258 (2) DUTIES.—The Auditor General shall:

259 (j) Conduct audits of local governmental entities when
260 determined to be necessary by the Auditor General, when directed
261 by the Legislative Auditing Committee, or when otherwise

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262 required by law. No later than 18 months after the release of
263 the audit report, the Auditor General shall perform such
264 appropriate followup procedures as he or she deems necessary to
265 determine the audited entity's progress in addressing the
266 findings and recommendations contained within the Auditor
267 General's previous report. The Auditor General shall notify each
268 member of the audited entity's governing body and the
269 Legislative Auditing Committee of the results of his or her
270 determination. For purposes of this paragraph, local
271 governmental entities do not include water management districts.
272

273 The Auditor General shall perform his or her duties
274 independently but under the general policies established by the
275 Legislative Auditing Committee. This subsection does not limit
276 the Auditor General's discretionary authority to conduct other
277 audits or engagements of governmental entities as authorized in
278 subsection (3).

279 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor
280 General may, pursuant to his or her own authority, or at the
281 direction of the Legislative Auditing Committee, conduct audits
282 or other engagements as determined appropriate by the Auditor
283 General of:

284 (u) The Florida Virtual School ~~pursuant to s. 1002.37.~~

285 (x) Tourist development councils and county tourism
286 promotion agencies.

287 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

288 (i) The Auditor General shall annually transmit by July 15,
289 to the President of the Senate, the Speaker of the House of
290 Representatives, and the Department of Financial Services, a

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291 list of all school districts, charter schools, charter technical
 292 career centers, Florida College System institutions, state
 293 universities, and local governmental entities ~~water management~~
 294 ~~districts~~ that have failed to comply with the transparency
 295 requirements as identified in the audit reports reviewed
 296 pursuant to paragraph (b) and those conducted pursuant to
 297 subsection (2).

298 Section 3. Paragraph (d) of subsection (2) of section
 299 28.35, Florida Statutes, is amended to read:

300 28.35 Florida Clerks of Court Operations Corporation.—

301 (2) The duties of the corporation shall include the
 302 following:

303 (d) Developing and certifying a uniform system of workload
 304 measures and applicable workload standards for court-related
 305 functions as developed by the corporation and clerk workload
 306 performance in meeting the workload performance standards. These
 307 workload measures and workload performance standards shall be
 308 designed to facilitate an objective determination of the
 309 performance of each clerk in accordance with minimum standards
 310 for fiscal management, operational efficiency, and effective
 311 collection of fines, fees, service charges, and court costs. The
 312 corporation shall develop the workload measures and workload
 313 performance standards in consultation with the Legislature. When
 314 the corporation finds a clerk has not met the workload
 315 performance standards, the corporation shall identify the nature
 316 of each deficiency and any corrective action recommended and
 317 taken by the affected clerk of the court. For quarterly periods
 318 ending on the last day of March, June, September, and December
 319 of each year, the corporation shall notify the Legislature of

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320 any clerk not meeting workload performance standards and provide
 321 a copy of any corrective action plans. Such notifications shall
 322 be submitted no later than 45 days after the end of the
 323 preceding quarterly period. As used in this subsection, the
 324 term:

325 1. "Workload measures" means the measurement of the
 326 activities and frequency of the work required for the clerk to
 327 adequately perform the court-related duties of the office as
 328 defined by the membership of the Florida Clerks of Court
 329 Operations Corporation.

330 2. "Workload performance standards" means the standards
 331 developed to measure the timeliness and effectiveness of the
 332 activities that are accomplished by the clerk in the performance
 333 of the court-related duties of the office as defined by the
 334 membership of the Florida Clerks of Court Operations
 335 Corporation.

336 Section 4. Present subsections (6) and (7) of section
 337 43.16, Florida Statutes, are renumbered as subsections (7) and
 338 (8), respectively, and a new subsection (6) is added to that
 339 section to read:

340 43.16 Justice Administrative Commission; membership, powers
 341 and duties.—

342 (6) The commission, each state attorney, each public
 343 defender, the criminal conflict and civil regional counsel, the
 344 capital collateral regional counsel, and the Guardian Ad Litem
 345 Program shall establish and maintain internal controls designed
 346 to:

347 (a) Prevent and detect fraud, waste, and abuse as defined
 348 in s. 11.45(1).

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349 (b) Promote and encourage compliance with applicable laws,
 350 rules, contracts, grant agreements, and best practices.
 351 (c) Support economical and efficient operations.
 352 (d) Ensure reliability of financial records and reports.
 353 (e) Safeguard assets.
 354 Section 5. Subsection (6) of section 112.061, Florida
 355 Statutes, is amended to read:
 356 112.061 Per diem and travel expenses of public officers,
 357 employees, and authorized persons.—
 358 (6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For
 359 purposes of reimbursement rates and methods of calculation, per
 360 diem and subsistence allowances are provided as follows:
 361 (a) All travelers shall be allowed for subsistence when
 362 traveling to a convention or conference or when traveling within
 363 or outside the state in order to conduct bona fide state
 364 business, which convention, conference, or business serves a
 365 direct and lawful public purpose with relation to the public
 366 agency served by the person attending such meeting or conducting
 367 such business, either of the following for each day of such
 368 travel at the option of the traveler:
 369 1. Eighty dollars per diem; or
 370 2. If actual expenses exceed \$80, the amounts permitted in
 371 paragraph (b) for subsistence, plus actual expenses for lodging
 372 at a single-occupancy rate, except as provided in paragraph (c),
 373 to be substantiated by paid bills therefor.
 374
 375 When lodging or meals are provided at a state institution, the
 376 traveler shall be reimbursed only for the actual expenses of
 377 such lodging or meals, not to exceed the maximum provided for in

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378 this subsection.
 379 (b) All travelers shall be allowed the following amounts
 380 for subsistence while on Class C travel on official business as
 381 provided in paragraph (5) (b):
 382 1. Breakfast \$6
 383 2. Lunch \$11
 384 3. Dinner \$19
 385 (c) Actual expenses for lodging associated with the
 386 attendance of an employee of a state agency or the judicial
 387 branch at a meeting, conference, or convention organized or
 388 sponsored in whole or in part by a state agency or the judicial
 389 branch may not exceed \$150 per day. However, an employee may
 390 expend his or her own funds for any lodging expenses that exceed
 391 \$150 per day.
 392 (d) ~~(e)~~ No one, whether traveling out of state or in state,
 393 shall be reimbursed for any meal or lodging included in a
 394 convention or conference registration fee paid by the state.
 395 Section 6. Paragraph (c) of subsection (3) of section
 396 129.03, Florida Statutes, is amended to read:
 397 129.03 Preparation and adoption of budget.—
 398 (3) The county budget officer, after tentatively
 399 ascertaining the proposed fiscal policies of the board for the
 400 next fiscal year, shall prepare and present to the board a
 401 tentative budget for the next fiscal year for each of the funds
 402 provided in this chapter, including all estimated receipts,
 403 taxes to be levied, and balances expected to be brought forward
 404 and all estimated expenditures, reserves, and balances to be
 405 carried over at the end of the year.
 406 (c) The board shall hold public hearings to adopt tentative

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 407 and final budgets pursuant to s. 200.065. The hearings shall be
 408 primarily for the purpose of hearing requests and complaints
 409 from the public regarding the budgets and the proposed tax
 410 levies and for explaining the budget and any proposed or adopted
 411 amendments. The tentative budget must be posted on the county's
 412 official website at least 2 days before the public hearing to
 413 consider such budget and must remain on the website for at least
 414 45 days. The final budget must be posted on the website within
 415 30 days after adoption and must remain on the website for at
 416 least 2 years. The tentative budgets, adopted tentative budgets,
 417 and final budgets shall be filed in the office of the county
 418 auditor as a public record. Sufficient reference in words and
 419 figures to identify the particular transactions must ~~shall~~ be
 420 made in the minutes of the board to record its actions with
 421 reference to the budgets.

422 Section 7. Paragraph (f) of subsection (2) of section
 423 129.06, Florida Statutes, is amended to read:

424 129.06 Execution and amendment of budget.—

425 (2) The board at any time within a fiscal year may amend a
 426 budget for that year, and may within the first 60 days of a
 427 fiscal year amend the budget for the prior fiscal year, as
 428 follows:

429 (f) Unless otherwise prohibited by law, if an amendment to
 430 a budget is required for a purpose not specifically authorized
 431 in paragraphs (a)-(e), the amendment may be authorized by
 432 resolution or ordinance of the board of county commissioners
 433 adopted following a public hearing.

434 1. The public hearing must be advertised at least 2 days,
 435 but not more than 5 days, before the date of the hearing. The

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 436 advertisement must appear in a newspaper of paid general
 437 circulation and must identify the name of the taxing authority,
 438 the date, place, and time of the hearing, and the purpose of the
 439 hearing. The advertisement must also identify each budgetary
 440 fund to be amended, the source of the funds, the use of the
 441 funds, and the total amount of each fund's appropriations.

442 2. If the board amends the budget pursuant to this
 443 paragraph, the adopted amendment must be posted on the county's
 444 official website within 5 days after adoption and must remain on
 445 the website for at least 2 years.

446 Section 8. Subsections (3) and (5) of section 166.241,
 447 Florida Statutes, are amended to read:

448 166.241 Fiscal years, budgets, and budget amendments.—

449 (3) The tentative budget must be posted on the
 450 municipality's official website at least 2 days before the
 451 budget hearing, held pursuant to s. 200.065 or other law, to
 452 consider such budget and must remain on the website for at least
 453 45 days. The final adopted budget must be posted on the
 454 municipality's official website within 30 days after adoption
 455 and must remain on the website for at least 2 years. If the
 456 municipality does not operate an official website, the
 457 municipality must, within a reasonable period of time as
 458 established by the county or counties in which the municipality
 459 is located, transmit the tentative budget and final budget to
 460 the manager or administrator of such county or counties who
 461 shall post the budgets on the county's website.

462 (5) If the governing body of a municipality amends the
 463 budget pursuant to paragraph (4)(c), the adopted amendment must
 464 be posted on the official website of the municipality within 5

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465 days after adoption and must remain on the website for at least
 466 2 years. If the municipality does not operate an official
 467 website, the municipality must, within a reasonable period of
 468 time as established by the county or counties in which the
 469 municipality is located, transmit the adopted amendment to the
 470 manager or administrator of such county or counties who shall
 471 post the adopted amendment on the county's website.

472 Section 9. Section 215.86, Florida Statutes, is amended to
 473 read:

474 215.86 Management systems and controls.—Each state agency
 475 and the judicial branch as defined in s. 216.011 shall establish
 476 and maintain management systems and internal controls designed
 477 to:

478 (1) Prevent and detect fraud, waste, and abuse as defined
 479 in s. 11.45(1). ~~that~~

480 (2) Promote and encourage compliance with applicable laws,
 481 rules, contracts, and grant agreements.

482 (3) Support economical and ~~economic~~, efficient, and
 483 effective operations.

484 (4) Ensure reliability of financial records and reports.

485 (5) Safeguard and safeguarding of assets. Accounting
 486 systems and procedures shall be designed to fulfill the
 487 requirements of generally accepted accounting principles.

488 Section 10. Paragraph (a) of subsection (2) of section
 489 215.97, Florida Statutes, is amended to read:

490 215.97 Florida Single Audit Act.—

491 (2) As used in this section, the term:

492 (a) "Audit threshold" means the threshold amount used to
 493 determine when a state single audit or project-specific audit of

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494 a nonstate entity shall be conducted in accordance with this
 495 section. Each nonstate entity that expends a total amount of
 496 state financial assistance equal to or in excess of \$750,000 in
 497 any fiscal year of such nonstate entity shall be required to
 498 have a state single audit~~,~~ or a project-specific audit~~,~~ for such
 499 fiscal year in accordance with the requirements of this section.
 500 ~~Every 2 years the Auditor General,~~ After consulting with the
 501 Executive Office of the Governor, the Department of Financial
 502 Services, and all state awarding agencies, the Auditor General
 503 shall periodically review the threshold amount for requiring
 504 audits under this section and may recommend any appropriate
 505 statutory change to revise the threshold amount in the annual
 506 report submitted pursuant to s. 11.45(7)(h) to the Legislature
 507 ~~adjust such threshold amount consistent with the purposes of~~
 508 ~~this section.~~

509 Section 11. Subsection (11) of section 215.985, Florida
 510 Statutes, is amended to read:

511 215.985 Transparency in government spending.—

512 (11) Each water management district shall provide a monthly
 513 financial statement in the form and manner prescribed by the
 514 Department of Financial Services to the district's ~~its~~ governing
 515 board and make such monthly financial statement available for
 516 public access on its website.

517 Section 12. Paragraph (d) of subsection (1) and subsection
 518 (2) of section 218.32, Florida Statutes, are amended to read:

519 218.32 Annual financial reports; local governmental
 520 entities.—

521 (1)

522 (d) Each local governmental entity that is required to

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523 provide for an audit under s. 218.39(1) must submit a copy of
 524 the audit report and annual financial report to the department
 525 within 45 days after the completion of the audit report but no
 526 later than 9 months after the end of the fiscal year. In
 527 conducting an audit of a local governmental entity pursuant to
 528 s. 218.39, an independent certified public accountant shall
 529 determine whether the entity's annual financial report is in
 530 agreement with the audited financial statements. If the audited
 531 financial statements are not in agreement with the annual
 532 financial report, the accountant shall specify and explain the
 533 significant differences that exist between the audited financial
 534 statements and the annual financial report.

535 (2) The department shall annually by December 1 file a
 536 verified report with the Governor, the Legislature, the Auditor
 537 General, and the Special District Accountability Program of the
 538 Department of Economic Opportunity showing the revenues, both
 539 locally derived and derived from intergovernmental transfers,
 540 and the expenditures of each local governmental entity, regional
 541 planning council, local government finance commission, and
 542 municipal power corporation that is required to submit an annual
 543 financial report. In preparing the verified report, the
 544 department may request additional information from the local
 545 governmental entity. The information requested must be provided
 546 to the department within 45 days after the request. If the local
 547 governmental entity does not comply with the request, the
 548 department shall notify the Legislative Auditing Committee,
 549 which may take action pursuant to s. 11.40(2). The report must
 550 include, but is not limited to:

551 (a) The total revenues and expenditures of each local

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552 governmental entity that is a component unit included in the
 553 annual financial report of the reporting entity.

554 (b) The amount of outstanding long-term debt by each local
 555 governmental entity. For purposes of this paragraph, the term
 556 "long-term debt" means any agreement or series of agreements to
 557 pay money, which, at inception, contemplate terms of payment
 558 exceeding 1 year in duration.

559 Section 13. Present subsection (3) of section 218.33,
 560 Florida Statutes, is renumbered as subsection (4), and a new
 561 subsection (3) is added to that section to read:

562 218.33 Local governmental entities; establishment of
 563 uniform fiscal years and accounting practices and procedures.—

564 (3) Each local governmental entity shall establish and
 565 maintain internal controls designed to:

566 (a) Prevent and detect fraud, waste, and abuse as defined
 567 in s. 11.45(1).

568 (b) Promote and encourage compliance with applicable laws,
 569 rules, contracts, grant agreements, and best practices.

570 (c) Support economical and efficient operations.

571 (d) Ensure reliability of financial records and reports.

572 (e) Safeguard assets.

573 Section 14. Present subsections (8) through (12) of section
 574 218.39, Florida Statutes, are renumbered as subsections (9)
 575 through (13), respectively, and a new subsection (8) is added to
 576 that section to read:

577 218.39 Annual financial audit reports.—

578 (8) If the audit report includes a recommendation that was
 579 included in the preceding financial audit report but remains
 580 unaddressed, the governing body of the audited entity, within 60

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581 days after the delivery of the audit report to the governing
 582 body, shall indicate during a regularly scheduled public meeting
 583 whether it intends to take corrective action, the intended
 584 corrective action, and the timeframe for the corrective action.
 585 If the governing body indicates that it does not intend to take
 586 corrective action, it must explain its decision at the public
 587 meeting.

588 Section 15. Subsection (2) of section 218.391, Florida
 589 Statutes, is amended to read:

590 218.391 Auditor selection procedures.—

591 (2) The governing body of a ~~charter~~ county, municipality,
 592 special district, district school board, charter school, or
 593 charter technical career center shall establish an audit
 594 committee.

595 (a) The audit committee for a county ~~Each noncharter county~~
 596 ~~shall establish an audit committee that,~~ at a minimum, shall
 597 consist of each of the county officers elected pursuant to the
 598 county charter or s. 1(d), Art. VIII of the State Constitution,
 599 or their respective designees a designee, and one member of the
 600 board of county commissioners or its designee.

601 (b) The audit committee for a municipality, special
 602 district, district school board, charter school, or charter
 603 technical career center shall consist of at least three members.
 604 One member of the audit committee must be a member of the
 605 governing body of an entity specified in this paragraph, who
 606 shall also serve as the chair of the committee.

607 (c) An employee, the chief executive officer, or the chief
 608 financial officer of the county, municipality, special district,
 609 district school board, charter school, or charter technical

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610 career center may not serve as a member of an audit committee
 611 established under this subsection.

612 (d) The primary purpose of the audit committee is to assist
 613 the governing body in selecting an auditor to conduct the annual
 614 financial audit required in s. 218.39; however, the audit
 615 committee may serve other audit oversight purposes as determined
 616 by the entity's governing body. The public ~~may shall~~ not be
 617 excluded from the proceedings under this section.

618 Section 16. Subsection (2) of section 286.0114, Florida
 619 Statutes, is amended to read:

620 286.0114 Public meetings; reasonable opportunity to be
 621 heard; attorney fees.—

622 (2) Members of the public shall be given a reasonable
 623 opportunity to be heard on a proposition before a board or
 624 commission. The opportunity to be heard need not occur at the
 625 same meeting at which the board or commission takes official
 626 action on the proposition if the opportunity occurs at a meeting
 627 that is during the decisionmaking process and is within
 628 reasonable proximity in time before the meeting at which the
 629 board or commission takes the official action. A board or
 630 commission may not require a member of the public to provide an
 631 advance written copy of his or her testimony or comments as a
 632 condition of being given the opportunity to be heard at a
 633 meeting. This section does not prohibit a board or commission
 634 from maintaining orderly conduct or proper decorum in a public
 635 meeting. The opportunity to be heard is subject to rules or
 636 policies adopted by the board or commission, as provided in
 637 subsection (4).

638 Section 17. Paragraph (e) of subsection (4), paragraph (d)

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639 of subsection (5), and paragraph (d) of subsection (6) of
 640 section 373.536, Florida Statutes, are amended to read:
 641 373.536 District budget and hearing thereon.—
 642 (4) BUDGET CONTROLS; FINANCIAL INFORMATION.—
 643 (e) ~~By September 1, 2012,~~ Each district shall provide a
 644 monthly financial statement in the form and manner prescribed by
 645 the Department of Financial Services to the district's governing
 646 board and make such monthly financial statement available for
 647 public access on its website.
 648 (5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND
 649 APPROVAL.—
 650 (d) Each district shall, by August 1 of each year, submit
 651 for review a tentative budget and a description of any
 652 significant changes from the preliminary budget submitted to the
 653 Legislature pursuant to s. 373.535 to the Governor, the
 654 President of the Senate, the Speaker of the House of
 655 Representatives, the chairs of all legislative committees and
 656 subcommittees having substantive or fiscal jurisdiction over
 657 water management districts, as determined by the President of
 658 the Senate or the Speaker of the House of Representatives, as
 659 applicable, the secretary of the department, and the governing
 660 body of each county in which the district has jurisdiction or
 661 derives any funds for the operations of the district. The
 662 tentative budget must be posted on the district's official
 663 website at least 2 days before budget hearings held pursuant to
 664 s. 200.065 or other law and must remain on the website for at
 665 least 45 days.
 666 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;
 667 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

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668 (d) The final adopted budget must be posted on the water
 669 management district's official website within 30 days after
 670 adoption and must remain on the website for at least 2 years.
 671 Section 18. Paragraph (1) of subsection (12) of section
 672 1001.42, Florida Statutes, is amended to read:
 673 1001.42 Powers and duties of district school board.—The
 674 district school board, acting as a board, shall exercise all
 675 powers and perform all duties listed below:
 676 (12) FINANCE.—Take steps to assure students adequate
 677 educational facilities through the financial procedure
 678 authorized in chapters 1010 and 1011 and as prescribed below:
 679 (1) Internal auditor.—May employ an internal auditor to
 680 perform ongoing financial verification of the financial records
 681 of the school district and such other audits and reviews as the
 682 district school board directs for the purpose of determining:
 683 1. The adequacy of internal controls designed to prevent
 684 and detect fraud, waste, and abuse as defined in s. 11.45(1).
 685 2. Compliance with applicable laws, rules, contracts, grant
 686 agreements, district school board-approved policies, and best
 687 practices.
 688 3. The efficiency of operations.
 689 4. The reliability of financial records and reports.
 690 5. The safeguarding of assets.
 691
 692 The internal auditor shall report directly to the district
 693 school board or its designee.
 694 Section 19. Paragraph (j) of subsection (9) of section
 695 1002.33, Florida Statutes, is amended to read:
 696 1002.33 Charter schools.—

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697 (9) CHARTER SCHOOL REQUIREMENTS.-

698 (j) The governing body of the charter school shall be
699 responsible for:

700 1. Establishing and maintaining internal controls designed
701 to:

702 a. Prevent and detect fraud, waste, and abuse as defined in
703 s. 11.45(1).

704 b. Promote and encourage compliance with applicable laws,
705 rules, contracts, grant agreements, and best practices.

706 c. Support economical and efficient operations.

707 d. Ensure reliability of financial records and reports.

708 e. Safeguard assets.

709 ~~2.1-~~ Ensuring that the charter school has retained the
710 services of a certified public accountant or auditor for the
711 annual financial audit, pursuant to s. 1002.345(2), who shall
712 submit the report to the governing body.

713 ~~3.2-~~ Reviewing and approving the audit report, including
714 audit findings and recommendations for the financial recovery
715 plan.

716 ~~4.a.3.a-~~ Performing the duties in s. 1002.345, including
717 monitoring a corrective action plan.

718 b. Monitoring a financial recovery plan in order to ensure
719 compliance.

720 ~~5.4-~~ Participating in governance training approved by the
721 department which must include government in the sunshine,
722 conflicts of interest, ethics, and financial responsibility.

723 Section 20. Present subsections (6) through (10) of section
724 1002.37, Florida Statutes, are renumbered as subsections (7)
725 through (11), respectively, a new subsection (6) is added to

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726 that section, and present subsections (6) and (11) of that
727 section are amended, to read:

728 1002.37 The Florida Virtual School.-

729 (6) The Florida Virtual School shall have an annual
730 financial audit of its accounts and records conducted by an
731 independent auditor who is a certified public accountant
732 licensed under chapter 473. The independent auditor shall
733 conduct the audit in accordance with rules adopted by the
734 Auditor General pursuant to s. 11.45 and, upon completion of the
735 audit, shall prepare an audit report in accordance with such
736 rules. The audit report must include a written statement by the
737 board of trustees describing corrective action to be taken in
738 response to each of the recommendations of the independent
739 auditor included in the audit report. The independent auditor
740 shall submit the audit report to the board of trustees and the
741 Auditor General no later than 9 months after the end of the
742 preceding fiscal year.

743 ~~(7)(6)-~~ The board of trustees shall annually submit to the
744 Governor, the Legislature, the Commissioner of Education, and
745 the State Board of Education the audit report prepared pursuant
746 to subsection (6) and a complete and detailed report setting
747 forth:

748 (a) The operations and accomplishments of the Florida
749 Virtual School within the state and those occurring outside the
750 state as Florida Virtual School Global.

751 (b) The marketing and operational plan for the Florida
752 Virtual School and Florida Virtual School Global, including
753 recommendations regarding methods for improving the delivery of
754 education through the Internet and other distance learning

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755 technology.

756 (c) The assets and liabilities of the Florida Virtual
757 School and Florida Virtual School Global at the end of the
758 fiscal year.

759 ~~(d) A copy of an annual financial audit of the accounts and
760 records of the Florida Virtual School and Florida Virtual School
761 Global, conducted by an independent certified public accountant
762 and performed in accordance with rules adopted by the Auditor
763 General.~~

764 (d)(e) Recommendations regarding the unit cost of providing
765 services to students through the Florida Virtual School and
766 Florida Virtual School Global. In order to most effectively
767 develop public policy regarding any future funding of the
768 Florida Virtual School, it is imperative that the cost of the
769 program is accurately identified. The identified cost of the
770 program must be based on reliable data.

771 (e)(f) Recommendations regarding an accountability
772 mechanism to assess the effectiveness of the services provided
773 by the Florida Virtual School and Florida Virtual School Global.

774 ~~(11) The Auditor General shall conduct an operational audit
775 of the Florida Virtual School, including Florida Virtual School
776 Global. The scope of the audit shall include, but not be limited
777 to, the administration of responsibilities relating to
778 personnel; procurement and contracting; revenue production;
779 school funds, including internal funds; student enrollment
780 records; franchise agreements; information technology
781 utilization, assets, and security; performance measures and
782 standards; and accountability. The final report on the audit
783 shall be submitted to the President of the Senate and the~~

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784 ~~Speaker of the House of Representatives no later than January
785 31, 2014.~~

786 Section 21. Subsection (5) is added to section 1010.01,
787 Florida Statutes, to read:

788 1010.01 Uniform records and accounts.—

789 (5) Each school district, Florida College System
790 institution, and state university shall establish and maintain
791 internal controls designed to:

792 (a) Prevent and detect fraud, waste, and abuse as defined
793 in s. 11.45(1).

794 (b) Promote and encourage compliance with applicable laws,
795 rules, contracts, grant agreements, and best practices.

796 (c) Support economical and efficient operations.

797 (d) Ensure reliability of financial records and reports.

798 (e) Safeguard assets.

799 Section 22. Subsection (2) of section 1010.30, Florida
800 Statutes, is amended to read:

801 1010.30 Audits required.—

802 (2) If a school district, Florida College System
803 institution, or university audit report includes a
804 recommendation that was included in the preceding financial
805 audit report but remains unaddressed an audit contains a
806 significant finding, the district school board, the Florida
807 College System institution board of trustees, or the university
808 board of trustees, within 60 days after the delivery of the
809 audit report to the school district, Florida College System
810 institution, or university, shall indicate ~~conduct an audit
811 overview~~ during a regularly scheduled public meeting whether it
812 intends to take corrective action, the intended corrective

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813 action, and the timeframe for the corrective action. If the
 814 district school board, Florida College System institution board
 815 of trustees, or university board of trustees indicates that it
 816 does not intend to take corrective action, it shall explain its
 817 decision at the public meeting.

818 Section 23. Subsection (3) of section 218.503, Florida
 819 Statutes, is amended to read:

820 218.503 Determination of financial emergency.—

821 (3) Upon notification that one or more of the conditions in
 822 subsection (1) have occurred or will occur if action is not
 823 taken to assist the local governmental entity or district school
 824 board, the Governor or his or her designee shall contact the
 825 local governmental entity or the Commissioner of Education or
 826 his or her designee shall contact the district school board, as
 827 appropriate, to determine what actions have been taken by the
 828 local governmental entity or the district school board to
 829 resolve or prevent the condition. The information requested must
 830 be provided within 45 days after the date of the request. If the
 831 local governmental entity or the district school board does not
 832 comply with the request, the Governor or his or her designee or
 833 the Commissioner of Education or his or her designee shall
 834 notify ~~the members of~~ the Legislative Auditing Committee, which
 835 ~~he~~ may take action pursuant to s. 11.40(2) ~~11.40~~. The Governor
 836 or the Commissioner of Education, as appropriate, shall
 837 determine whether the local governmental entity or the district
 838 school board needs state assistance to resolve or prevent the
 839 condition. If state assistance is needed, the local governmental
 840 entity or district school board is considered to be in a state
 841 of financial emergency. The Governor or the Commissioner of

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842 Education, as appropriate, has the authority to implement
 843 measures as set forth in ss. 218.50-218.504 to assist the local
 844 governmental entity or district school board in resolving the
 845 financial emergency. Such measures may include, but are not
 846 limited to:

847 (a) Requiring approval of the local governmental entity's
 848 budget by the Governor or approval of the district school
 849 board's budget by the Commissioner of Education.

850 (b) Authorizing a state loan to a local governmental entity
 851 and providing for repayment of same.

852 (c) Prohibiting a local governmental entity or district
 853 school board from issuing bonds, notes, certificates of
 854 indebtedness, or any other form of debt until such time as it is
 855 no longer subject to this section.

856 (d) Making such inspections and reviews of records,
 857 information, reports, and assets of the local governmental
 858 entity or district school board as are needed. The appropriate
 859 local officials shall cooperate in such inspections and reviews.

860 (e) Consulting with officials and auditors of the local
 861 governmental entity or the district school board and the
 862 appropriate state officials regarding any steps necessary to
 863 bring the books of account, accounting systems, financial
 864 procedures, and reports into compliance with state requirements.

865 (f) Providing technical assistance to the local
 866 governmental entity or the district school board.

867 (g)1. Establishing a financial emergency board to oversee
 868 the activities of the local governmental entity or the district
 869 school board. If a financial emergency board is established for
 870 a local governmental entity, the Governor shall appoint board

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871 members and select a chair. If a financial emergency board is
 872 established for a district school board, the State Board of
 873 Education shall appoint board members and select a chair. The
 874 financial emergency board shall adopt such rules as are
 875 necessary for conducting board business. The board may:

876 a. Make such reviews of records, reports, and assets of the
 877 local governmental entity or the district school board as are
 878 needed.

879 b. Consult with officials and auditors of the local
 880 governmental entity or the district school board and the
 881 appropriate state officials regarding any steps necessary to
 882 bring the books of account, accounting systems, financial
 883 procedures, and reports of the local governmental entity or the
 884 district school board into compliance with state requirements.

885 c. Review the operations, management, efficiency,
 886 productivity, and financing of functions and operations of the
 887 local governmental entity or the district school board.

888 d. Consult with other governmental entities for the
 889 consolidation of all administrative direction and support
 890 services, including, but not limited to, services for asset
 891 sales, economic and community development, building inspections,
 892 parks and recreation, facilities management, engineering and
 893 construction, insurance coverage, risk management, planning and
 894 zoning, information systems, fleet management, and purchasing.

895 2. The recommendations and reports made by the financial
 896 emergency board must be submitted to the Governor for local
 897 governmental entities or to the Commissioner of Education and
 898 the State Board of Education for district school boards for
 899 appropriate action.

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900 (h) Requiring and approving a plan, to be prepared by
 901 officials of the local governmental entity or the district
 902 school board in consultation with the appropriate state
 903 officials, prescribing actions that will cause the local
 904 governmental entity or district school board to no longer be
 905 subject to this section. The plan must include, but need not be
 906 limited to:

907 1. Provision for payment in full of obligations outlined in
 908 subsection (1), designated as priority items, which are
 909 currently due or will come due.

910 2. Establishment of priority budgeting or zero-based
 911 budgeting in order to eliminate items that are not affordable.

912 3. The prohibition of a level of operations which can be
 913 sustained only with nonrecurring revenues.

914 4. Provisions implementing the consolidation, sourcing, or
 915 discontinuance of all administrative direction and support
 916 services, including, but not limited to, services for asset
 917 sales, economic and community development, building inspections,
 918 parks and recreation, facilities management, engineering and
 919 construction, insurance coverage, risk management, planning and
 920 zoning, information systems, fleet management, and purchasing.

921 Section 24. Subsection (2) of section 1002.455, Florida
 922 Statutes, is amended to read:

923 1002.455 Student eligibility for K-12 virtual instruction.-
 924 (2) A student is eligible to participate in virtual
 925 instruction if:

926 (a) The student spent the prior school year in attendance
 927 at a public school in the state and was enrolled and reported by
 928 the school district for funding during October and February for

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929 purposes of the Florida Education Finance Program surveys;

930 (b) The student is a dependent child of a member of the
931 United States Armed Forces who was transferred within the last
932 12 months to this state from another state or from a foreign
933 country pursuant to a permanent change of station order;

934 (c) The student was enrolled during the prior school year
935 in a virtual instruction program under s. 1002.45 or a full-time
936 Florida Virtual School program under s. 1002.37(9)(a)
937 ~~1002.37(8)(a)~~;

938 (d) The student has a sibling who is currently enrolled in
939 a virtual instruction program and the sibling was enrolled in
940 that program at the end of the prior school year;

941 (e) The student is eligible to enter kindergarten or first
942 grade; or

943 (f) The student is eligible to enter grades 2 through 5 and
944 is enrolled full-time in a school district virtual instruction
945 program, virtual charter school, or the Florida Virtual School.

946 Section 25. The Legislature finds that a proper and
947 legitimate state purpose is served when internal controls are
948 established to prevent and detect fraud, waste, and abuse and to
949 safeguard and account for government funds and property.
950 Therefore, the Legislature determines and declares that this act
951 fulfills an important state interest.

952 Section 26. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL

22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

March 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,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL

22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

March 28, 2017

The Honorable Jack Latvala
Senate Committee on Appropriations, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

I respectfully request that the following bills be placed on the next committee agenda:

- CS/SB 370, related to *Florida Wing of the Civil Air Patrol*; the House companion CS/HB 635 is in its final committee.
- SB 514, related to *Fees of the Department of Business and Professional Regulation (if received)*; the House companion HB 741 is on the agenda of its final committee.
- CS/SB 880, related to *Government Accountability*; the House companion CS/CS/CS/HB 479 is on the House Special Order Calendar.
- CS/SB 986, related to *Department of Financial Services (if received)*; the House companion CS/HB 925 is in its final committee.
- SB 1156, related to *Corporate Income Tax*.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

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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

880

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

City

State

Zip

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 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.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	<u>Recommend: Favorable</u>
3.	<u>Reagan</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>

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

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/peacriver/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.sjrwm.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 Strategy²² 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

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 County³¹ 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

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.prcwater.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.prcwater.org/boccsite/WorkArea/DownloadAsset.aspx?id=11306> (last visited Mar. 22, 2017).

³³ Polk County Regional Water Cooperative. *Homepage* <http://www.prcwater.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 Hillsborough³⁶ 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;

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 Area⁴⁷ 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

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.swfwmd.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

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1 A bill to be entitled
2 An act relating to water protection and
3 sustainability; creating the "Heartland Headwaters
4 Protection and Sustainability Act"; creating s.
5 373.462, F.S.; providing legislative findings and a
6 declaration of important state interest; creating s.
7 373.463, F.S.; requiring the Polk Regional Water
8 Cooperative, in coordination with its member county
9 and municipal governments, to prepare a comprehensive
10 annual report on certain water resource projects
11 within its members' jurisdictions; specifying
12 requirements for such report; specifying to whom such
13 report must be submitted; requiring the Polk Regional
14 Water Cooperative, in coordination with appropriate
15 water management districts, to submit an annual status
16 report on projects receiving priority state funding;
17 requiring that such report be included in specified
18 annual reports; amending s. 212.055, F.S.; authorizing
19 local government infrastructure surtax proceeds to be
20 allocated to regional water supply authorities under
21 certain conditions; providing an effective date.

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

24
25 Section 1. This act may be cited as the "Heartland
26 Headwaters Protection and Sustainability Act."

27 Section 2. Section 373.462, Florida Statutes, is created to
28 read:

29 373.462 Legislative findings and intent.-

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30 (1) The Legislature recognizes that, in 1979, specified
31 portions of Lake and Polk Counties were designated by law as an
32 area of critical state concern, known as the Green Swamp Area,
33 in acknowledgment of their regional and statewide importance in
34 maintaining the quality and quantity of Florida's water supply
35 and water resources for the public and the environment.

36 (2) The Legislature also recognizes that the entire Green
37 Swamp Area, which encompasses approximately 560,000 acres, is
38 located in a regionally significant high recharge area of the
39 Floridan Aquifer system, and that it helps protect coastal
40 communities from saltwater intrusion.

41 (3) The Legislature finds that the Green Swamp Area or Polk
42 County make up the headwaters or portions of the headwaters of
43 six major river systems in the state, the Alafia, Hillsborough,
44 Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers. In
45 addition, due to the area's unique topography and geology, it
46 receives no water inputs other than rainfall. The area is
47 essential in maintaining the potentiometric head of the Floridan
48 Aquifer system, which directly influences the aquifer's
49 productivity for water supply.

50 (4) The Legislature also finds that the Green Swamp Area
51 and surrounding areas are economically, environmentally, and
52 socially defined by some of the most important and vulnerable
53 water resources in the state.

54 (5) The Legislature recognizes that the Central Florida
55 Water Initiative Guiding Document, dated January 30, 2015, and
56 the Southern Water Use Caution Area Recovery Strategy, dated
57 March 2006, found that the surface water and groundwater
58 resources in the heartland counties of Hardee, Highlands, and

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59 Polk are integral to the health, public safety, and economic
60 future of those regions.

61 (6) The Legislature declares that there is an important
62 state interest in partnering with regional water supply
63 authorities, local governments, and water management districts
64 in accordance with s. 373.705, to protect the water resources of
65 the headwaters of the Alafia, Hillsborough, Kissimmee,
66 Ocklawaha, Peace, and Withlacoochee Rivers and the areas that
67 surround them. The Legislature further declares that priority
68 state funding consideration must be given to funding solutions
69 that manage the water resources of these headwaters and the
70 local Floridan Aquifer system in the most efficient, cost-
71 effective, and environmentally beneficial way.

72 Section 3. Section 373.463, Florida Statutes, is created to
73 read:

74 373.463 Heartland headwaters annual reports.—

75 (1) The Polk Regional Water Cooperative, in coordination
76 with all of its member county and municipal governments, shall
77 prepare a comprehensive annual report on water resource projects
78 identified for priority state funding within its members'
79 jurisdictions. The report must include, at a minimum:

80 (a) A list of projects identified by the cooperative for
81 priority state funding for each of the following categories. A
82 project may be listed in more than one category:

- 83 1. Drinking water supply.
- 84 2. Wastewater, including reuse.
- 85 3. Stormwater and flood control.
- 86 4. Environmental restoration.
- 87 5. Conservation.

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88 (b) A priority ranking for each listed project that will be
89 ready to proceed in the upcoming fiscal year, identified by the
90 categories specified in paragraph (a).

91 (c) The estimated cost of each listed project.

92 (d) The estimated completion date of each listed project.

93 (e) The source and amount of financial assistance to be
94 provided by the cooperative, the member county or municipal
95 governments, or other entities for each listed project.

96 (2) By December 1, 2017, and each year thereafter, the
97 cooperative shall submit the comprehensive annual report to the
98 Governor, the President of the Senate, the Speaker of the House
99 of Representatives, the department, and the appropriate water
100 management districts.

101 (3) The cooperative shall also annually coordinate with the
102 appropriate water management district to submit a status report
103 on projects receiving priority state funding for inclusion in
104 the consolidated water management district annual report
105 required by s. 373.036(7).

106 Section 4. Present paragraph (h) of subsection (2) of
107 section 212.055, Florida Statutes, is redesignated as paragraph
108 (i) of that subsection and amended, and a new paragraph (h) is
109 added to that subsection, to read:

110 212.055 Discretionary sales surtaxes; legislative intent;
111 authorization and use of proceeds.—It is the legislative intent
112 that any authorization for imposition of a discretionary sales
113 surtax shall be published in the Florida Statutes as a
114 subsection of this section, irrespective of the duration of the
115 levy. Each enactment shall specify the types of counties
116 authorized to levy; the rate or rates which may be imposed; the

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117 maximum length of time the surtax may be imposed, if any; the
118 procedure which must be followed to secure voter approval, if
119 required; the purpose for which the proceeds may be expended;
120 and such other requirements as the Legislature may provide.
121 Taxable transactions and administrative procedures shall be as
122 provided in s. 212.054.

123 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

124 (h) A county or municipality that receives proceeds under
125 the provisions of this subsection may transfer such proceeds to
126 an entity created under s. 373.713 whose purpose is to develop,
127 recover, store, and supply water. Such transferred proceeds must
128 be used for the purposes specified in paragraph (d).

129 (i) ~~(h)~~ Notwithstanding any other provision of this section,
130 a county may ~~shall~~ not levy local option sales surtaxes
131 authorized in this subsection and subsections (3), (4), and (5)
132 in excess of a combined rate of 1 percent.

133 Section 5. This act shall take effect July 1, 2017.

134



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

April 17, 2017

The Honorable Jack Latvala
Senate Committee on Appropriations, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

I respectfully request that 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,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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

Phone (561) 718-2345

Street

Tallahassee

FL

32308

Email Frank.bernardino@florida.com

City

State

Zip

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.

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~~ 928
Bill Number (if applicable)

Topic Health Protection & Sustainability

Amendment Barcode (if applicable)

Name Tom Singleton

Job Title President

Address 285 Taylor Road

Phone (850) 556-9733

Monticello FL 32344
City State Zip

Email tom@tsingletonconsulting.com

Speaking: For Against Information

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

Representing Wash State, FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Recommend: Fav/CS
3.	<u>Gross</u>	<u>Hansen</u>	<u>AP</u>	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

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.



106194

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



106194

11 (2) "Malt beverage" means any ~~mean all~~ brewed beverage
12 ~~beverages~~ containing malt.

13

14 The terms "beer" and "malt beverage" have the same meaning when
15 either term is used in the Beverage Law. The terms do not
16 include alcoholic beverages that require a certificate of label
17 approval by the Federal Government as wine or as distilled
18 spirits.

19

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

21 And the title is amended as follows:

22 Delete line 67

23 and insert:

24 penalty under certain circumstances; amending s.
25 563.01, F.S.; revising the definitions of the terms
26 "beer" and "malt beverage" for purposes of the
27 Beverage Law; amending s.



437538

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-percent 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

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57 employers of employees performing domestic services to
58 annually report wages and pay certain contributions
59 under the Reemployment Assistance Program Law;
60 defining the term "holiday"; amending s. 443.141,
61 F.S.; specifying a due date of certain employer
62 contributions if such date falls on a weekend or
63 holiday; defining the term "holiday"; conforming
64 cross-references; amending s. 443.163, F.S.; deleting
65 a form name; authorizing reemployment assistance tax
66 collection service providers to waive a certain
67 penalty under certain circumstances; amending s.
68 733.2121, F.S.; providing that a personal
69 representative may serve a notice to creditors on the
70 department only under certain circumstances; deleting
71 a provision providing construction; reenacting s.
72 733.701, F.S., relating to notifying creditors, to
73 incorporate the amendment made to s. 733.2121, F.S.,
74 in a reference thereto; amending s. 206.998, F.S.;
75 conforming cross-references; repealing s. 1 of ch.
76 2007-339, s. 13 of ch. 2008-173, s. 6 of ch. 2009-131,
77 ss. 8(2) and 24 of ch. 2010-138, s. 6 of ch. 2010-149,
78 s. 7 of ch. 2010-166, s. 35 of ch. 2011-76, s. 4 of
79 ch. 2011-93, s. 3 of ch. 2011-229, s. 25 of ch. 2012-
80 32, and s. 3 of ch. 2013-46, Laws of Florida, relating
81 to obsolete emergency rulemaking authority of the
82 department; providing an effective date.

84 Be It Enacted by the Legislature of the State of Florida:
85



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86 Section 1. Section 198.30, Florida Statutes, is amended to
87 read:
88 198.30 Circuit judge to report names of decedents, etc.—
89 Each circuit judge of this state shall, on or before the 10th
90 day of every month, notify the Agency for Health Care
91 Administration ~~department~~ of the names of all decedents; the
92 names and addresses of the respective personal representatives,
93 administrators, or curators appointed; the amount of the bonds,
94 if any, required by the court; and the probable value of the
95 estates, in all estates of decedents whose wills have been
96 probated or propounded for probate before the circuit judge or
97 upon which letters testamentary or upon whose estates letters of
98 administration or curatorship have been sought or granted,
99 during the preceding month; and such report shall contain any
100 other information that ~~which~~ the circuit judge may have
101 concerning the estates of such decedents. ~~In addition, a copy of~~
102 ~~this report shall be provided to the Agency for Health Care~~
103 ~~Administration.~~ A circuit judge shall also furnish forthwith
104 such further information, from the records and files of the
105 circuit court in regard to such estates, as the department may
106 from time to time require.
107 Section 2. Effective January 1, 2018, subsections (2), (3),
108 and (4), paragraph (a) of subsection (7), and paragraph (b) of
109 subsection (8) of section 206.02, Florida Statutes, are amended
110 to read:
111 206.02 Application for license; temporary license; terminal
112 suppliers, importers, exporters, blenders, biodiesel
113 manufacturers, and wholesalers.—
114 (2) To procure a terminal supplier license, a person shall



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115 file with the department an application under oath, and in such
116 form as the department may prescribe, setting forth:

117 (a) The name under which the person will transact business
118 within the state and that person's registration number under s.
119 4101 of the Internal Revenue Code.

120 (b) The location, with street number address, of his or her
121 principal office or place of business and the location where
122 records will be made available for inspection.

123 (c) The name and complete residence address of the owner or
124 the names and addresses of the partners, if such person is a
125 partnership, or of the principal officers, if such person is a
126 corporation or association; and, if such person is a corporation
127 organized under the laws of another state, territory, or
128 country, he or she shall also indicate the state, territory, or
129 country where the corporation is organized and the date the
130 corporation was registered with the Department of State as a
131 foreign corporation authorized to transact business in the
132 state.

133
134 ~~The application shall require a \$30 license tax. Each license~~
135 ~~must shall~~ be renewed annually through application, ~~including an~~
136 ~~annual \$30 license tax.~~

137 (3) To procure an importer, exporter, or blender of motor
138 fuels license, a person shall file with the department an
139 application under oath, and in such form as the department may
140 prescribe, setting forth:

141 (a) The name under which the person will transact business
142 within the state.

143 (b) The location, with street number address, of his or her



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144 principal office or place of business and the location where
145 records will be made available for inspection.

146 (c) The name and complete residence address of the owner or
147 the names and addresses of the partners, if such person is a
148 partnership, or of the principal officers, if such person is a
149 corporation or association; and, if such person is a corporation
150 organized under the laws of another state, territory, or
151 country, he or she shall also indicate the state, territory, or
152 country where the corporation is organized and the date the
153 corporation was registered with the Department of State as a
154 foreign corporation authorized to transact business in the
155 state.

156
157 ~~The application shall require a \$30 license tax. Each license~~
158 ~~must shall~~ be renewed annually through application, ~~including an~~
159 ~~annual \$30 license tax.~~

160 (4) To procure a wholesaler of motor fuel license, a person
161 shall file with the department an application under oath and in
162 such form as the department may prescribe, setting forth:

163 (a) The name under which the person will transact business
164 within the state.

165 (b) The location, with street number address, of his or her
166 principal office or place of business within this state and the
167 location where records will be made available for inspection.

168 (c) The name and complete residence address of the owner or
169 the names and addresses of the partners, if such person is a
170 partnership, or of the principal officers, if such person is a
171 corporation or association; and, if such person is a corporation
172 organized under the laws of another state, territory, or



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173 country, he or she shall also indicate the state, territory, or
174 country where the corporation is organized and the date the
175 corporation was registered with the Department of State as a
176 foreign corporation authorized to transact business in the
177 state.

178 ~~The application shall require a \$30 license tax. Each license~~
179 ~~must shall be renewed annually through application, including an~~
180 ~~annual \$30 license fee.~~

182 (7) (a) If all applicants for a license hold a current
183 license in good standing of the same type and kind, the
184 department shall issue a temporary license upon the filing of a
185 completed application, ~~payment of all fees,~~ and the posting of
186 adequate bond. A temporary license shall automatically expire 90
187 days after its effective date or, prior to the expiration of 90
188 days or the period of any extension, upon issuance of a
189 permanent license or of a notice of intent to deny a permanent
190 license. A temporary license may be extended once for a period
191 not to exceed 60 days, upon written request of the applicant,
192 subject to the restrictions imposed by this subsection.

193 (8)

194 (b) Notwithstanding the provisions of this chapter
195 requiring a license ~~tax~~ and a bond or criminal background check,
196 the department may issue a temporary license as an importer or
197 exporter to a person who holds a valid Florida wholesaler
198 license or to a person who is an unlicensed dealer. A license
199 may be issued under this subsection only to a business that has
200 a physical location in this state and holds a valid Florida
201 sales and use tax certificate of registration or that holds a



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202 valid fuel license issued by another state.

203 Section 3. Effective January 1, 2018, subsection (3) and
204 paragraph (b) of subsection (5) of section 206.021, Florida
205 Statutes, are amended to read:

206 206.021 Application for license; carriers.-

207 (3) ~~The application shall require a \$30 license tax. Each~~
208 ~~license must shall be renewed annually through application,~~
209 ~~including an annual \$30 license tax.~~

210 (5)

211 (b) Notwithstanding the provisions of this chapter
212 requiring a license ~~tax~~ and a bond or criminal background check,
213 the department may issue a temporary license as a carrier to a
214 person who holds a valid Florida wholesaler, importer, exporter,
215 or blender license or to a person who is an unlicensed dealer. A
216 license may be issued under this subsection only to a business
217 that has a physical location in this state and holds a valid
218 Florida sales and use tax certificate of registration or that
219 holds a valid fuel license issued by another state.

220 Section 4. Effective January 1, 2018, subsection (2) of
221 section 206.022, Florida Statutes, is amended to read:

222 206.022 Application for license; terminal operators.-

223 (2) ~~The application shall require a \$30 license tax. Each~~
224 ~~license shall be renewed annually through application, including~~
225 ~~an annual \$30 license tax.~~

226 Section 5. Effective January 1, 2018, subsection (1) of
227 section 206.03, Florida Statutes, is amended to read:

228 206.03 Licensing of terminal suppliers, importers,
229 exporters, and wholesalers.-

230 (1) The application in proper form having been accepted for



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231 filing, ~~the filing fee paid,~~ and the bond accepted and approved,
232 except as provided in s. 206.05(1), the department shall issue
233 to such person a license to transact business in the state,
234 subject to cancellation of such license as provided by law.

235 Section 6. Effective January 1, 2018, section 206.045,
236 Florida Statutes, is amended to read:

237 206.045 Licensing period; ~~cost for license issuance.~~
238 Beginning January 1, 1998, the licensing period under this
239 chapter shall be a calendar year, or any part thereof. ~~The cost~~
240 ~~of any such license issued pursuant to this chapter shall be~~
241 ~~\$30.~~

242 Section 7. Effective January 1, 2018, ss. 206.405 and
243 206.406, Florida Statutes, are repealed.

244 Section 8. Effective January 1, 2018, paragraph (c) of
245 subsection (5) of section 206.41, Florida Statutes, is amended
246 to read:

247 206.41 State taxes imposed on motor fuel.-

248 (5)

249 (c)1. No refund may be authorized unless a sworn
250 application therefor containing such information as the
251 department may determine is filed with the department not later
252 than the last day of the month following the quarter for which
253 the refund is claimed. However, when a justified excuse for late
254 filing is presented to the department and the last preceding
255 claim was filed on time, the deadline for filing may be extended
256 an additional month. No refund will be authorized unless the
257 amount due is for \$5 or more for any refund period and unless
258 application is made upon forms prescribed by the department.

259 2. Claims made for refunds provided pursuant to subsection



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260 (4) shall be paid quarterly. ~~The department shall deduct a fee~~
261 ~~of \$2 for each claim, which fee shall be deposited in the~~
262 ~~General Revenue Fund.~~

263 Section 9. Effective January 1, 2018, subsection (3) of
264 section 206.9943, Florida Statutes, is amended to read:

265 206.9943 Pollutant tax license.-

266 (3) The license must be renewed annually, ~~and the fee for~~
267 ~~original application or renewal is \$30.~~

268 Section 10. Effective January 1, 2018, subsection (9) of
269 section 206.9952, Florida Statutes, is amended to read:

270 206.9952 Application for license as a natural gas fuel
271 retailer.-

272 (9) ~~The license application requires a license fee of \$5.~~

273 Each license shall be renewed annually by submitting a
274 reapplication ~~and the license fee to the department. The license~~
275 ~~fee shall be paid to the department for deposit into the General~~
276 ~~Revenue Fund.~~

277 Section 11. Effective January 1, 2018, subsection (3) of
278 section 206.9865, Florida Statutes, is amended to read:

279 206.9865 Commercial air carriers; registration; reporting.-

280 (3) The application must be renewed annually ~~and the fee~~
281 ~~for application or renewal is \$30.~~

282 Section 12. Effective January 1, 2018, subsections (3) and
283 (4) and present subsection (7) of section 212.0515, Florida
284 Statutes, are amended to read:

285 212.0515 Sales from vending machines; sales to vending
286 machine operators; special provisions; registration; penalties.-

287 (3) ~~(a)~~ An operator of a vending machine may not operate or
288 cause to be operated in this state any vending machine until the



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289 operator has registered with the department ~~and~~, has obtained a
290 separate registration certificate for each county in which such
291 machines are located, ~~and has affixed a notice to each vending~~
292 ~~machine selling food or beverages. The notice must be~~
293 ~~conspicuously displayed on the vending machine when it is being~~
294 ~~operated in this state and shall contain the following language~~
295 ~~in conspicuous type: NOTICE TO CUSTOMER: FLORIDA LAW REQUIRES~~
296 ~~THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING~~
297 ~~MACHINES. REPORT ANY MACHINE WITHOUT A NOTICE TO (TOLL-FREE~~
298 ~~NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD. DO NOT USE THIS~~
299 ~~NUMBER TO REPORT PROBLEMS WITH THE VENDING MACHINE SUCH AS LOST~~
300 ~~MONEY OR OUT-OF-DATE PRODUCTS.~~
301 ~~(b)~~ The department shall establish a toll-free number to
302 report any violations of this section. ~~Upon a determination that~~
303 ~~a violation has occurred, the department shall pay the informant~~
304 ~~a reward of up to 10 percent of previously unpaid taxes~~
305 ~~recovered as a result of the information provided. A person who~~
306 ~~receives information concerning a violation of this section from~~
307 ~~an employee as specified in s. 213.30 is not eligible for a cash~~
308 ~~reward.~~
309 ~~(4) A penalty of \$250 per machine is imposed on an operator~~
310 ~~who fails to properly obtain and display the required notice on~~
311 ~~any machine. Penalties accrue interest as provided for~~
312 ~~delinquent taxes under this chapter and apply in addition to all~~
313 ~~other applicable taxes, interest, and penalties.~~
314 ~~(6)(7)~~ The department may adopt rules necessary to
315 administer the provisions of this section and may establish a
316 schedule for phasing in the requirement that existing notices be
317 replaced with revised notices displayed on vending machines.



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318 Section 13. Effective January 1, 2018, subsection (7) of
319 section 212.0596, Florida Statutes, is amended to read:
320 212.0596 Taxation of mail order sales.—
321 (7) The department may establish by rule procedures for
322 collecting the use tax from unregistered persons who but for
323 their mail order purchases would not be required to remit sales
324 or use tax directly to the department. The procedures may
325 provide for waiver of registration ~~and registration fees~~,
326 provisions for irregular remittance of tax, elimination of the
327 collection allowance, and nonapplication of local option
328 surtaxes.
329 Section 14. Effective January 1, 2018, paragraphs (a) and
330 (c) of subsection (3) of section 212.18, Florida Statutes, are
331 amended to read:
332 212.18 Administration of law; registration of dealers;
333 rules.—
334 (3) (a) A person desiring to engage in or conduct business
335 in this state as a dealer, or to lease, rent, or let or grant
336 licenses in living quarters or sleeping or housekeeping
337 accommodations in hotels, apartment houses, roominghouses, or
338 tourist or trailer camps that are subject to tax under s.
339 212.03, or to lease, rent, or let or grant licenses in real
340 property, and a person who sells or receives anything of value
341 by way of admissions, must file with the department an
342 application for a certificate of registration for each place of
343 business. The application must include the names of the persons
344 who have interests in such business and their residences, the
345 address of the business, and other data reasonably required by
346 the department. However, owners and operators of vending



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347 machines or newspaper rack machines are required to obtain only
348 one certificate of registration for each county in which such
349 machines are located. The department, by rule, may authorize a
350 dealer that uses independent sellers to sell its merchandise to
351 remit tax on the retail sales price charged to the ultimate
352 consumer in lieu of having the independent seller register as a
353 dealer and remit the tax. The department may appoint the county
354 tax collector as the department's agent to accept applications
355 for registrations. The application must be submitted to the
356 department before the person, firm, copartnership, or
357 corporation may engage in such business, ~~and it must be~~
358 ~~accompanied by a registration fee of \$5. However, a registration~~
359 ~~fee is not required to accompany an application to engage in or~~
360 ~~conduct business to make mail order sales. The department may~~
361 ~~waive the registration fee for applications submitted through~~
362 ~~the department's Internet registration process.~~

363 (c)1. A person who engages in acts requiring a certificate
364 of registration under this subsection and who fails or refuses
365 to register commits a misdemeanor of the first degree,
366 punishable as provided in s. 775.082 or s. 775.083. Such acts
367 are subject to injunctive proceedings as provided by law. A
368 person who engages in acts requiring a certificate of
369 registration and who fails or refuses to register is also
370 subject to a \$100 initial registration fee ~~in lieu of the \$5~~
371 ~~registration fee required by paragraph (a).~~ However, the
372 department may waive the ~~increase in the~~ registration fee if it
373 finds that the failure to register was due to reasonable cause
374 and not to willful negligence, willful neglect, or fraud.

375 2.a. A person who willfully fails to register after the



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376 department provides notice of the duty to register as a dealer
377 commits a felony of the third degree, punishable as provided in
378 s. 775.082, s. 775.083, or s. 775.084.

379 b. The department shall provide written notice of the duty
380 to register to the person by personal service or by sending
381 notice by registered mail to the person's last known address.
382 The department may provide written notice by both methods
383 described in this sub-subparagraph.

384 Section 15. Subsection (5) of section 336.021, Florida
385 Statutes, is amended to read:

386 336.021 County transportation system; levy of ninth-cent
387 fuel tax on motor fuel and diesel fuel.-

388 (5) All impositions of the tax shall be levied before
389 October 1 of each year to be effective January 1 of the
390 following year. However, levies of the tax which were in effect
391 on July 1, 2002, and which expire on August 31 of any year may
392 be reimposed at the current authorized rate if the imposition of
393 the tax is levied before July 1 and is to be effective September
394 1 of the year of expiration. All impositions shall be required
395 to end on December 31 of a year. A decision to rescind the tax
396 shall not take effect on any date other than December 31 and
397 shall require a minimum of 60 days' notice to the department of
398 such decision.

399 Section 16. Paragraphs (a) and (b) of subsection (1) and
400 paragraph (a) of subsection (5) of section 336.025, Florida
401 Statutes, are amended to read:

402 336.025 County transportation system; levy of local option
403 fuel tax on motor fuel and diesel fuel.-

404 (1) (a) In addition to other taxes allowed by law, there may



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405 be levied as provided in ss. 206.41(1)(e) and 206.87(1)(c) a 1-
406 cent, 2-cent, 3-cent, 4-cent, 5-cent, or 6-cent local option
407 fuel tax upon every gallon of motor fuel and diesel fuel sold in
408 a county and taxed under the provisions of part I or part II of
409 chapter 206.

410 1. All impositions and rate changes of the tax shall be
411 levied before October 1 to be effective January 1 of the
412 following year for a period not to exceed 30 years, and the
413 applicable method of distribution shall be established pursuant
414 to subsection (3) or subsection (4). However, levies of the tax
415 which were in effect on July 1, 2002, and which expire on August
416 31 of any year may be reimposed at the current authorized rate
417 if the imposition of the tax is levied before July 1 and is
418 effective September 1 of the year of expiration. Upon
419 expiration, the tax may be relieved provided that a
420 redetermination of the method of distribution is made as
421 provided in this section.

422 2. County and municipal governments shall utilize moneys
423 received pursuant to this paragraph only for transportation
424 expenditures.

425 3. Any tax levied pursuant to this paragraph may be
426 extended on a majority vote of the governing body of the county.
427 A redetermination of the method of distribution shall be
428 established pursuant to subsection (3) or subsection (4), if,
429 after July 1, 1986, the tax is extended or the tax rate changed,
430 for the period of extension or for the additional tax.

431 (b) In addition to other taxes allowed by law, there may be
432 levied as provided in s. 206.41(1)(e) a 1-cent, 2-cent, 3-cent,
433 4-cent, or 5-cent local option fuel tax upon every gallon of



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434 motor fuel sold in a county and taxed under the provisions of
435 part I of chapter 206. The tax shall be levied by an ordinance
436 adopted by a majority plus one vote of the membership of the
437 governing body of the county or by referendum.

438 1. All impositions and rate changes of the tax shall be
439 levied before October 1, to be effective January 1 of the
440 following year. However, levies of the tax which were in effect
441 on July 1, 2002, and which expire on August 31 of any year may
442 be reimposed at the current authorized rate if the imposition of
443 the tax is levied before July 1 and is effective September 1 of
444 the year of expiration.

445 2. The county may, prior to levy of the tax, establish by
446 interlocal agreement with one or more municipalities located
447 therein, representing a majority of the population of the
448 incorporated area within the county, a distribution formula for
449 dividing the entire proceeds of the tax among county government
450 and all eligible municipalities within the county. If no
451 interlocal agreement is adopted before the effective date of the
452 tax, tax revenues shall be distributed pursuant to the
453 provisions of subsection (4). If no interlocal agreement exists,
454 a new interlocal agreement may be established prior to June 1 of
455 any year pursuant to this subparagraph. However, any interlocal
456 agreement agreed to under this subparagraph after the initial
457 levy of the tax or change in the tax rate authorized in this
458 section shall under no circumstances materially or adversely
459 affect the rights of holders of outstanding bonds which are
460 backed by taxes authorized by this paragraph, and the amounts
461 distributed to the county government and each municipality shall
462 not be reduced below the amount necessary for the payment of



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463 principal and interest and reserves for principal and interest
464 as required under the covenants of any bond resolution
465 outstanding on the date of establishment of the new interlocal
466 agreement.

467 3. County and municipal governments shall use moneys
468 received pursuant to this paragraph for transportation
469 expenditures needed to meet the requirements of the capital
470 improvements element of an adopted comprehensive plan or for
471 expenditures needed to meet immediate local transportation
472 problems and for other transportation-related expenditures that
473 are critical for building comprehensive roadway networks by
474 local governments. For purposes of this paragraph, expenditures
475 for the construction of new roads, the reconstruction or
476 resurfacing of existing paved roads, or the paving of existing
477 graded roads shall be deemed to increase capacity and such
478 projects shall be included in the capital improvements element
479 of an adopted comprehensive plan. Expenditures for purposes of
480 this paragraph shall not include routine maintenance of roads.

481 (5) (a) By October 1 of each year, the county shall notify
482 the Department of Revenue of the rate of the taxes levied
483 pursuant to paragraphs (1) (a) and (b), and of its decision to
484 rescind or change the rate of a tax, if applicable, and shall
485 provide the department with a certified copy of the interlocal
486 agreement established under subparagraph (1) (b) 2. or
487 subparagraph (3) (a) 1. with distribution proportions established
488 by such agreement or pursuant to subsection (4), if applicable.
489 A decision to rescind a tax may not take effect on any date
490 other than December 31, regardless of when the tax was
491 originally imposed, and requires a minimum of 60 days' notice to



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492 the Department of Revenue of such decision.

493 Section 17. Effective January 1, 2018, subsection (2) of
494 section 376.70, Florida Statutes, is amended to read:

495 376.70 Tax on gross receipts of drycleaning facilities.—

496 (2) Each drycleaning facility or dry drop-off facility
497 imposing a charge for the drycleaning or laundering of clothing
498 or other fabrics is required to register with the Department of
499 Revenue and become licensed for the purposes of this section.
500 The owner or operator of the facility shall register the
501 facility with the Department of Revenue. Drycleaning facilities
502 or dry drop-off facilities operating at more than one location
503 are only required to have a single registration. ~~The fee for~~
504 ~~registration is \$30. The owner or operator of the facility shall~~
505 ~~pay the registration fee to the Department of Revenue. The~~
506 ~~department may waive the registration fee for applications~~
507 ~~submitted through the department's Internet registration~~
508 ~~process.~~

509 Section 18. Subsection (2) of section 376.75, Florida
510 Statutes, is amended to read:

511 376.75 Tax on production or importation of
512 perchloroethylene.—

513 (2) Any person producing in, importing into, or causing to
514 be imported into, or selling in, this state perchloroethylene
515 must register with the Department of Revenue and become licensed
516 for the purposes of remitting the tax pursuant to, or providing
517 information required by, this section. Such person must register
518 as a seller of perchloroethylene, a user of perchloroethylene in
519 drycleaning facilities, or a user of perchloroethylene for
520 purposes other than drycleaning. Persons operating at more than



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521 one location are only required to have a single registration.
522 ~~The fee for registration is \$30.~~ Failure to timely register is a
523 misdemeanor of the first degree, punishable as provided in s.
524 775.082 or s. 775.083.

525 Section 19. Subsection (1) of section 443.131, Florida
526 Statutes, is amended to read:

527 443.131 Contributions.-

528 (1) PAYMENT OF CONTRIBUTIONS.-Contributions accrue and are
529 payable by each employer for each calendar quarter he or she is
530 subject to this chapter for wages paid during each calendar
531 quarter for employment. Contributions are due and payable by
532 each employer to the tax collection service provider, in
533 accordance with the rules adopted by the Department of Economic
534 Opportunity or the state agency providing tax collection
535 services. This subsection does not prohibit the tax collection
536 service provider from allowing, at the request of the employer,
537 employers of employees performing domestic services, as defined
538 in s. 443.1216(6), to pay contributions or report wages at
539 intervals other than quarterly when the nonquarterly payment or
540 reporting assists the service provider and when nonquarterly
541 payment and reporting is authorized under federal law. Employers
542 of employees performing domestic services may report wages and
543 pay contributions annually, with a due date of no later than
544 January 31, unless that day is a Saturday, Sunday, or holiday,
545 in which event the due date is the next day that is not a
546 Saturday, Sunday, or holiday. For purposes of this subsection,
547 the term "holiday" means a day designated under s. 110.117(1)
548 and (2) and any other day when the offices of the United States
549 Postal Service are closed January 1 and a delinquency date of



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550 ~~February 1.~~ To qualify for this election, the employer must
551 employ only employees performing domestic services, be eligible
552 for a variation from the standard rate computed under subsection
553 (3), apply to this program no later than December 1 of the
554 preceding calendar year, and agree to provide the department or
555 its tax collection service provider with any special reports
556 that are requested, including copies of all federal employment
557 tax forms. An employer who fails to timely furnish any wage
558 information required by the department or its tax collection
559 service provider loses the privilege to participate in this
560 program, effective the calendar quarter immediately after the
561 calendar quarter the failure occurred. The employer may reapply
562 for annual reporting when a complete calendar year elapses after
563 the employer's disqualification if the employer timely furnished
564 any requested wage information during the period in which annual
565 reporting was denied. An employer may not deduct contributions,
566 interests, penalties, fines, or fees required under this chapter
567 from any part of the wages of his or her employees. A fractional
568 part of a cent less than one-half cent shall be disregarded from
569 the payment of contributions, but a fractional part of at least
570 one-half cent shall be increased to 1 cent.

571 Section 20. Paragraph (d) of subsection (1) of section
572 443.141, Florida Statutes, is amended to read:

573 443.141 Collection of contributions and reimbursements.-

574 (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
575 ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.-

576 (d) *Payments for contributions.*-For an annual
577 administrative fee not to exceed \$5, a contributing employer may
578 pay its quarterly contributions due for wages paid in the first



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579 three quarters of each year in equal installments if those
580 contributions are paid as follows:

581 1. For contributions due for wages paid in the first
582 quarter of each year, one-fourth of the contributions due must
583 be paid on or before April 30, one-fourth must be paid on or
584 before July 31, one-fourth must be paid on or before October 31,
585 and one-fourth must be paid on or before December 31.

586 2. In addition to the payments specified in subparagraph
587 1., for contributions due for wages paid in the second quarter
588 of each year, one-third of the contributions due must be paid on
589 or before July 31, one-third must be paid on or before October
590 31, and one-third must be paid on or before December 31.

591 3. In addition to the payments specified in subparagraphs
592 1. and 2., for contributions due for wages paid in the third
593 quarter of each year, one-half of the contributions due must be
594 paid on or before October 31, and one-half must be paid on or
595 before December 31.

596 4. If any of the due dates in this paragraph falls on a
597 Saturday, Sunday, or holiday, the due date is the next day that
598 is not a Saturday, Sunday, or holiday. For purposes of this
599 paragraph, the term "holiday" means a day designated under s.
600 110.117(1) and (2) and any other day when the offices of the
601 United States Postal Service are closed.

602 ~~5.4-~~ The annual administrative fee assessed for electing to
603 pay under the installment method shall be collected at the time
604 the employer makes the first installment payment each year. The
605 fee shall be segregated from the payment and deposited into the
606 Operating Trust Fund of the Department of Revenue.

607 ~~6.5-~~ Interest does not accrue on any contribution that



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608 becomes due for wages paid in the first three quarters of each
609 year if the employer pays the contribution in accordance with
610 ~~subparagraphs 1.-5. subparagraphs 1.-4.~~ Interest and fees
611 continue to accrue on prior delinquent contributions and
612 commence accruing on all contributions due for wages paid in the
613 first three quarters of each year which are not paid in
614 accordance with ~~subparagraphs 1.-4. subparagraphs 1.-3.~~
615 Penalties may be assessed in accordance with this chapter. The
616 contributions due for wages paid in the fourth quarter are not
617 affected by this paragraph and are due and payable in accordance
618 with this chapter.

619 Section 21. Section 443.163, Florida Statutes, is amended
620 to read:

621 443.163 Electronic reporting and remitting of contributions
622 and reimbursements.-

623 (1) An employer may file any report and remit any
624 contributions or reimbursements required under this chapter by
625 electronic means. The Department of Economic Opportunity or the
626 state agency providing reemployment assistance tax collection
627 services shall adopt rules prescribing the format and
628 instructions necessary for electronically filing reports and
629 remitting contributions and reimbursements to ensure a full
630 collection of contributions and reimbursements due. The
631 acceptable method of transfer, the method, form, and content of
632 the electronic means, and the method, if any, by which the
633 employer will be provided with an acknowledgment shall be
634 prescribed by the department or its tax collection service
635 provider. However, any employer who employed 10 or more
636 employees in any quarter during the preceding state fiscal year



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637 must file the Employers Quarterly Reports ~~(UCT-6)~~ for the
638 current calendar year and remit the contributions and
639 reimbursements due by electronic means approved by the tax
640 collection service provider. A person who prepared and reported
641 for 100 or more employers in any quarter during the preceding
642 state fiscal year must file the Employers Quarterly Reports
643 ~~(UCT-6)~~ for each calendar quarter in the current calendar year,
644 beginning with reports due for the second calendar quarter of
645 2003, by electronic means approved by the tax collection service
646 provider.

647 (2) (a) An employer who is required by law to file an
648 Employers Quarterly Report ~~(UCT-6)~~ by approved electronic means,
649 but who files the report by a means other than approved
650 electronic means, is liable for a penalty of \$50 for that report
651 and \$1 for each employee. This penalty is in addition to any
652 other penalty provided by this chapter. However, the penalty
653 does not apply if the tax collection service provider waives the
654 electronic filing requirement in advance. An employer who fails
655 to remit contributions or reimbursements by approved electronic
656 means as required by law is liable for a penalty of \$50 for each
657 remittance submitted by a means other than approved electronic
658 means. This penalty is in addition to any other penalty provided
659 by this chapter.

660 (b) A person who prepared and reported for 100 or more
661 employers in any quarter during the preceding state fiscal year,
662 but who fails to file an Employers Quarterly Report ~~(UCT-6)~~ for
663 each calendar quarter in the current calendar year by approved
664 electronic means, is liable for a penalty of \$50 for that report
665 and \$1 for each employee. This penalty is in addition to any



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666 other penalty provided by this chapter. However, the penalty
667 does not apply if the tax collection service provider waives the
668 electronic filing requirement in advance.

669 (3) The tax collection service provider may waive the
670 requirement to file an Employers Quarterly Report ~~(UCT-6)~~ by
671 electronic means for employers that are unable to comply despite
672 good faith efforts or due to circumstances beyond the employer's
673 reasonable control.

674 (a) As prescribed by the Department of Economic Opportunity
675 or its tax collection service provider, grounds for approving
676 the waiver include, but are not limited to, circumstances in
677 which the employer does not:

- 678 1. Currently file information or data electronically with
679 any business or government agency; or
- 680 2. Have a compatible computer that meets or exceeds the
681 standards prescribed by the department or its tax collection
682 service provider.

683 (b) The tax collection service provider shall accept other
684 reasons for requesting a waiver from the requirement to submit
685 the Employers Quarterly Report ~~(UCT-6)~~ by electronic means,
686 including, but not limited to:

- 687 1. That the employer needs additional time to program his
688 or her computer;
- 689 2. That complying with this requirement causes the employer
690 financial hardship; or
- 691 3. That complying with this requirement conflicts with the
692 employer's business procedures.

693 (c) The department or the state agency providing
694 reemployment assistance tax collection services may establish by



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695 rule the length of time a waiver is valid and may determine
696 whether subsequent waivers will be authorized, based on this
697 subsection.

698 (4) As used in this section, the term "electronic means"
699 includes, but is not limited to, electronic data interchange;
700 electronic funds transfer; and use of the Internet, telephone,
701 or other technology specified by the Department of Economic
702 Opportunity or its tax collection service provider.

703 (5) The tax collection service provider may waive the
704 penalty imposed by this section if a written request for a
705 waiver is filed which establishes that imposition would be
706 inequitable. Examples of inequity include, but are not limited
707 to, situations where the failure to electronically file was
708 caused by one of the following factors:

709 (a) Death or serious illness of the person responsible for
710 the preparation and filing of the report.

711 (b) Destruction of the business records by fire or other
712 casualty.

713 (c) Unscheduled and unavoidable computer downtime.

714 Section 22. Paragraph (e) of subsection (3) of section
715 733.2121, Florida Statutes, is amended to read:

716 733.2121 Notice to creditors; filing of claims.-

717 (3)

718 (e) The personal representative may serve a notice to
719 creditors on the Department of Revenue only when the Department
720 of Revenue is determined to be a creditor under paragraph (a) ~~if~~
721 the Department of Revenue has not previously been served with a
722 copy of the notice to creditors, then service of the inventory
723 on the Department of Revenue shall be the equivalent of service



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724 ~~of a copy of the notice to creditors.~~

725 Section 23. For the purpose of incorporating the amendment
726 made by this act to section 733.2121, Florida Statutes, in a
727 reference thereto, section 733.701, Florida Statutes, is
728 reenacted to read:

729 733.701 Notifying creditors.-Unless creditors' claims are
730 otherwise barred by s. 733.710, every personal representative
731 shall cause notice to creditors to be published and served under
732 s. 733.2121.

733 Section 24. Effective January 1, 2018, section 206.998,
734 Florida Statutes, is amended to read:

735 206.998 Applicability of specified sections of parts I and
736 II.-The provisions of ss. 206.01, 206.02, 206.025, 206.026,
737 206.027, 206.028, 206.03, 206.05, 206.055, 206.06, 206.07,
738 206.075, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15,
739 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204,
740 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25,
741 206.27, 206.28, ~~206.405, 206.406,~~ 206.41, 206.413, 206.43,
742 206.44, 206.48, 206.485, 206.49, 206.56, 206.59, 206.606,
743 206.608, and 206.61 of part I of this chapter and ss. 206.86,
744 206.872, 206.874, 206.8745, 206.88, 206.90, and 206.93 of part
745 II of this chapter shall, as far as lawful or practicable, be
746 applicable to the tax levied and imposed and to the collection
747 thereof as if fully set out in this part. However, any provision
748 of any such section does not apply if it conflicts with any
749 provision of this part.

750 Section 25. Section 1 of chapter 2007-339, section 13 of
751 chapter 2008-173, section 6 of chapter 2009-131, subsection (2)
752 of section 8 and section 24 of chapter 2010-138, section 6 of



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753 chapter 2010-149, section 7 of chapter 2010-166, section 35 of
754 chapter 2011-76, section 4 of chapter 2011-93, section 3 of
755 chapter 2011-229, section 25 of chapter 2012-32, and section 3
756 of chapter 2013-46, Laws of Florida, are repealed.

757 Section 26. Except as otherwise expressly provided in this
758 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.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Recommend: Fav/CS
3.	<u>Gross</u>	<u>Hansen</u>	<u>AP</u>	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.

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.

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

¹⁷ Department of Revenue, *2017 Legislative Bill Analysis* (March 7, 2017) (on file with the Senate Judiciary Committee).

By Senator Stargel

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1 A bill to be entitled
 2 An act relating to tax administration; amending s.
 3 198.30, F.S.; deleting a requirement for circuit
 4 judges to monthly report certain information to the
 5 Department of Revenue relating to the estates of
 6 certain decedents; amending s. 206.02, F.S.; deleting
 7 requirements to pay license taxes for a terminal
 8 supplier license, an importer, exporter, or blender of
 9 motor fuels license, or a wholesaler of motor fuel
 10 license; conforming a provision to changes made by the
 11 act; amending s. 206.021, F.S.; deleting a requirement
 12 to pay license taxes for a carrier license; amending
 13 s. 206.022, F.S.; deleting a requirement to pay
 14 license taxes for a terminal operator license;
 15 amending s. 206.03, F.S.; conforming a provision to
 16 changes made by the act; amending s. 206.045, F.S.;
 17 conforming a provision to changes made by the act;
 18 repealing ss. 206.405 and 206.406, F.S., relating to
 19 receipt for payment of license taxes and disposition
 20 of license tax funds, respectively; amending s.
 21 206.41, F.S.; deleting a requirement for the
 22 department to deduct a specified fee from certain
 23 motor fuel refund claims; amending s. 206.9943, F.S.;
 24 deleting a requirement to pay license fees for a
 25 pollutant tax license; amending s. 206.9952, F.S.;
 26 deleting a requirement to pay license fees for a
 27 natural gas fuel retailer license; amending s.
 28 206.9865, F.S.; deleting a requirement to pay
 29 application fees for an aviation fuel tax license for

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

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30 commercial air carriers; amending s. 212.0515, F.S.;
 31 deleting a requirement for vending machine operators
 32 to post a specified notice on vending machines;
 33 deleting a provision requiring the department to pay
 34 an informant certain rewards for reporting vending
 35 machines without the notice; conforming provisions to
 36 changes made by the act; amending s. 212.0596, F.S.;
 37 deleting an authorization for procedures that waive
 38 registration fees in relation to the use tax on mail
 39 order purchases by certain persons; amending s.
 40 212.18, F.S.; deleting a requirement for certificates
 41 of registration fees for certain dealers in relation
 42 to the sales and use tax; conforming provisions to
 43 changes made by the act; amending s. 336.021, F.S.;
 44 specifying a condition for the reimposition of ninth-
 45 cent fuel taxes on motor and diesel fuels by a county;
 46 amending s. 336.025, F.S.; specifying a condition for
 47 the reimposition of local option fuel taxes on motor
 48 and diesel fuels by a county; providing construction
 49 relating to requirements on a decision to rescind a
 50 tax; amending s. 376.70, F.S.; deleting a requirement
 51 for drycleaning or dry drop-off facilities to pay
 52 registration fees to the department; amending s.
 53 376.75, F.S.; deleting a requirement to pay
 54 registration fees for certain persons producing,
 55 importing, selling, or using perchloroethylene;
 56 amending s. 443.131, F.S.; revising a deadline for
 57 employers of employees performing domestic services to
 58 annually report wages and pay certain contributions

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59 under the Reemployment Assistance Program Law;
 60 defining the term "holiday"; amending s. 443.141,
 61 F.S.; specifying a due date of certain employer
 62 contributions if such date falls on a weekend or
 63 holiday; defining the term "holiday"; conforming
 64 cross-references; amending s. 443.163, F.S.; deleting
 65 a form name; authorizing reemployment assistance tax
 66 collection service providers to waive a certain
 67 penalty under certain circumstances; amending s.
 68 733.2121, F.S.; providing that a personal
 69 representative may serve a notice to creditors on the
 70 department only under certain circumstances; deleting
 71 a provision providing construction; reenacting s.
 72 733.701, F.S., relating to notifying creditors, to
 73 incorporate the amendment made to s. 733.2121, F.S.,
 74 in a reference thereto; amending s. 206.998, F.S.;
 75 conforming cross-references; providing an effective
 76 date.

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

79
 80 Section 1. Section 198.30, Florida Statutes, is amended to
 81 read:

82 198.30 Circuit judge to report names of decedents, etc.—
 83 Each circuit judge of this state shall, on or before the 10th
 84 day of every month, notify the Agency for Health Care
 85 Administration ~~department~~ of the names of all decedents; the
 86 names and addresses of the respective personal representatives,
 87 administrators, or curators appointed; the amount of the bonds,

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88 if any, required by the court; and the probable value of the
 89 estates, in all estates of decedents whose wills have been
 90 probated or propounded for probate before the circuit judge or
 91 upon which letters testamentary or upon whose estates letters of
 92 administration or curatorship have been sought or granted,
 93 during the preceding month; and such report shall contain any
 94 other information that ~~which~~ the circuit judge may have
 95 concerning the estates of such decedents. ~~In addition, a copy of~~
 96 ~~this report shall be provided to the Agency for Health Care~~
 97 ~~Administration.~~ A circuit judge shall also furnish forthwith
 98 such further information, from the records and files of the
 99 circuit court in regard to such estates, as the department may
 100 from time to time require.

101 Section 2. Effective January 1, 2018, subsections (2), (3),
 102 and (4), paragraph (a) of subsection (7), and paragraph (b) of
 103 subsection (8) of section 206.02, Florida Statutes, are amended
 104 to read:

105 206.02 Application for license; temporary license; terminal
 106 suppliers, importers, exporters, blenders, biodiesel
 107 manufacturers, and wholesalers.—

108 (2) To procure a terminal supplier license, a person shall
 109 file with the department an application under oath, and in such
 110 form as the department may prescribe, setting forth:

111 (a) The name under which the person will transact business
 112 within the state and that person's registration number under s.
 113 4101 of the Internal Revenue Code.

114 (b) The location, with street number address, of his or her
 115 principal office or place of business and the location where
 116 records will be made available for inspection.

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117 (c) The name and complete residence address of the owner or
 118 the names and addresses of the partners, if such person is a
 119 partnership, or of the principal officers, if such person is a
 120 corporation or association; and, if such person is a corporation
 121 organized under the laws of another state, territory, or
 122 country, he or she shall also indicate the state, territory, or
 123 country where the corporation is organized and the date the
 124 corporation was registered with the Department of State as a
 125 foreign corporation authorized to transact business in the
 126 state.

127 ~~The application shall require a \$30 license tax. Each license~~
 128 ~~must shall~~ be renewed annually through application, ~~including an~~
 129 ~~annual \$30 license tax.~~

131 (3) To procure an importer, exporter, or blender of motor
 132 fuels license, a person shall file with the department an
 133 application under oath, and in such form as the department may
 134 prescribe, setting forth:

135 (a) The name under which the person will transact business
 136 within the state.

137 (b) The location, with street number address, of his or her
 138 principal office or place of business and the location where
 139 records will be made available for inspection.

140 (c) The name and complete residence address of the owner or
 141 the names and addresses of the partners, if such person is a
 142 partnership, or of the principal officers, if such person is a
 143 corporation or association; and, if such person is a corporation
 144 organized under the laws of another state, territory, or
 145 country, he or she shall also indicate the state, territory, or

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146 country where the corporation is organized and the date the
 147 corporation was registered with the Department of State as a
 148 foreign corporation authorized to transact business in the
 149 state.

150 ~~The application shall require a \$30 license tax. Each license~~
 151 ~~must shall~~ be renewed annually through application, ~~including an~~
 152 ~~annual \$30 license tax.~~

154 (4) To procure a wholesaler of motor fuel license, a person
 155 shall file with the department an application under oath and in
 156 such form as the department may prescribe, setting forth:

157 (a) The name under which the person will transact business
 158 within the state.

159 (b) The location, with street number address, of his or her
 160 principal office or place of business within this state and the
 161 location where records will be made available for inspection.

162 (c) The name and complete residence address of the owner or
 163 the names and addresses of the partners, if such person is a
 164 partnership, or of the principal officers, if such person is a
 165 corporation or association; and, if such person is a corporation
 166 organized under the laws of another state, territory, or
 167 country, he or she shall also indicate the state, territory, or
 168 country where the corporation is organized and the date the
 169 corporation was registered with the Department of State as a
 170 foreign corporation authorized to transact business in the
 171 state.

172 ~~The application shall require a \$30 license tax. Each license~~
 173 ~~must shall~~ be renewed annually through application, ~~including an~~
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175 ~~annual \$30 license fee.~~

176 (7) (a) If all applicants for a license hold a current
177 license in good standing of the same type and kind, the
178 department shall issue a temporary license upon the filing of a
179 completed application, ~~payment of all fees,~~ and the posting of
180 adequate bond. A temporary license shall automatically expire 90
181 days after its effective date or, prior to the expiration of 90
182 days or the period of any extension, upon issuance of a
183 permanent license or of a notice of intent to deny a permanent
184 license. A temporary license may be extended once for a period
185 not to exceed 60 days, upon written request of the applicant,
186 subject to the restrictions imposed by this subsection.

187 (8)

188 (b) Notwithstanding the provisions of this chapter
189 requiring a license ~~tax~~ and a bond or criminal background check,
190 the department may issue a temporary license as an importer or
191 exporter to a person who holds a valid Florida wholesaler
192 license or to a person who is an unlicensed dealer. A license
193 may be issued under this subsection only to a business that has
194 a physical location in this state and holds a valid Florida
195 sales and use tax certificate of registration or that holds a
196 valid fuel license issued by another state.

197 Section 3. Effective January 1, 2018, subsection (3) and
198 paragraph (b) of subsection (5) of section 206.021, Florida
199 Statutes, are amended to read:

200 206.021 Application for license; carriers.-

201 (3) ~~The application shall require a \$30 license tax.~~ Each
202 license must ~~shall~~ be renewed annually through application,
203 ~~including an annual \$30 license tax.~~

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204 (5)

205 (b) Notwithstanding the provisions of this chapter
206 requiring a license ~~tax~~ and a bond or criminal background check,
207 the department may issue a temporary license as a carrier to a
208 person who holds a valid Florida wholesaler, importer, exporter,
209 or blender license or to a person who is an unlicensed dealer. A
210 license may be issued under this subsection only to a business
211 that has a physical location in this state and holds a valid
212 Florida sales and use tax certificate of registration or that
213 holds a valid fuel license issued by another state.

214 Section 4. Effective January 1, 2018, subsection (2) of
215 section 206.022, Florida Statutes, is amended to read:

216 206.022 Application for license; terminal operators.-

217 (2) ~~The application shall require a \$30 license tax.~~ Each
218 license shall be renewed annually through application, including
219 an annual \$30 license tax.

220 Section 5. Effective January 1, 2018, subsection (1) of
221 section 206.03, Florida Statutes, is amended to read:

222 206.03 Licensing of terminal suppliers, importers,
223 exporters, and wholesalers.-

224 (1) The application in proper form having been accepted for
225 filing, ~~the filing fee paid,~~ and the bond accepted and approved,
226 except as provided in s. 206.05(1), the department shall issue
227 to such person a license to transact business in the state,
228 subject to cancellation of such license as provided by law.

229 Section 6. Effective January 1, 2018, section 206.045,
230 Florida Statutes, is amended to read:

231 206.045 Licensing period; ~~cost for license issuance.~~-
232 Beginning January 1, 1998, the licensing period under this

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233 chapter shall be a calendar year, or any part thereof. ~~The cost~~
 234 ~~of any such license issued pursuant to this chapter shall be~~
 235 ~~\$30.~~

236 Section 7. Effective January 1, 2018, ss. 206.405 and
 237 206.406, Florida Statutes, are repealed.

238 Section 8. Effective January 1, 2018, paragraph (c) of
 239 subsection (5) of section 206.41, Florida Statutes, is amended
 240 to read:

241 206.41 State taxes imposed on motor fuel.—

242 (5)

243 (c)1. No refund may be authorized unless a sworn
 244 application therefor containing such information as the
 245 department may determine is filed with the department not later
 246 than the last day of the month following the quarter for which
 247 the refund is claimed. However, when a justified excuse for late
 248 filing is presented to the department and the last preceding
 249 claim was filed on time, the deadline for filing may be extended
 250 an additional month. No refund will be authorized unless the
 251 amount due is for \$5 or more for any refund period and unless
 252 application is made upon forms prescribed by the department.

253 2. Claims made for refunds provided pursuant to subsection
 254 (4) shall be paid quarterly. ~~The department shall deduct a fee~~
 255 ~~of \$2 for each claim, which fee shall be deposited in the~~
 256 ~~General Revenue Fund.~~

257 Section 9. Effective January 1, 2018, subsection (3) of
 258 section 206.9943, Florida Statutes, is amended to read:

259 206.9943 Pollutant tax license.—

260 (3) The license must be renewed annually, ~~and the fee for~~
 261 ~~original application or renewal is \$30.~~

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262 Section 10. Effective January 1, 2018, subsection (9) of
 263 section 206.9952, Florida Statutes, is amended to read:

264 206.9952 Application for license as a natural gas fuel
 265 retailer.—

266 (9) ~~The license application requires a license fee of \$5.~~
 267 Each license shall be renewed annually by submitting a
 268 reapplication ~~and the license fee to the department. The license~~
 269 ~~fee shall be paid to the department for deposit into the General~~
 270 ~~Revenue Fund.~~

271 Section 11. Effective January 1, 2018, subsection (3) of
 272 section 206.9865, Florida Statutes, is amended to read:

273 206.9865 Commercial air carriers; registration; reporting.—

274 (3) The application must be renewed annually ~~and the fee~~
 275 ~~for application or renewal is \$30.~~

276 Section 12. Effective January 1, 2018, subsections (3) and
 277 (4) and present subsection (7) of section 212.0515, Florida
 278 Statutes, are amended to read:

279 212.0515 Sales from vending machines; sales to vending
 280 machine operators; special provisions; registration; penalties.—

281 (3) ~~(a)~~ An operator of a vending machine may not operate or
 282 cause to be operated in this state any vending machine until the
 283 operator has registered with the department ~~and~~, has obtained a
 284 separate registration certificate for each county in which such
 285 machines are located, ~~and has affixed a notice to each vending~~
 286 ~~machine selling food or beverages. The notice must be~~
 287 ~~conspicuously displayed on the vending machine when it is being~~
 288 ~~operated in this state and shall contain the following language~~
 289 ~~in conspicuous type: NOTICE TO CUSTOMER: FLORIDA LAW REQUIRES~~
 290 ~~THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING~~

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291 ~~MACHINES. REPORT ANY MACHINE WITHOUT A NOTICE TO (TOLL-FREE~~
 292 ~~NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD. DO NOT USE THIS~~
 293 ~~NUMBER TO REPORT PROBLEMS WITH THE VENDING MACHINE SUCH AS LOST~~
 294 ~~MONEY OR OUT-OF-DATE PRODUCTS.~~

295 ~~(b) The department shall establish a toll-free number to~~
 296 ~~report any violations of this section. Upon a determination that~~
 297 ~~a violation has occurred, the department shall pay the informant~~
 298 ~~a reward of up to 10 percent of previously unpaid taxes~~
 299 ~~recovered as a result of the information provided. A person who~~
 300 ~~receives information concerning a violation of this section from~~
 301 ~~an employee as specified in s. 213.30 is not eligible for a cash~~
 302 ~~reward.~~

303 ~~(4) A penalty of \$250 per machine is imposed on an operator~~
 304 ~~who fails to properly obtain and display the required notice on~~
 305 ~~any machine. Penalties accrue interest as provided for~~
 306 ~~delinquent taxes under this chapter and apply in addition to all~~
 307 ~~other applicable taxes, interest, and penalties.~~

308 ~~(6)(7) The department may adopt rules necessary to~~
 309 ~~administer the provisions of this section and may establish a~~
 310 ~~schedule for phasing in the requirement that existing notices be~~
 311 ~~replaced with revised notices displayed on vending machines.~~

312 Section 13. Effective January 1, 2018, subsection (7) of
 313 section 212.0596, Florida Statutes, is amended to read:

314 212.0596 Taxation of mail order sales.—

315 (7) The department may establish by rule procedures for
 316 collecting the use tax from unregistered persons who but for
 317 their mail order purchases would not be required to remit sales
 318 or use tax directly to the department. The procedures may
 319 provide for waiver of registration ~~and registration fees,~~

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320 provisions for irregular remittance of tax, elimination of the
 321 collection allowance, and nonapplication of local option
 322 surtaxes.

323 Section 14. Effective January 1, 2018, paragraphs (a) and
 324 (c) of subsection (3) of section 212.18, Florida Statutes, are
 325 amended to read:

326 212.18 Administration of law; registration of dealers;
 327 rules.—

328 (3) (a) A person desiring to engage in or conduct business
 329 in this state as a dealer, or to lease, rent, or let or grant
 330 licenses in living quarters or sleeping or housekeeping
 331 accommodations in hotels, apartment houses, roominghouses, or
 332 tourist or trailer camps that are subject to tax under s.
 333 212.03, or to lease, rent, or let or grant licenses in real
 334 property, and a person who sells or receives anything of value
 335 by way of admissions, must file with the department an
 336 application for a certificate of registration for each place of
 337 business. The application must include the names of the persons
 338 who have interests in such business and their residences, the
 339 address of the business, and other data reasonably required by
 340 the department. However, owners and operators of vending
 341 machines or newspaper rack machines are required to obtain only
 342 one certificate of registration for each county in which such
 343 machines are located. The department, by rule, may authorize a
 344 dealer that uses independent sellers to sell its merchandise to
 345 remit tax on the retail sales price charged to the ultimate
 346 consumer in lieu of having the independent seller register as a
 347 dealer and remit the tax. The department may appoint the county
 348 tax collector as the department's agent to accept applications

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349 for registrations. The application must be submitted to the
 350 department before the person, firm, copartnership, or
 351 corporation may engage in such business, ~~and it must be~~
 352 ~~accompanied by a registration fee of \$5. However, a registration~~
 353 ~~fee is not required to accompany an application to engage in or~~
 354 ~~conduct business to make mail order sales. The department may~~
 355 ~~waive the registration fee for applications submitted through~~
 356 ~~the department's Internet registration process.~~

357 (c)1. A person who engages in acts requiring a certificate
 358 of registration under this subsection and who fails or refuses
 359 to register commits a misdemeanor of the first degree,
 360 punishable as provided in s. 775.082 or s. 775.083. Such acts
 361 are subject to injunctive proceedings as provided by law. A
 362 person who engages in acts requiring a certificate of
 363 registration and who fails or refuses to register is also
 364 subject to a \$100 initial registration fee ~~in lieu of the \$5~~
 365 ~~registration fee required by paragraph (a).~~ However, the
 366 department may waive the ~~increase in the~~ registration fee if it
 367 finds that the failure to register was due to reasonable cause
 368 and not to willful negligence, willful neglect, or fraud.

369 2.a. A person who willfully fails to register after the
 370 department provides notice of the duty to register as a dealer
 371 commits a felony of the third degree, punishable as provided in
 372 s. 775.082, s. 775.083, or s. 775.084.

373 b. The department shall provide written notice of the duty
 374 to register to the person by personal service or by sending
 375 notice by registered mail to the person's last known address.
 376 The department may provide written notice by both methods
 377 described in this sub-subparagraph.

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378 Section 15. Subsection (5) of section 336.021, Florida
 379 Statutes, is amended to read:

380 336.021 County transportation system; levy of ninth-cent
 381 fuel tax on motor fuel and diesel fuel.—

382 (5) All impositions of the tax shall be levied before
 383 October 1 of each year to be effective January 1 of the
 384 following year. However, levies of the tax which were in effect
 385 on July 1, 2002, and which expire on August 31 of any year may
 386 be reimposed at the current authorized rate if the imposition of
 387 the tax is levied before July 1 and is ~~to be~~ effective September
 388 1 of the year of expiration. All impositions shall be required
 389 to end on December 31 of a year. A decision to rescind the tax
 390 shall not take effect on any date other than December 31 and
 391 shall require a minimum of 60 days' notice to the department of
 392 such decision.

393 Section 16. Paragraphs (a) and (b) of subsection (1) and
 394 paragraph (a) of subsection (5) of section 336.025, Florida
 395 Statutes, are amended to read:

396 336.025 County transportation system; levy of local option
 397 fuel tax on motor fuel and diesel fuel.—

398 (1) (a) In addition to other taxes allowed by law, there may
 399 be levied as provided in ss. 206.41(1) (e) and 206.87(1) (c) a 1-
 400 cent, 2-cent, 3-cent, 4-cent, 5-cent, or 6-cent local option
 401 fuel tax upon every gallon of motor fuel and diesel fuel sold in
 402 a county and taxed under the provisions of part I or part II of
 403 chapter 206.

404 1. All impositions and rate changes of the tax shall be
 405 levied before October 1 to be effective January 1 of the
 406 following year for a period not to exceed 30 years, and the

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 407 applicable method of distribution shall be established pursuant
 408 to subsection (3) or subsection (4). However, levies of the tax
 409 which were in effect on July 1, 2002, and which expire on August
 410 31 of any year may be reimposed at the current authorized rate
 411 if the imposition of the tax is levied before July 1 and is
 412 effective September 1 of the year of expiration. Upon
 413 expiration, the tax may be relieved provided that a
 414 redetermination of the method of distribution is made as
 415 provided in this section.

416 2. County and municipal governments shall utilize moneys
 417 received pursuant to this paragraph only for transportation
 418 expenditures.

419 3. Any tax levied pursuant to this paragraph may be
 420 extended on a majority vote of the governing body of the county.
 421 A redetermination of the method of distribution shall be
 422 established pursuant to subsection (3) or subsection (4), if,
 423 after July 1, 1986, the tax is extended or the tax rate changed,
 424 for the period of extension or for the additional tax.

425 (b) In addition to other taxes allowed by law, there may be
 426 levied as provided in s. 206.41(1)(e) a 1-cent, 2-cent, 3-cent,
 427 4-cent, or 5-cent local option fuel tax upon every gallon of
 428 motor fuel sold in a county and taxed under the provisions of
 429 part I of chapter 206. The tax shall be levied by an ordinance
 430 adopted by a majority plus one vote of the membership of the
 431 governing body of the county or by referendum.

432 1. All impositions and rate changes of the tax shall be
 433 levied before October 1, to be effective January 1 of the
 434 following year. However, levies of the tax which were in effect
 435 on July 1, 2002, and which expire on August 31 of any year may

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 436 be reimposed at the current authorized rate if the imposition of
 437 the tax is levied before July 1 and is effective September 1 of
 438 the year of expiration.

439 2. The county may, prior to levy of the tax, establish by
 440 interlocal agreement with one or more municipalities located
 441 therein, representing a majority of the population of the
 442 incorporated area within the county, a distribution formula for
 443 dividing the entire proceeds of the tax among county government
 444 and all eligible municipalities within the county. If no
 445 interlocal agreement is adopted before the effective date of the
 446 tax, tax revenues shall be distributed pursuant to the
 447 provisions of subsection (4). If no interlocal agreement exists,
 448 a new interlocal agreement may be established prior to June 1 of
 449 any year pursuant to this subparagraph. However, any interlocal
 450 agreement agreed to under this subparagraph after the initial
 451 levy of the tax or change in the tax rate authorized in this
 452 section shall under no circumstances materially or adversely
 453 affect the rights of holders of outstanding bonds which are
 454 backed by taxes authorized by this paragraph, and the amounts
 455 distributed to the county government and each municipality shall
 456 not be reduced below the amount necessary for the payment of
 457 principal and interest and reserves for principal and interest
 458 as required under the covenants of any bond resolution
 459 outstanding on the date of establishment of the new interlocal
 460 agreement.

461 3. County and municipal governments shall use moneys
 462 received pursuant to this paragraph for transportation
 463 expenditures needed to meet the requirements of the capital
 464 improvements element of an adopted comprehensive plan or for

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465 expenditures needed to meet immediate local transportation
 466 problems and for other transportation-related expenditures that
 467 are critical for building comprehensive roadway networks by
 468 local governments. For purposes of this paragraph, expenditures
 469 for the construction of new roads, the reconstruction or
 470 resurfacing of existing paved roads, or the paving of existing
 471 graded roads shall be deemed to increase capacity and such
 472 projects shall be included in the capital improvements element
 473 of an adopted comprehensive plan. Expenditures for purposes of
 474 this paragraph shall not include routine maintenance of roads.

475 (5) (a) By October 1 of each year, the county shall notify
 476 the Department of Revenue of the rate of the taxes levied
 477 pursuant to paragraphs (1) (a) and (b), and of its decision to
 478 rescind or change the rate of a tax, if applicable, and shall
 479 provide the department with a certified copy of the interlocal
 480 agreement established under subparagraph (1) (b) 2. or
 481 subparagraph (3) (a) 1. with distribution proportions established
 482 by such agreement or pursuant to subsection (4), if applicable.
 483 A decision to rescind a tax may not take effect on any date
 484 other than December 31, regardless of when the tax was
 485 originally imposed, and requires a minimum of 60 days' notice to
 486 the Department of Revenue of such decision.

487 Section 17. Effective January 1, 2018, subsection (2) of
 488 section 376.70, Florida Statutes, is amended to read:

489 376.70 Tax on gross receipts of drycleaning facilities.—

490 (2) Each drycleaning facility or dry drop-off facility
 491 imposing a charge for the drycleaning or laundering of clothing
 492 or other fabrics is required to register with the Department of
 493 Revenue and become licensed for the purposes of this section.

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494 The owner or operator of the facility shall register the
 495 facility with the Department of Revenue. Drycleaning facilities
 496 or dry drop-off facilities operating at more than one location
 497 are only required to have a single registration. ~~The fee for~~
 498 ~~registration is \$30. The owner or operator of the facility shall~~
 499 ~~pay the registration fee to the Department of Revenue. The~~
 500 ~~department may waive the registration fee for applications~~
 501 ~~submitted through the department's Internet registration~~
 502 ~~process.~~

503 Section 18. Subsection (2) of section 376.75, Florida
 504 Statutes, is amended to read:

505 376.75 Tax on production or importation of
 506 perchloroethylene.—

507 (2) Any person producing in, importing into, or causing to
 508 be imported into, or selling in, this state perchloroethylene
 509 must register with the Department of Revenue and become licensed
 510 for the purposes of remitting the tax pursuant to, or providing
 511 information required by, this section. Such person must register
 512 as a seller of perchloroethylene, a user of perchloroethylene in
 513 drycleaning facilities, or a user of perchloroethylene for
 514 purposes other than drycleaning. Persons operating at more than
 515 one location are only required to have a single registration.
 516 ~~The fee for registration is \$30.~~ Failure to timely register is a
 517 misdemeanor of the first degree, punishable as provided in s.
 518 775.082 or s. 775.083.

519 Section 19. Subsection (1) of section 443.131, Florida
 520 Statutes, is amended to read:

521 443.131 Contributions.—

522 (1) PAYMENT OF CONTRIBUTIONS.—Contributions accrue and are

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523 payable by each employer for each calendar quarter he or she is
 524 subject to this chapter for wages paid during each calendar
 525 quarter for employment. Contributions are due and payable by
 526 each employer to the tax collection service provider, in
 527 accordance with the rules adopted by the Department of Economic
 528 Opportunity or the state agency providing tax collection
 529 services. This subsection does not prohibit the tax collection
 530 service provider from allowing, at the request of the employer,
 531 employers of employees performing domestic services, as defined
 532 in s. 443.1216(6), to pay contributions or report wages at
 533 intervals other than quarterly when the nonquarterly payment or
 534 reporting assists the service provider and when nonquarterly
 535 payment and reporting is authorized under federal law. Employers
 536 of employees performing domestic services may report wages and
 537 pay contributions annually, with a due date of no later than
 538 January 31, unless that day is a Saturday, Sunday, or holiday,
 539 in which event the due date is the next day that is not a
 540 Saturday, Sunday, or holiday. For purposes of this subsection,
 541 the term "holiday" means a day designated under s. 110.117(1)
 542 and (2) and any other day when the offices of the United States
 543 Postal Service are closed January 1 and a delinquency date of
 544 February 1. To qualify for this election, the employer must
 545 employ only employees performing domestic services, be eligible
 546 for a variation from the standard rate computed under subsection
 547 (3), apply to this program no later than December 1 of the
 548 preceding calendar year, and agree to provide the department or
 549 its tax collection service provider with any special reports
 550 that are requested, including copies of all federal employment
 551 tax forms. An employer who fails to timely furnish any wage

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552 information required by the department or its tax collection
 553 service provider loses the privilege to participate in this
 554 program, effective the calendar quarter immediately after the
 555 calendar quarter the failure occurred. The employer may reapply
 556 for annual reporting when a complete calendar year elapses after
 557 the employer's disqualification if the employer timely furnished
 558 any requested wage information during the period in which annual
 559 reporting was denied. An employer may not deduct contributions,
 560 interests, penalties, fines, or fees required under this chapter
 561 from any part of the wages of his or her employees. A fractional
 562 part of a cent less than one-half cent shall be disregarded from
 563 the payment of contributions, but a fractional part of at least
 564 one-half cent shall be increased to 1 cent.

565 Section 20. Paragraph (d) of subsection (1) of section
 566 443.141, Florida Statutes, is amended to read:

567 443.141 Collection of contributions and reimbursements.—

568 (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
 569 ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

570 (d) *Payments for contributions.*—For an annual
 571 administrative fee not to exceed \$5, a contributing employer may
 572 pay its quarterly contributions due for wages paid in the first
 573 three quarters of each year in equal installments if those
 574 contributions are paid as follows:

575 1. For contributions due for wages paid in the first
 576 quarter of each year, one-fourth of the contributions due must
 577 be paid on or before April 30, one-fourth must be paid on or
 578 before July 31, one-fourth must be paid on or before October 31,
 579 and one-fourth must be paid on or before December 31.

580 2. In addition to the payments specified in subparagraph

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581 1., for contributions due for wages paid in the second quarter
 582 of each year, one-third of the contributions due must be paid on
 583 or before July 31, one-third must be paid on or before October
 584 31, and one-third must be paid on or before December 31.

585 3. In addition to the payments specified in subparagraphs
 586 1. and 2., for contributions due for wages paid in the third
 587 quarter of each year, one-half of the contributions due must be
 588 paid on or before October 31, and one-half must be paid on or
 589 before December 31.

590 4. If any of the due dates in this paragraph falls on a
 591 Saturday, Sunday, or holiday, the due date is the next day that
 592 is not a Saturday, Sunday, or holiday. For purposes of this
 593 paragraph, the term "holiday" means a day designated under s.
 594 110.117(1) and (2) and any other day when the offices of the
 595 United States Postal Service are closed.

596 ~~5.4.~~ The annual administrative fee assessed for electing to
 597 pay under the installment method shall be collected at the time
 598 the employer makes the first installment payment each year. The
 599 fee shall be segregated from the payment and deposited into the
 600 Operating Trust Fund of the Department of Revenue.

601 ~~6.5.~~ Interest does not accrue on any contribution that
 602 becomes due for wages paid in the first three quarters of each
 603 year if the employer pays the contribution in accordance with
 604 ~~subparagraphs 1.-5. subparagraphs 1.-4.~~ Interest and fees
 605 continue to accrue on prior delinquent contributions and
 606 commence accruing on all contributions due for wages paid in the
 607 first three quarters of each year which are not paid in
 608 accordance with ~~subparagraphs 1.-4. subparagraphs 1.-3.~~
 609 Penalties may be assessed in accordance with this chapter. The

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610 contributions due for wages paid in the fourth quarter are not
 611 affected by this paragraph and are due and payable in accordance
 612 with this chapter.

613 Section 21. Section 443.163, Florida Statutes, is amended
 614 to read:

615 443.163 Electronic reporting and remitting of contributions
 616 and reimbursements.—

617 (1) An employer may file any report and remit any
 618 contributions or reimbursements required under this chapter by
 619 electronic means. The Department of Economic Opportunity or the
 620 state agency providing reemployment assistance tax collection
 621 services shall adopt rules prescribing the format and
 622 instructions necessary for electronically filing reports and
 623 remitting contributions and reimbursements to ensure a full
 624 collection of contributions and reimbursements due. The
 625 acceptable method of transfer, the method, form, and content of
 626 the electronic means, and the method, if any, by which the
 627 employer will be provided with an acknowledgment shall be
 628 prescribed by the department or its tax collection service
 629 provider. However, any employer who employed 10 or more
 630 employees in any quarter during the preceding state fiscal year
 631 must file the Employers Quarterly Reports ~~(UCT-6)~~ for the
 632 current calendar year and remit the contributions and
 633 reimbursements due by electronic means approved by the tax
 634 collection service provider. A person who prepared and reported
 635 for 100 or more employers in any quarter during the preceding
 636 state fiscal year must file the Employers Quarterly Reports
 637 ~~(UCT-6)~~ for each calendar quarter in the current calendar year,
 638 beginning with reports due for the second calendar quarter of

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639 2003, by electronic means approved by the tax collection service
640 provider.

641 (2) (a) An employer who is required by law to file an
642 Employers Quarterly Report ~~(UCT-6)~~ by approved electronic means,
643 but who files the report by a means other than approved
644 electronic means, is liable for a penalty of \$50 for that report
645 and \$1 for each employee. This penalty is in addition to any
646 other penalty provided by this chapter. However, the penalty
647 does not apply if the tax collection service provider waives the
648 electronic filing requirement in advance. An employer who fails
649 to remit contributions or reimbursements by approved electronic
650 means as required by law is liable for a penalty of \$50 for each
651 remittance submitted by a means other than approved electronic
652 means. This penalty is in addition to any other penalty provided
653 by this chapter.

654 (b) A person who prepared and reported for 100 or more
655 employers in any quarter during the preceding state fiscal year,
656 but who fails to file an Employers Quarterly Report ~~(UCT-6)~~ for
657 each calendar quarter in the current calendar year by approved
658 electronic means, is liable for a penalty of \$50 for that report
659 and \$1 for each employee. This penalty is in addition to any
660 other penalty provided by this chapter. However, the penalty
661 does not apply if the tax collection service provider waives the
662 electronic filing requirement in advance.

663 (3) The tax collection service provider may waive the
664 requirement to file an Employers Quarterly Report ~~(UCT-6)~~ by
665 electronic means for employers that are unable to comply despite
666 good faith efforts or due to circumstances beyond the employer's
667 reasonable control.

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

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668 (a) As prescribed by the Department of Economic Opportunity
669 or its tax collection service provider, grounds for approving
670 the waiver include, but are not limited to, circumstances in
671 which the employer does not:

672 1. Currently file information or data electronically with
673 any business or government agency; or

674 2. Have a compatible computer that meets or exceeds the
675 standards prescribed by the department or its tax collection
676 service provider.

677 (b) The tax collection service provider shall accept other
678 reasons for requesting a waiver from the requirement to submit
679 the Employers Quarterly Report ~~(UCT-6)~~ by electronic means,
680 including, but not limited to:

681 1. That the employer needs additional time to program his
682 or her computer;

683 2. That complying with this requirement causes the employer
684 financial hardship; or

685 3. That complying with this requirement conflicts with the
686 employer's business procedures.

687 (c) The department or the state agency providing
688 reemployment assistance tax collection services may establish by
689 rule the length of time a waiver is valid and may determine
690 whether subsequent waivers will be authorized, based on this
691 subsection.

692 (4) As used in this section, the term "electronic means"
693 includes, but is not limited to, electronic data interchange;
694 electronic funds transfer; and use of the Internet, telephone,
695 or other technology specified by the Department of Economic
696 Opportunity or its tax collection service provider.

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

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697 (5) The tax collection service provider may waive the
 698 penalty imposed by this section if a written request for a
 699 waiver is filed which establishes that imposition would be
 700 inequitable. Examples of inequity include, but are not limited
 701 to, situations where the failure to electronically file was
 702 caused by one of the following factors:

703 (a) Death or serious illness of the person responsible for
 704 the preparation and filing of the report.

705 (b) Destruction of the business records by fire or other
 706 casualty.

707 (c) Unscheduled and unavoidable computer downtime.

708 Section 22. Paragraph (e) of subsection (3) of section
 709 733.2121, Florida Statutes, is amended to read:

710 733.2121 Notice to creditors; filing of claims.—

711 (3)

712 (e) The personal representative may serve a notice to
 713 creditors on the Department of Revenue only when the Department
 714 of Revenue is determined to be a creditor under paragraph (a) ~~if~~
 715 the Department of Revenue has not previously been served with a
 716 copy of the notice to creditors, then service of the inventory
 717 on the Department of Revenue shall be the equivalent of service
 718 of a copy of the notice to creditors.

719 Section 23. For the purpose of incorporating the amendment
 720 made by this act to section 733.2121, Florida Statutes, in a
 721 reference thereto, section 733.701, Florida Statutes, is
 722 reenacted to read:

723 733.701 Notifying creditors.—Unless creditors' claims are
 724 otherwise barred by s. 733.710, every personal representative
 725 shall cause notice to creditors to be published and served under

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726 s. 733.2121.

727 Section 24. Effective January 1, 2018, section 206.998,
 728 Florida Statutes, is amended to read:

729 206.998 Applicability of specified sections of parts I and
 730 II.—The provisions of ss. 206.01, 206.02, 206.025, 206.026,
 731 206.027, 206.028, 206.03, 206.05, 206.055, 206.06, 206.07,
 732 206.075, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15,
 733 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204,
 734 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25,
 735 206.27, 206.28, ~~206.405, 206.406,~~ 206.41, 206.413, 206.43,
 736 206.44, 206.48, 206.485, 206.49, 206.56, 206.59, 206.606,
 737 206.608, and 206.61 of part I of this chapter and ss. 206.86,
 738 206.872, 206.874, 206.8745, 206.88, 206.90, and 206.93 of part
 739 II of this chapter shall, as far as lawful or practicable, be
 740 applicable to the tax levied and imposed and to the collection
 741 thereof as if fully set out in this part. However, any provision
 742 of any such section does not apply if it conflicts with any
 743 provision of this part.

744 Section 25. Except as otherwise expressly provided in this
 745 act, this act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

April 17, 2017

The Honorable Jack Latvala
Senate Committee on Appropriations, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

I respectfully request SB 1320, related to *Tax Administration*, be placed on the next committee agenda.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

4/25/17

Meeting Date

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

SB1320

Bill Number (if applicable)

106194

Amendment Barcode (if applicable)

Topic Tax Administration

Name Kevin Cabrera

Job Title Representative

Address 123 S. Adams St.

Phone 786-329-9080

Street

Tallahassee FL 32301

Email

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing 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 PITTS

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.	<u>Bouck</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Fav/CS
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting
4.	_____	_____	<u>RC</u>	_____

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 course³ 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

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 length²⁵ 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.

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



866412

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

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.—



866412

11 (2) Next Generation Sunshine State Standards must meet the
12 following requirements:

13 (d) Social Studies standards must establish specific
14 curricular content for, at a minimum, geography, United States
15 and world history, government, civics, humanities, and
16 economics, including financial literacy. Financial literacy
17 includes the knowledge, understanding, skills, behaviors,
18 attitudes, and values that will enable a student to make
19 responsible and effective financial decisions on a daily basis.
20 Financial literacy instruction shall be an integral part of
21 instruction throughout the entire economics course and include
22 information regarding earning income; buying goods and services;
23 saving and financial investing; taxes; the use of credit and
24 credit cards; budgeting and debt management, including student
25 loans and secured loans; banking and financial services;
26 planning for one's financial future, including higher education
27 and career planning; credit reports and scores; and fraud and
28 identity theft prevention. The requirements for financial
29 literacy specified under this paragraph do not apply to students
30 entering grade 9 in the 2017-2018 school year and thereafter.

31 (f) Effective for students entering grade 9 in the 2017-
32 2018 school year and thereafter, financial literacy standards
33 must establish specific curricular content for, at a minimum,
34 personal financial literacy and money management. Financial
35 literacy includes instruction in the areas specified in s.
36 1003.4282(3)(h).

37 Section 6. Paragraphs (d) and (g) of subsection (3) of
38 section 1003.4282, Florida Statutes, are amended, and paragraph
39 (h) is added to that subsection, to read:



866412

40 1003.4282 Requirements for a standard high school diploma.—

41 (3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT
42 REQUIREMENTS.—

43 (d) *Three credits in social studies.*—A student must earn
44 one credit in United States History; one credit in World
45 History; one-half credit in economics, which must include
46 financial literacy; and one-half credit in United States
47 Government. The United States History EOC assessment constitutes
48 30 percent of the student's final course grade. However, for a
49 student entering grade 9 in the 2017-2018 school year or
50 thereafter, financial literacy is not a required component of
51 the one-half credit in economics.

52 (g) ~~Eight~~ *Credits in Electives.*—School districts must
53 develop and offer coordinated electives so that a student may
54 develop knowledge and skills in his or her area of interest,
55 such as electives with a STEM or liberal arts focus. Such
56 electives must include opportunities for students to earn
57 college credit, including industry-certified career education
58 programs or series of career-themed courses that result in
59 industry certification or articulate into the award of college
60 credit, or career education courses for which there is a
61 statewide or local articulation agreement and which lead to
62 college credit. A student entering grade 9 before the 2017-2018
63 school year must earn eight credits in electives. A student
64 entering grade 9 in the 2017-2018 school year or thereafter must
65 earn seven and one-half credits in electives.

66 (h) *One-half credit in personal financial literacy.*—
67 Beginning with students entering grade 9 in the 2017-2018 school
68 year, each student shall earn one-half credit in personal



866412

69 financial literacy and money management. This instruction must
70 include discussion of or instruction in the following:

71 1. Types of bank accounts offered, opening and managing a
72 bank account, and assessing the quality of a depository
73 institution's services.

74 2. Balancing a checkbook.

75 3. Basic principles of money management, such as spending,
76 credit, credit scores, and managing debt, including retail and
77 credit card debt.

78 4. Completing a loan application.

79 5. Receiving an inheritance and related implications.

80 6. Basic principles of personal insurance policies.

81 7. Computing federal income taxes.

82 8. Local tax assessments.

83 9. Computing interest rates by various mechanisms.

84 10. Simple contracts.

85 11. Contesting an incorrect billing statement.

86 12. Types of savings and investments.

87 13. State and federal laws concerning finance.

88

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

90 And the title is amended as follows:

91 Delete line 9

92 and insert:

93 schools; providing a short title; amending s. 1003.41,
94 F.S.; revising the financial literacy requirements for
95 the Next Generation Sunshine State Standards; amending
96 s. 1003.4282, F.S.; revising the social studies
97 requirements for a standard high school diploma;



866412

98 revising the required credits for a standard high
99 school diploma to seven and one-half, rather than
100 eight, credits in electives and to include one-half
101 credit of instruction in personal financial literacy
102 and money management; amending s. 1003.44, F.S.;
103 encouraging



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LEGISLATIVE ACTION

Senate

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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

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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

- 11 (1) Train ~~highly effective~~ reading coaches.
- 12 (2) Create multiple designations of effective reading
13 instruction, with accompanying credentials, to enable ~~which~~
14 ~~encourage~~ all teachers to integrate reading instruction into
15 their content areas.
- 16 (3) Work with the Lastinger Center for Learning at the
17 University of Florida, to develop training for ~~train~~ K-12
18 teachers, reading coaches, and school principals on effective
19 content-area-specific reading strategies; the integration of
20 content knowledge-rich texts from other core subject areas into
21 reading instruction; evidence-based reading strategies
22 identified in subsection (7); and technology tools to improve
23 student reading performance. For secondary teachers, emphasis
24 shall be on technical text. These strategies must be developed
25 for all content areas in the K-12 curriculum.
- 26 (4) Develop and provide access to sequenced, content-rich
27 curriculum programming, instructional practices, and resources
28 that help elementary schools use state-adopted instructional
29 materials to increase students' core knowledge and literacy
30 skills, including student attainment of the Next Generation
31 Sunshine State Standards for social studies, science, and the
32 arts.
- 33 (5)~~(4)~~ Provide parents with information and strategies for
34 assisting their children in reading, including reading in ~~the~~
35 content areas ~~area~~.
- 36 (6)~~(5)~~ Provide technical assistance to school districts in
37 the development and implementation of district plans for use of
38 the research-based reading instruction allocation provided in s.
39 1011.62(9) and annually review and approve such plans.



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40 ~~(7)(6)~~ Review, evaluate, and provide technical assistance
41 to school districts' implementation of the K-12 comprehensive
42 reading plan required in s. 1011.62(9).

43 ~~(8)(7)~~ Work with the Florida Center for Reading Research to
44 identify scientifically researched and evidence-based reading
45 instructional and intervention programs that incorporate
46 explicit, systematic, and sequential approaches to teaching
47 phonemic awareness, phonics, vocabulary, fluency, and text
48 comprehension and incorporate decodable or phonetic text
49 instructional ~~provide information on research-based reading~~
50 ~~programs and effective reading in the content area strategies.~~
51 Reading intervention includes evidence-based strategies
52 frequently used to remediate reading deficiencies and includes,
53 but is not limited to, individual instruction, multisensory
54 approaches, tutoring, mentoring, or the use of technology that
55 targets specific reading skills and abilities.

56 ~~(9)(8)~~ Periodically review the Next Generation Sunshine
57 State Standards for English Language Arts to determine their
58 appropriateness at each grade level ~~reading at all grade levels.~~

59 ~~(10)(9)~~ Periodically review teacher certification
60 requirements and examinations, including alternative
61 certification requirements and examinations ~~exams~~, to ascertain
62 whether the examinations measure the skills needed for evidence-
63 based ~~research-based~~ reading instruction and instructional
64 strategies for teaching reading, including reading in the
65 content areas.

66 ~~(11)(10)~~ Work with teacher preparation programs approved
67 pursuant to ss. ~~s.~~ 1004.04 and 1004.85 to integrate effective,
68 research-based and evidence-based reading instructional and



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69 intervention strategies, including explicit, systematic, and
70 sequential and reading strategies, multisensory intervention
71 strategies, and reading in the content area instructional
72 strategies into teacher preparation programs.

73 (12)-(11) Administer grants and perform other functions as
74 necessary to help meet the goal that all students read at their
75 highest potential grade level.

76 Section 4. Paragraph (b) of subsection (2) of section
77 1004.04, Florida Statutes, is amended to read:

78 1004.04 Public accountability and state approval for
79 teacher preparation programs.—

80 (2) UNIFORM CORE CURRICULA AND CANDIDATE ASSESSMENT.—

81 (b) The rules to establish uniform core curricula for each
82 state-approved teacher preparation program must include, but are
83 not limited to, the following:

84 1. The Florida Educator Accomplished Practices.

85 2. The state-adopted content standards.

86 3. Scientifically researched and evidence-based reading
87 instructional strategies that improve reading performance for
88 all students, including explicit, systematic, and sequential
89 approaches to teaching phonemic awareness, phonics, vocabulary,
90 fluency, and text comprehension, and multisensory intervention
91 strategies instruction.

92 4. Content literacy and mathematics practices.

93 5. Strategies appropriate for the instruction of English
94 language learners.

95 6. Strategies appropriate for the instruction of students
96 with disabilities.

97 7. School safety.



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98 Section 5. Paragraph (a) of subsection (3) of section
99 1004.85, Florida Statutes, is amended to read:

100 1004.85 Postsecondary educator preparation institutes.—

101 (3) Educator preparation institutes approved pursuant to
102 this section may offer competency-based certification programs
103 specifically designed for noneducation major baccalaureate
104 degree holders to enable program participants to meet the
105 educator certification requirements of s. 1012.56. An educator
106 preparation institute choosing to offer a competency-based
107 certification program pursuant to the provisions of this section
108 must implement a program previously approved by the Department
109 of Education for this purpose or a program developed by the
110 institute and approved by the department for this purpose.
111 Approved programs shall be available for use by other approved
112 educator preparation institutes.

113 (a) Within 90 days after receipt of a request for approval,
114 the Department of Education shall approve a preparation program
115 pursuant to the requirements of this subsection or issue a
116 statement of the deficiencies in the request for approval. The
117 department shall approve a certification program if the
118 institute provides evidence of the institute's capacity to
119 implement a competency-based program that includes each of the
120 following:

121 1.a. Participant instruction and assessment in the Florida
122 Educator Accomplished Practices.

123 b. The state-adopted student content standards.

124 c. Scientifically researched and evidence-based reading
125 instructional strategies that improve reading performance for
126 all students, including explicit, systematic, and sequential



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127 approaches to teaching phonemic awareness, phonics, vocabulary,
128 fluency, and text comprehension, and multisensory intervention
129 strategies instruction.

130 d. Content literacy and mathematical practices.

131 e. Strategies appropriate for instruction of English
132 language learners.

133 f. Strategies appropriate for instruction of students with
134 disabilities.

135 g. School safety.

136 2. An educational plan for each participant to meet
137 certification requirements and demonstrate his or her ability to
138 teach the subject area for which the participant is seeking
139 certification, which is based on an assessment of his or her
140 competency in the areas listed in subparagraph 1.

141 3. Field experiences appropriate to the certification
142 subject area specified in the educational plan with a diverse
143 population of students in a variety of settings under the
144 supervision of qualified educators.

145 4. A certification ombudsman to facilitate the process and
146 procedures required for participants who complete the program to
147 meet any requirements related to the background screening
148 pursuant to s. 1012.32 and educator professional or temporary
149 certification pursuant to s. 1012.56.

150
151 ===== T I T L E A M E N D M E N T =====

152 And the title is amended as follows:

153 Delete lines 6 - 9

154 and insert:

155 amending s. 1001.215, F.S.; revising the duties of the



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156 Just Read, Florida! Office; amending s. 1004.04, F.S.;
157 revising core curricula requirements for certain
158 teacher preparation programs to include certain
159 reading instruction and interventions; amending s.
160 1004.85, F.S.; requiring certain educator preparation
161 institutes to provide evidence of specified reading
162 instruction as a condition of program approval and
163 continued approval; amending s. 1003.44, F.S.;
164 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



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57 materials to increase students' core knowledge and literacy
58 skills, including student attainment of the Next Generation
59 Sunshine State Standards for social studies, science, and the
60 arts.

61 Section 4. Subsection (3) is added to section 1003.44,
62 Florida Statutes, to read:

63 1003.44 Patriotic programs; rules.—

64 (3) All public schools in the state are encouraged to
65 coordinate, at all grade levels, instruction related to our
66 nation's Founding Fathers with "American Founders' Month"
67 pursuant to s. 683.1455.

68 Section 5. Present subsections (4) through (11) of section
69 1007.25, Florida Statutes, are redesignated as subsections (5)
70 through (12), respectively, and a new subsection (4) is added to
71 that section, to read:

72 1007.25 General education courses; common prerequisites;
73 other degree requirements.—

74 (4) Beginning with students initially entering a Florida
75 College System institution or state university in 2018-2019 and
76 thereafter, each student must demonstrate competency in civic
77 literacy. A student must have the option to demonstrate
78 competency through successful completion of a civic literacy
79 course or by achieving a passing score on an assessment. The
80 State Board of Education must adopt in rule and the Board of
81 Governors must adopt in regulation at least one existing
82 assessment that measures competencies consistent with the
83 required course competencies outlined in paragraph (b). The
84 chair of the State Board of Education and the chair of the Board
85 of Governors, or their respective designees, shall jointly



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86 appoint a faculty committee to:

87 (a) Develop a new course in civic literacy or revise an
88 existing general education core course in American History or
89 American Government to include civic literacy; and

90 (b) Establish course competencies and identify outcomes
91 that include, at a minimum, an understanding of the basic
92 principles of American democracy and how they are applied in our
93 republican form of government, an understanding of the United
94 States Constitution, knowledge of the founding documents and how
95 they have shaped the nature and functions of our institutions of
96 self-governance, and an understanding of landmark Supreme Court
97 cases and their impact on law and society.

98 Section 6. Paragraph (c) of subsection (1) of section
99 943.22, Florida Statutes, is amended to read:

100 943.22 Salary incentive program for full-time officers.—

101 (1) For the purpose of this section, the term:

102 (c) "Community college degree or equivalent" means
103 graduation from an accredited community college or having been
104 granted a degree pursuant to s. 1007.25(11) ~~s. 1007.25(10)~~ or
105 successful completion of 60 semester hours or 90 quarter hours
106 and eligibility to receive an associate degree from an
107 accredited college, university, or community college.

108 Section 7. Subsection (7) and paragraph (d) of subsection
109 (8) of section 1001.64, Florida Statutes, are amended to read:

110 1001.64 Florida College System institution boards of
111 trustees; powers and duties.—

112 (7) Each board of trustees has responsibility for: ensuring
113 that students have access to general education courses as
114 identified in rule; requiring no more than 60 semester hours of



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115 degree program coursework, including 36 semester hours of
116 general education coursework, for an associate in arts degree;
117 notifying students that earned hours in excess of 60 semester
118 hours may not be accepted by state universities; notifying
119 students of unique program prerequisites; and ensuring that
120 degree program coursework beyond general education coursework is
121 consistent with degree program prerequisite requirements adopted
122 pursuant to s. 1007.25(6) ~~s. 1007.25(5)~~.

123 (8) Each board of trustees has authority for policies
124 related to students, enrollment of students, student records,
125 student activities, financial assistance, and other student
126 services.

127 (d) Boards of trustees shall identify their general
128 education curricula pursuant to s. 1007.25(7) ~~s. 1007.25(6)~~.

129 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.	<u>Bouck</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Fav/CS
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting
4.	_____	_____	<u>RC</u>	_____

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 course³ 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

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

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 length²⁵ 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"

Page 1 of 5

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

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

Page 2 of 5

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59 Sunshine State Standards for social studies, science, and the
60 arts.

61 Section 4. Subsection (3) is added to section 1003.44,
62 Florida Statutes, to read:

63 1003.44 Patriotic programs; rules.—

64 (3) All public schools in the state are encouraged to
65 coordinate, at all grade levels, instruction related to our
66 nation's Founding Fathers with "American Founders' Month"
67 pursuant to s. 683.1455.

68 Section 5. Present subsections (4) through (11) of section
69 1007.25, Florida Statutes, are redesignated as subsections (5)
70 through (12), respectively, and a new subsection (4) is added to
71 that section, to read:

72 1007.25 General education courses; common prerequisites;
73 other degree requirements.—

74 (4) Beginning with students initially entering a Florida
75 College System institution or state university in 2018-2019 and
76 thereafter, each student must demonstrate competency in civic
77 literacy. A student must have the option to demonstrate
78 competency through successful completion of a civic literacy
79 course or by achieving a passing score on an assessment adopted
80 in rule by the State Board of Education or in regulation by the
81 Board of Governors, as applicable. The chair of the State Board
82 of Education and the chair of the Board of Governors, or their
83 respective designees, shall jointly appoint a faculty committee
84 to:

85 (a) Develop a new course in civic literacy or revise an
86 existing general education core course; and

87 (b) Establish course competencies and identify outcomes

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88 that include, at a minimum, an understanding of the basic
89 principles of American democracy and how they are applied in our
90 republican form of government, an understanding of the United
91 States Constitution, knowledge of the founding documents and how
92 they have shaped the nature and functions of our institutions of
93 self-governance, and an understanding of landmark Supreme Court
94 cases and their impact on law and society.

95 Section 6. Paragraph (c) of subsection (1) of section
96 943.22, Florida Statutes, is amended to read:

97 943.22 Salary incentive program for full-time officers.—

98 (1) For the purpose of this section, the term:

99 (c) "Community college degree or equivalent" means
100 graduation from an accredited community college or having been
101 granted a degree pursuant to s. 1007.25(11) ~~s. 1007.25(10)~~ or
102 successful completion of 60 semester hours or 90 quarter hours
103 and eligibility to receive an associate degree from an
104 accredited college, university, or community college.

105 Section 7. Subsection (7) and paragraph (d) of subsection
106 (8) of section 1001.64, Florida Statutes, are amended to read:

107 1001.64 Florida College System institution boards of
108 trustees; powers and duties.—

109 (7) Each board of trustees has responsibility for: ensuring
110 that students have access to general education courses as
111 identified in rule; requiring no more than 60 semester hours of
112 degree program coursework, including 36 semester hours of
113 general education coursework, for an associate in arts degree;
114 notifying students that earned hours in excess of 60 semester
115 hours may not be accepted by state universities; notifying
116 students of unique program prerequisites; and ensuring that

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117 degree program coursework beyond general education coursework is
118 consistent with degree program prerequisite requirements adopted
119 pursuant to s. 1007.25(6) ~~s. 1007.25(5)~~.

120 (8) Each board of trustees has authority for policies
121 related to students, enrollment of students, student records,
122 student activities, financial assistance, and other student
123 services.

124 (d) Boards of trustees shall identify their general
125 education curricula pursuant to s. 1007.25(7) ~~s. 1007.25(6)~~.

126 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.

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.

Phone 850-320-8319

Street

St. Petersburg FL 33701

Email john@floridaymcas.org

City

State

Zip

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.



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

1 A bill to be entitled
 2 An act for the relief of J.D.S.; providing an
 3 appropriation from the General Revenue Fund to
 4 compensate J.D.S. for injuries and damages sustained
 5 as a result of the negligence of the Agency for
 6 Persons with Disabilities, as successor agency of the
 7 Department of Children and Family Services; providing
 8 that certain payments and the appropriation satisfy
 9 all present and future claims related to the negligent
 10 act; providing a limitation on the payment of attorney
 11 fees; providing an effective date.

12

13 WHEREAS, in December 2002, J.D.S., a 22-year-old
 14 developmentally disabled woman with autism, cerebral palsy, and
 15 mental retardation, was living at the Strong Group Home, which
 16 was owned and operated by Hester Strong and licensed and
 17 supervised by the Department of Children and Family Services,
 18 and

19 WHEREAS, in December 2002, J.D.S. was raped and impregnated
 20 by Philip Strong, husband of the owner and operator of the
 21 Strong Group Home, and

22 WHEREAS, on April 24, 2003, J.D.S.'s pregnancy was
 23 discovered by her physician, and on August 30, 2003, J.D.S. gave
 24 birth to a baby girl, known as G.V.S., who was immediately taken
 25 from J.D.S. and placed for adoption, and

26 WHEREAS, as a result of her rape and impregnation, J.D.S.
 27 sustained mental anguish and a further diminution in the quality
 28 of her life, and

29 WHEREAS, J.D.S. filed a claim in Orange County Circuit

Page 1 of 4

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590-01949-17

201728c1

30 Court alleging that the department negligently supervised the
 31 Strong Group Home and that the Strong Group Home was negligently
 32 operated, thereby allowing Philip Strong to rape J.D.S., which
 33 resulted in her impregnation, and

34 WHEREAS, J.D.S.'s claims against the department, the Strong
 35 Group Home, and other parties were based upon negligence,
 36 violations of chapter 393, Florida Statutes, and violations of
 37 the Bill of Rights of Persons with Developmental Disabilities,
 38 as set forth in s. 393.13, Florida Statutes, and

39 WHEREAS, as a client of the department, as the term
 40 "client" is defined in s. 393.063, Florida Statutes, J.D.S. had
 41 a right under s. 393.13, Florida Statutes, to "dignity, privacy,
 42 and humane care, including the right to be free from abuse,
 43 including sexual abuse, neglect, and exploitation," and

44 WHEREAS, J.D.S. alleged that the department had a
 45 nondelegable duty to protect her from foreseeable harm,
 46 including sexual abuse, and

47 WHEREAS, J.D.S. alleged that the department was liable for
 48 direct negligence relating to its oversight of the Strong Group
 49 Home and that it was vicariously liable for the negligence of
 50 the Strong Group Home under the doctrine of respondeat superior
 51 established under s. 768.28(9)(a), Florida Statutes, and

52 WHEREAS, before the jury trial was scheduled to commence on
 53 February 6, 2012, the parties agreed to settle the case titled
 54 *Patti R. Jarrell, as plenary guardian of J.D.S., an*
 55 *incapacitated person, Plaintiff, v. State of Florida, Agency for*
 56 *Persons With Disabilities, as successor agency of the Department*
 57 *of Children and Family Services, for the sum of \$1.15 million,*
 58 and

Page 2 of 4

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201728c1

59 WHEREAS, under the terms of the settlement agreement
60 consented to by the parties, the Agency for Persons with
61 Disabilities agreed to pay \$200,000 to J.D.S., with the
62 remaining \$950,000 to be paid pursuant to a stipulated claim
63 bill, and

64 WHEREAS, the agency has agreed to request an appropriation
65 from the Legislature in the amount of \$950,000, and

66 WHEREAS, the \$950,000 stipulated settlement is sought
67 through the submission of a claim bill to the Legislature, NOW,
68 THEREFORE,

69

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

71

72 Section 1. The facts stated in the preamble to this act are
73 found and declared to be true.

74 Section 2. The sum of \$950,000 is appropriated from the
75 General Revenue Fund to the Agency for Persons with Disabilities
76 for the relief of J.D.S. as compensation for the injuries and
77 damages she sustained.

78 Section 3. The Chief Financial Officer shall draw a warrant
79 upon funds of the Agency for Persons with Disabilities in the
80 sum of \$950,000 and shall pay such amount out of funds in the
81 State Treasury to the AGED Pooled Special Needs Trust, which
82 shall be managed and administered on behalf of J.D.S. by AGED,
83 Inc., a nonprofit trust company.

84 Section 4. The amount paid by the Agency for Persons with
85 Disabilities pursuant to s. 768.28, Florida Statutes, and the
86 amount awarded under this act are intended to provide the sole
87 compensation for all present and future claims arising out of

Page 3 of 4

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590-01949-17

201728c1

88 the factual situation described in this act which resulted in
89 the injuries and damages to J.D.S. The total amount paid for
90 attorney fees relating to this claim may not exceed 25 percent
91 of the amount awarded under this act.

92

Section 5. This act shall take effect upon becoming a law.

Page 4 of 4

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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.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 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 cemeteries² 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

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 person⁹ 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 felony¹¹ 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 felony¹³ 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 performing 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.

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.



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; ~~r~~ 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.



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57 497.005(43).

58 (b) If a legally authorized person cannot be located after
59 a reasonable search or if 75 years or more have elapsed since
60 the date of entombment, interment, or inurnment, then public
61 notice must be posted. The public notice must be published once
62 a week for 4 consecutive weeks in a newspaper of general
63 circulation in the county where the cemetery is located. The
64 public notice must contain the name of the cemetery; the name,
65 address, and telephone number of the cemetery representative
66 with whom objections may be filed; the reason for relocation of
67 the contents of the graves or tombs; the names of the human
68 remains to be relocated; the approximate date of the initial
69 entombment, interment, or inurnment; the proposed site of
70 relocation; and the proposed date of relocation. The proposed
71 date of relocation may not be less than 30 days from last date
72 of publication. If no objection from a legally authorized person
73 is received within 30 days from the last date of publication of
74 the public notice, the cemetery may proceed with relocation.

75 (6) If a legally authorized person refuses to sign a
76 contract, as provided in (5)(a), or if a legally authorized
77 person objects, as provided in (5)(b), a public hearing shall be
78 held before the county commission of the county where the
79 cemetery is located, or the city council, if the cemetery is
80 located in a municipality, and the county commission or the city
81 council shall have sole authority to grant a request for
82 relocation of the contents of such graves or tombs.

83 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.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

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 cemeteries² 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

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 person⁹ 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 felony¹¹ 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 felony¹³ 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 performing 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.

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

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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

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591-02378B-17

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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

Page 2 of 3

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591-02378B-17

2017844c1

59 a reasonable search or if 75 years or more have elapsed since
60 the date of entombment, interment, or inurnment, then public
61 notice must be posted. The public notice must be published once
62 a week for 4 consecutive weeks in a newspaper of general
63 circulation in the county where the cemetery is located. The
64 public notice must contain the name of the cemetery; the name,
65 address, and telephone number of the cemetery representative
66 with whom objections may be filed; the reason for relocation of
67 the contents of the graves or tombs; the names of the human
68 remains to be relocated; the approximate date of the initial
69 entombment, interment, or inurnment; the proposed site of
70 relocation; and the proposed date of relocation. The proposed
71 date of relocation may not be less than 30 days from last date
72 of publication. If no objection from a legally authorized person
73 is received within 30 days from the last date of publication of
74 the public notice, the cemetery may proceed with relocation.

75 (6) If a legally authorized person objects, a public
76 hearing shall be held before the county commission of the county
77 where the cemetery is located, or the city council, if the
78 cemetery is located in a municipality, and the county commission
79 or the city council shall have sole authority to grant a request
80 for relocation of the contents of such graves or tombs.

81 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.

A handwritten signature in black ink, appearing to read "David Simmons". The signature is written in a cursive style with a prominent flourish at the end.

Senator David Simmons
Florida Senate, District 9

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

CSRB 844

Bill Number (if applicable)

Topic Tombs + Memorials + Cemeteries

Amendment Barcode (if applicable)

Name BOB BOYD

Job Title ATTY GEN ARCHDIOCESE OF MIAMI

Address 660 E. JEFFERSON ST

Phone 850-412-0306

Street

TALLAHASSEE

City

FL

State

32301

Zip

Email bboyd@sscclawfirm.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~~

Page 1 of 3

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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:

Page 2 of 3

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9-00516-17

2017892__

59 985.565 Sentencing powers; procedures; alternatives for
60 juveniles prosecuted as adults.—
61 (4) SENTENCING ALTERNATIVES.—
62 (c) *Adult sanctions upon failure of juvenile sanctions.*—If
63 a child proves not to be suitable to a commitment program,
64 juvenile probation program, or treatment program under paragraph
65 (b), the department shall provide the sentencing court with a
66 written report outlining the basis for its objections to the
67 juvenile sanction and shall simultaneously provide a copy of the
68 report to the state attorney and the defense counsel. The
69 department shall schedule a hearing within 30 days. Upon
70 hearing, the court may revoke the previous adjudication, impose
71 an adjudication of guilt, and impose any sentence which it may
72 lawfully impose, giving credit for all time spent by the child
73 in the department. The court may also classify the child as a
74 youthful offender under s. 958.04, if appropriate. For purposes
75 of this paragraph, a child may be found not suitable to a
76 commitment program, community control program, or treatment
77 program under paragraph (b) if the child commits a new violation
78 of law while under juvenile sanctions, if the child commits any
79 other violation of the conditions of juvenile sanctions, or if
80 the child's actions are otherwise determined by the court to
81 demonstrate a failure of juvenile sanctions.
82
83 It is the intent of the Legislature that the criteria and
84 guidelines in this subsection are mandatory and that a
85 determination of disposition under this subsection is subject to
86 the right of the child to appellate review under s. 985.534.
87 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.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

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.

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

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

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

(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 Coleen Mackin

Job Title Constituency Services

Address 401 S. Magnolia DR.

Phone 850-425-2600

Street

Palmdale FL

City

State

Zip

Email cmackin@iamfor

Kids Club

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: SB 894

INTRODUCER: Senator Simmons

SUBJECT: Arrest Warrants for State Prisoners

DATE: April 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2.	<u>Parks</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Harkness</u>	<u>Hansen</u>	<u>AP</u>	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 affected 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__

1 A bill to be entitled
 2 An act relating to arrest warrants for state
 3 prisoners; creating s. 948.33, F.S.; authorizing a
 4 prisoner in a state prison who has an unserved
 5 violation of probation or an unserved violation of
 6 community control warrant to file a notice of unserved
 7 warrant in the circuit court where the warrant was
 8 issued; requiring the prisoner to serve notice on the
 9 state attorney; requiring the state attorney to
 10 schedule a status hearing within a certain time after
 11 receiving notice; specifying procedures and
 12 requirements for the status hearing; providing for
 13 prosecution of the violation; requiring the court to
 14 send the order to the county sheriff; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 948.33, Florida Statutes, is created to
 20 read:

21 948.33 Prosecution for violation of probation and community
 22 control arrest warrants of state prisoners.-A prisoner in a
 23 state prison in this state who has an unserved violation of
 24 probation or an unserved violation of community control warrant
 25 for his or her arrest may file a state prisoner's notice of
 26 unserved warrant in the circuit court of the judicial circuit in
 27 which the unserved warrant was issued. The prisoner must serve
 28 notice on the state attorney of that circuit and the state
 29 attorney must schedule the notice for a status hearing before

Page 1 of 2

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9-00517-17

2017894__

30 the circuit court within 90 days after receipt of the notice.
 31 The state prisoner may not be transported to the status hearing.
 32 At the status hearing the state attorney shall inform the court
 33 whether there is an unserved violation of probation or an
 34 unserved violation of community control warrant for the arrest
 35 of the state prisoner. If a warrant for either violation exists,
 36 the court must order the state attorney to submit to the court
 37 within 30 days after the status hearing an order to transport
 38 the state prisoner to the county jail of the county that issued
 39 the warrant for prosecution of the violation and the court shall
 40 send the order to the county sheriff for execution.

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

Page 2 of 2

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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.

A handwritten signature in black ink, appearing to read "David Simmons". The signature is written in a cursive style with a prominent flourish at the end.

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

April 25, 2017

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

894

Meeting Date

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

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

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

(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

Phone _____

Street

Tall FL 32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing 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.

The Florida Senate
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.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Forbes</u>	<u>Williams</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Forbes</u>	<u>Hansen</u>	<u>AP</u>	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

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

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/does/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/does/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.

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.

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

By Senator Simmons

9-00495-17

20171050__

1 A bill to be entitled
 2 An act relating to memory disorder clinics; amending
 3 s. 430.502, F.S.; establishing a memory disorder
 4 clinic at Florida Hospital in Orange County;
 5 reenacting s. 1004.445(3), F.S., relating to providing
 6 assistance to memory disorder clinics, to incorporate
 7 the amendment made to s. 430.502, F.S., in a reference
 8 thereto; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (1) of section 430.502, Florida
 13 Statutes, is amended, and subsection (2) is republished, to
 14 read:
 15 430.502 Alzheimer's disease; memory disorder clinics and
 16 day care and respite care programs.—
 17 (1) There is established:
 18 (a) A memory disorder clinic at each of the three medical
 19 schools in this state;
 20 (b) A memory disorder clinic at a major private nonprofit
 21 research-oriented teaching hospital, and may fund a memory
 22 disorder clinic at any of the other affiliated teaching
 23 hospitals;
 24 (c) A memory disorder clinic at the Mayo Clinic in
 25 Jacksonville;
 26 (d) A memory disorder clinic at the West Florida Regional
 27 Medical Center;
 28 (e) A memory disorder clinic operated by Health First in
 29 Brevard County;

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

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30 (f) A memory disorder clinic at the Orlando Regional
 31 Healthcare System, Inc.;
 32 (g) A memory disorder center located in a public hospital
 33 that is operated by an independent special hospital taxing
 34 district that governs multiple hospitals and is located in a
 35 county with a population greater than 800,000 persons;
 36 (h) A memory disorder clinic at St. Mary's Medical Center
 37 in Palm Beach County;
 38 (i) A memory disorder clinic at Tallahassee Memorial
 39 Healthcare;
 40 (j) A memory disorder clinic at Lee Memorial Hospital
 41 created by chapter 63-1552, Laws of Florida, as amended;
 42 (k) A memory disorder clinic at Sarasota Memorial Hospital
 43 in Sarasota County;
 44 (l) A memory disorder clinic at Morton Plant Hospital,
 45 Clearwater, in Pinellas County; ~~and~~
 46 (m) A memory disorder clinic at Florida Atlantic
 47 University, Boca Raton, in Palm Beach County; and
 48 (n) A memory disorder clinic at Florida Hospital in Orange
 49 County,
 50
 51 for the purpose of conducting research and training in a
 52 diagnostic and therapeutic setting for persons suffering from
 53 Alzheimer's disease and related memory disorders. However,
 54 memory disorder clinics funded as of June 30, 1995, shall not
 55 receive decreased funding due solely to subsequent additions of
 56 memory disorder clinics in this subsection.
 57 (2) It is the intent of the Legislature that research
 58 conducted by a memory disorder clinic and supported by state

Page 2 of 4

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

9-00495-17

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59 funds pursuant to subsection (1) be applied research, be
 60 service-related, and be selected in conjunction with the
 61 department. Such research may address, but is not limited to,
 62 diagnostic technique, therapeutic interventions, and supportive
 63 services for persons suffering from Alzheimer's disease and
 64 related memory disorders and their caregivers. A memory disorder
 65 clinic shall conduct such research in accordance with a research
 66 plan developed by the clinic which establishes research
 67 objectives that are in accordance with this legislative intent.
 68 A memory disorder clinic shall also complete and submit to the
 69 department a report of the findings, conclusions, and
 70 recommendations of completed research. This subsection does not
 71 apply to those memory disorder clinics at the three medical
 72 schools in the state or at the major private nonprofit research-
 73 oriented teaching hospital or other affiliated teaching
 74 hospital.

75 Section 2. For the purpose of incorporating the amendment
 76 made by this act to section 430.502, Florida Statutes, in a
 77 reference thereto, subsection (3) of section 1004.445, Florida
 78 Statutes, is reenacted to read:

79 1004.445 Johnnie B. Byrd, Sr., Alzheimer's Center and
 80 Research Institute.—

81 (3) BUDGET.—The institute's budget shall include the moneys
 82 appropriated in the General Appropriations Act, donated, or
 83 otherwise provided to the institute from private, local, state,
 84 and federal sources, as well as technical and professional
 85 income generated or derived from practice activities at the
 86 institute. Any appropriation to the institute shall be expended
 87 for the purposes specified in this section, including conducting

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20171050__

88 and supporting research and related clinical services, awarding
 89 institutional grants and investigator-initiated research grants
 90 to other persons within the state through a peer-reviewed
 91 competitive process, developing and operating integrated data
 92 projects, providing assistance to the memory disorder clinics
 93 established in s. 430.502, and providing for the operation of
 94 the institute.

95 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.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

4/25/17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

1050
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
Street

Phone 407-303-2850

Orlando FL 32804
City State Zip

Email jean.vansmith@flhosp.org

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.

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

Phone 727/897-9291

Street

St Petersburg

City

FL

State

33705

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.

The Florida Senate
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.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Fav/CS
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AHE</u>	Recommend: Favorable
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	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 organizations¹ 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 bylaws²² and one ex-officio board member who also serves as the director of the DBS.²³

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 statute.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.

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.

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

⁵¹ Email, Florida Department of Education (Feb. 11, 2017).

⁵² *Id.*

By the Committee on Education; and Senator Simmons

581-02689-17

20171458c1

1 A bill to be entitled
2 An act relating to the blind services direct-support
3 organization; amending s. 413.0111, F.S.; abrogating
4 the scheduled repeal of provisions relating to the
5 blind services direct-support organization; providing
6 an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (7) of section 413.0111, Florida
11 Statutes, is amended to read:

12 413.0111 Blind services direct-support organization.-
13 ~~(7) This section is repealed October 1, 2017, unless~~
14 ~~reviewed and saved from repeal by the Legislature.~~

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



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 14, 2017

I respectfully request that **Senate Bill 1458**, relating to Blind Services Direct-support Organization, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 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.	<u>Bouck</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>RC</u>	_____

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 teachers¹ 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 Ranks⁴ in effect when the classroom teacher took the assessment.
- An evaluation of highly effective⁵ 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 contract¹¹ 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 school¹⁴ 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 contract¹⁵ 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 Program¹⁸ 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 program¹⁹ 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 program²⁰ 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 area²¹ 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 performance²² 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 its 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	.	
	.	
	.	
	.	

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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11 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



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57 accountability shall comply with the provisions of ss. 1008.33,
58 1008.34, 1008.345, and 1008.385 and include the following:

59 (a) *School improvement plans.*—

60 ~~1.~~ The district school board shall annually approve and
61 require implementation of a new, amended, or continuation school
62 improvement plan for each school in the district which has a
63 school grade of "D" or "F"; ~~-. If a school~~ has a significant gap
64 in achievement on statewide, standardized assessments
65 administered pursuant to s. 1008.22 by one or more student
66 subgroups, as defined in the federal Elementary and Secondary
67 Education Act (ESEA), 20 U.S.C. s. 6311(b)(2)(C)(v)(II); has not
68 significantly increased the percentage of students passing
69 statewide, standardized assessments; has not significantly
70 increased the percentage of students demonstrating Learning
71 Gains, as defined in s. 1008.34 and as calculated under s.
72 1008.34(3)(b), who passed statewide, standardized assessments;
73 or has significantly lower graduation rates for a subgroup when
74 compared to the state's graduation rate. ~~The, that school's~~
75 improvement plan of a school that meets the requirements of this
76 paragraph shall include strategies for improving these results.
77 The state board shall adopt rules establishing thresholds and
78 for determining compliance with this paragraph ~~subparagraph~~.

79 ~~2. A school that includes any of grades 6, 7, or 8 shall~~
80 ~~include annually in its school improvement plan information and~~
81 ~~data on the school's early warning system required under~~
82 ~~paragraph (b), including a list of the early warning indicators~~
83 ~~used in the system, the number of students identified by the~~
84 ~~system as exhibiting two or more early warning indicators, the~~
85 ~~number of students by grade level that exhibit each early~~



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86 ~~warning indicator, and a description of all intervention~~
87 ~~strategies employed by the school to improve the academic~~
88 ~~performance of students identified by the early warning system.~~
89 ~~In addition, a school that includes any of grades 6, 7, or 8~~
90 ~~shall describe in its school improvement plan the strategies~~
91 ~~used by the school to implement the instructional practices for~~
92 ~~middle grades emphasized by the district's professional~~
93 ~~development system pursuant to s. 1012.98(4)(b)9.~~

94 (b) *Early warning system.*—

95 1. A school that serves any students in grade 1 through
96 grade 1 ~~includes any of grades 6, 7, or 8~~ shall implement an early
97 warning system to identify students in such ~~grades 6, 7, and 8~~
98 who need additional support to improve academic performance and
99 stay engaged in school. The early warning system must include
100 the following early warning indicators:

101 a. Attendance below 90 percent, regardless of whether
102 absence is excused or a result of out-of-school suspension.

103 b. One or more suspensions, whether in school or out of
104 school.

105 c. Course failure in English Language Arts or mathematics
106 during any grading period.

107 d. A Level 1 score on the statewide, standardized
108 assessments in English Language Arts or mathematics or, for
109 students in grade 1 through grade 3, a substantial deficiency in
110 reading under s. 1008.25(5)(a).

111
112 A school district may identify additional early warning
113 indicators for use in a school's early warning system. Beginning
114 in the 2018-2019 academic year, the system must include data on



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115 the number of students identified by the system as exhibiting
116 two or more early warning indicators, the number of students by
117 grade level who exhibit each early warning indicator, and a
118 description of all intervention strategies employed by the
119 school to improve the academic performance of students
120 identified by the early warning system.

121 2. When a student exhibits two or more early warning
122 indicators, the school's child study team under s. 1003.02 or a
123 school-based team formed for the purpose of implementing the
124 requirements of this paragraph, in consultation with the
125 student's parent, shall convene to determine appropriate
126 intervention strategies for the student. The team must use data
127 and information relating to a student's early warning indicators
128 to inform any intervention strategies provided to the student.

129 The school shall provide at least 10 days' written notice of the
130 meeting to the student's parent, indicating the meeting's
131 purpose, time, and location, and provide the parent the
132 opportunity to participate.

133 (21) ~~EDUCATIONAL AUTHORITY TO DECLARE AN EMERGENCY.-Pursue~~
134 ~~negotiations of May declare an emergency in cases in which one~~
135 ~~or more schools in the district are failing or are in danger of~~
136 ~~failing and negotiate~~ special provisions of its contract with
137 the appropriate bargaining units to free ~~these~~ schools meeting
138 specified conditions from contract restrictions that limit a the
139 school's ability to implement programs and strategies needed to
140 improve student performance. The negotiations must result in a
141 memorandum of understanding that addresses the selection,
142 placement, and expectations of instructional personnel and
143 school administrators. For purposes of this subsection, an



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154 educational emergency exists in a school district under the
155 following conditions, and the school board must act accordingly:

156 (a) A school board may negotiate in cases in which one or
157 more schools in the district have a school grade of "D" or in
158 which a school is in danger of earning a grade of "F."

159 (b) Beginning in the 2018-2019 academic year, a school
160 board may negotiate in cases in which one or more schools in the
161 district are currently subject to, or are in danger of being
162 subject to, a differentiated matrix of intervention and support
163 strategies as a turnaround school or turnaround schools under s.
164 1008.33(3)(c).

165 Section 2. Paragraph (n) of subsection (9) of section
166 1002.33, Florida Statutes, is amended to read:

167 1002.33 Charter schools.-

168 (9) CHARTER SCHOOL REQUIREMENTS.-

169 (n)1. The director and a representative of the governing
170 board of a charter school that has earned a grade of "D" or is
171 in danger of earning a grade of "F" pursuant to s. 1008.34 shall
172 appear before the sponsor to present information concerning each
173 contract component having noted deficiencies. The director and a
174 representative of the governing board shall submit to the
175 sponsor for approval a school improvement plan to raise student
176 performance. Upon approval by the sponsor, the charter school
177 shall begin implementation of the school improvement plan. The
178 department shall offer technical assistance and training to the
179 charter school and its governing board and establish guidelines
180 for developing, submitting, and approving such plans.

181 2.a. If a charter school earns a grade of "F" or two three
182 consecutive grades below a "C," of "D," two consecutive grades



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173 ~~of "D" followed by a grade of "F," or two nonconsecutive grades~~
174 ~~of "F" within a 3-year period, the turnaround charter school~~
175 ~~governing board must immediately implement its approved school~~
176 ~~improvement plan for the remainder of the school year and~~
177 ~~continue implementation for at least 1 school year, and shall~~

178 choose one of the following corrective actions:

179 (I) Contract for educational services to be provided
180 directly to students, instructional personnel, and school
181 administrators, as prescribed in state board rule;

182 (II) Contract with an outside entity that has a
183 demonstrated record of effectiveness to operate the school;

184 (III) Reorganize the school under a new director or
185 principal who is authorized to hire new staff; or

186 (IV) Voluntarily close the charter school.

187 b. The turnaround charter school must implement the
188 corrective action in the school year following receipt of a
189 grade of "F" or a second ~~third~~ consecutive grade below a "C." ~~of~~
190 ~~"D," a grade of "F" following two consecutive grades of "D," or~~
191 ~~a second nonconsecutive grade of "F" within a 3-year period.~~

192 c. The sponsor may annually waive a corrective action if it
193 determines that the turnaround charter school is likely to
194 improve a letter grade if additional time is provided to
195 implement the intervention and support strategies prescribed by
196 the school improvement plan. Notwithstanding this sub-
197 subparagraph, a charter school that earns a second consecutive
198 grade of "F" is subject to subparagraph 3. 4-

199 d. A turnaround charter school is no longer required to
200 implement a corrective action if it improves to a grade of "C"
201 or higher ~~by at least one letter grade~~. However, the charter



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202 school must continue to implement strategies identified in the
203 school improvement plan. The sponsor must annually review
204 implementation of the school improvement plan to monitor the
205 school's continued improvement pursuant to subparagraph 4. 5-

206 e. A turnaround charter school implementing a corrective
207 action that does not improve to a grade of "C" or higher ~~by at~~
208 ~~least one letter grade~~ after 2 full school years of implementing
209 the corrective action must select a different corrective action.
210 Implementation of the new corrective action must begin in the
211 school year following the implementation period of the existing
212 corrective action, unless the sponsor determines that the
213 charter school is likely to improve to a grade of "C" or higher
214 ~~a letter grade~~ if additional time is provided to implement the
215 existing corrective action. Notwithstanding this sub-
216 subparagraph, a charter school that earns a second consecutive
217 grade of "F" while implementing a corrective action is subject
218 to subparagraph 3. 4-

219 ~~3. A charter school with a grade of "D" or "F" that~~
220 ~~improves by at least one letter grade must continue to implement~~
221 ~~the strategies identified in the school improvement plan. The~~
222 ~~sponsor must annually review implementation of the school~~
223 ~~improvement plan to monitor the school's continued improvement~~
224 ~~pursuant to subparagraph 5-~~

225 ~~3.4-~~ A charter school's charter contract is automatically
226 terminated if the school earns two consecutive grades of "F"
227 after all school grade appeals are final unless:

228 a. The charter school is established to turn around the
229 performance of a district public school pursuant to s.
230 1008.33(4)(b)6. s. 1008.33(4)(b)3- Such charter schools shall be



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231 governed by s. 1008.33;

232 b. The charter school serves a student population the
233 majority of which resides in a school zone served by a district
234 public school ~~subject to s. 1008.33(4) that earned a grade of~~
235 ~~"F" in the year before the charter school opened~~ and the charter
236 school earns at least a grade of "D" in its third year of
237 operation. The exception provided under this sub-subparagraph
238 does not apply to a charter school in its fourth year of
239 operation and thereafter; or

240 c. The state board grants the charter school a waiver of
241 termination. The charter school must request the waiver within
242 15 days after the department's official release of school
243 grades. The state board may waive termination if the charter
244 school demonstrates that the Learning Gains of its students on
245 statewide assessments are comparable to or better than the
246 Learning Gains of similarly situated students enrolled in nearby
247 district public schools. The waiver is valid for 1 year and may
248 only be granted once. Charter schools that have been in
249 operation for more than 5 years are not eligible for a waiver
250 under this sub-subparagraph.

251
252 The sponsor shall notify the charter school's governing board,
253 the charter school principal, and the department in writing when
254 a charter contract is terminated under this subparagraph. The
255 letter of termination must meet the requirements of paragraph
256 (8)(c). A charter terminated under this subparagraph must follow
257 the procedures for dissolution and reversion of public funds
258 pursuant to paragraphs (8)(e)-(g) and (9)(o).

259 ~~4.5-~~ The director and a representative of the governing



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260 board of a graded charter school that has implemented a school
261 improvement plan under this paragraph shall appear before the
262 sponsor at least once a year to present information regarding
263 the progress of intervention and support strategies implemented
264 by the school pursuant to the school improvement plan and
265 corrective actions, if applicable. The sponsor shall communicate
266 at the meeting, and in writing to the director, the services
267 provided to the school to help the school address its
268 deficiencies.

269 ~~5.6-~~ Notwithstanding any provision of this paragraph except
270 sub-subparagraphs ~~3.a.-c. 4.a.-e.~~, the sponsor may terminate the
271 charter at any time pursuant to subsection (8).

272 Section 3. Paragraph (b) of subsection (1) of section
273 1002.332, Florida Statutes, is amended to read:

274 1002.332 High-performing charter school system.-

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

276 (b) "High-performing charter school system" means an entity
277 that:

278 1. Operated at least three high-performing charter schools
279 in the state during each of the previous 3 school years;

280 2. Operated a system of charter schools in which at least
281 50 percent of the charter schools were high-performing charter
282 schools pursuant to s. 1002.331 and no charter school earned a
283 school grade of "D" or "F" pursuant to s. 1008.34 in any of the
284 previous 3 school years regardless of whether the entity
285 currently operates the charter school, except that:

286 a. If the entity assumed operation of a public school
287 pursuant to ~~s. 1008.33(4)(b)6. s. 1008.33(4)(b)3-~~ with a school
288 grade of "F," that school's grade may not be considered in



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289 determining high-performing charter school system status for a
290 period of 3 years.

291 b. If the entity established a new charter school that
292 served a student population the majority of which resided in a
293 school zone served by a public school that earned a grade of "F"
294 or three consecutive grades of "D" pursuant to s. 1008.34, that
295 charter school's grade may not be considered in determining
296 high-performing charter school system status if it attained and
297 maintained a school grade that was higher than that of the
298 public school serving that school zone within 3 years after
299 establishment; and

300 3. Did not receive a financial audit that revealed one or
301 more of the financial emergency conditions set forth in s.
302 218.503(1) for any charter school assumed or established by the
303 entity in the most recent 3 fiscal years for which such audits
304 are available.

305 Section 4. Subsections (3), (4), and (5) of section
306 1008.33, Florida Statutes, are amended to read:

307 1008.33 Authority to enforce public school improvement.-

308 (3) (a) The academic performance of all students has a
309 significant effect on the state school system. Pursuant to Art.
310 IX of the State Constitution, which prescribes the duty of the
311 State Board of Education to supervise Florida's public school
312 system, the state board shall equitably enforce the
313 accountability requirements of the state school system and may
314 impose state requirements on school districts in order to
315 improve the academic performance of all districts, schools, and
316 students based upon the provisions of the Florida K-20 Education
317 Code, chapters 1000-1013; the federal ESEA and its implementing



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318 regulations; and the ESEA flexibility waiver approved for
319 Florida by the United States Secretary of Education.

320 (b) ~~Beginning with the 2011-2012 school year,~~ The
321 Department of Education shall annually identify each public
322 school in need of intervention and support to improve student
323 academic performance. All schools earning a grade of "D" or in
324 danger of earning a grade of "F" pursuant to s. 1008.34 are
325 considered schools in need of intervention and support.

326 (c) To assist in implementing paragraph (4) (a) and (b), the
327 state board shall adopt by rule a differentiated matrix of
328 intervention and support strategies for assisting traditional
329 public schools identified under this section and rules for
330 implementing s. 1002.33(9) (n), relating to charter schools. The
331 intervention and support strategies must address student
332 performance and include extended learning by at least 1 extra
333 hour, and may include improvement planning, leadership quality
334 improvement, educator quality improvement, professional
335 development, curriculum alignment and pacing, and the use of
336 continuous improvement and monitoring plans and processes. In
337 addition, the state board may prescribe reporting requirements
338 to review and monitor the progress of the schools. The rule must
339 define the intervention and support strategies for school
340 improvement for schools earning a grade of "D" or "F" and the
341 roles for the district and department. The rule shall define and
342 differentiate among schools as follows: earning consecutive
343 grades of "D" or "F," or a combination thereof, and provide for
344 more intense monitoring, intervention, and support strategies
345 for these schools.

346 1. A "school-in-need" means a school that has a grade of



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347 "D" or that is in danger of earning a grade of "F," and that is
348 in need of intervention and support under paragraph (b);

349 2. A "turnaround school" means a school with a grade of "F"
350 or two consecutive grades below a "C" which is in need of
351 intensive intervention and support and which is implementing a
352 district-managed turnaround plan or a different turnaround
353 option approved pursuant to subsection (4). A "turnaround
354 charter school" is a charter school subject to the requirements
355 of s. 1002.33(9)(n); and

356 3. A "persistently low-performing school" means a
357 turnaround school that has been subject to a differentiated
358 matrix of intensive intervention and support strategies for more
359 than 3 consecutive years, or a turnaround school that was closed
360 pursuant to s. 1008.33(4) within 2 years after the submission of
361 a notice of intent.

362
363 The rule must also define a "low-performing school" to include,
364 at minimum, any school meeting the requirements of this
365 subsection.

366 (4) (a) The state board shall apply ~~intensive the most~~
367 ~~intense~~ intervention and support strategies to turnaround
368 schools earning a grade of "F" or two consecutive grades below a
369 "C." ~~"F."~~ In the first full school year after a school initially
370 receives ~~earns~~ a turnaround school designation, ~~grade of "F,"~~
371 the school district must ~~immediately~~ implement ~~intensive~~
372 intervention and support strategies prescribed in rule under
373 paragraph (3) (c) and, by September 1, provide, ~~select a~~
374 turnaround option from those provided in subparagraphs (b)1.-5.,
375 and submit a plan for implementing the turnaround option to the



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376 department with the memorandum of understanding negotiated
377 pursuant to s. 1001.42(21) and with a district-managed
378 turnaround plan for approval by the state board. Upon approval
379 by the state board, the school district must implement the plan
380 for the remainder of the school year and continue the plan for 1
381 full school year ~~for approval by the state board. Upon approval~~
382 ~~by the state board, the turnaround option must be implemented in~~
383 ~~the following school year.~~

384 (b) The ~~turnaround~~ options available to the turnaround a
385 school district to address a school ~~include one or a combination~~
386 of the following turnaround options, giving priority to the
387 first three options ~~that earns a grade of "F"~~ are:

388 1. ~~Implement an extended school day with at least 1 hour of~~
389 ~~additional learning time. Convert the school to a district-~~
390 ~~managed turnaround school;~~

391 2. ~~Enter into a formal agreement with a nonprofit~~
392 ~~organization with tax exempt status under s. 501(c) (3) of the~~
393 ~~Internal Revenue Code to implement an integrated student support~~
394 ~~service model that provides students and families with access to~~
395 ~~wrap-around services, including, but not limited to, health~~
396 ~~services, after-school programs, drug-prevention programs,~~
397 ~~college and career readiness, and food and clothing banks.~~
398 ~~Districts implementing this option may be eligible for~~
399 ~~additional funding as provided in the General Appropriations~~
400 ~~Act.~~

401 3. ~~Implement a principal autonomy program school, through a~~
402 ~~performance contract and in accordance with proposal elements,~~
403 ~~criteria, and timelines established by the state board pursuant~~
404 ~~to s. 1011.6202(2)(b) specifically tailored for a turnaround~~



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405 ~~school. For purposes of this section, a school district using~~
406 ~~this option for its turnaround school is eligible to participate~~
407 ~~in, and receive the benefits of, the principal autonomy program,~~
408 ~~pursuant to s. 1011.6202(1) for only the turnaround school.~~

409 ~~5.2- Reassign students to another school and monitor the~~
410 ~~progress of each reassigned student.~~

411 ~~6.3- Close the school and reopen the school as one or more~~
412 ~~charter schools, each with a governing board that has a~~
413 ~~demonstrated record of effectiveness.~~

414 ~~4. Contract as a conversion charter school or with an~~
415 ~~outside entity that has a demonstrated record of effectiveness~~
416 ~~to operate the school.~~

417 ~~5. Implement a hybrid of turnaround options set forth in~~
418 ~~subparagraphs 1.-4. or other turnaround models that have a~~
419 ~~demonstrated record of effectiveness.~~

420 ~~(c) A school earning a grade of "F" shall have a planning~~
421 ~~year followed by 2 full school years to implement the initial~~
422 ~~turnaround option selected by the school district and approved~~
423 ~~by the state board. Implementation of the turnaround option is~~
424 ~~no longer required if the school improves to a grade of "C" or~~
425 ~~higher by at least one letter grade.~~

426 ~~(d) A school earning a grade of "F" that improves its~~
427 ~~letter grade must continue to implement strategies identified in~~
428 ~~its school improvement plan pursuant to s. 1001.42(18) (a). The~~
429 ~~department must annually review implementation of the school~~
430 ~~improvement plan for 3 years to monitor the school's continued~~
431 ~~improvement.~~

432 ~~(d)(e) If a turnaround school earning a grade of "F" does~~
433 ~~not improve to a grade of "C" or higher by at least one letter~~



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434 ~~grade~~ after 2 full school years of implementing the turnaround
435 option selected by the school district under paragraph (b), the
436 school district must implement ~~select a different option and~~
437 ~~submit another turnaround option implementation plan to the~~
438 ~~department for approval by the state board.~~ Implementation of
439 the turnaround option approved plan must begin the school year
440 following the implementation period of the existing turnaround
441 option, unless the state board determines that the school is
442 likely to improve to a grade of "C" or higher a letter grade if
443 additional time is provided to implement the existing turnaround
444 option.

445 ~~(5) A school that earns a grade of "D" for 3 consecutive~~
446 ~~years must implement the district-managed turnaround option~~
447 ~~pursuant to subparagraph (4) (b)1. The school district must~~
448 ~~submit an implementation plan to the department for approval by~~
449 ~~the state board.~~

450 Section 5. Paragraph (d) of subsection (6) of section
451 1008.345, Florida Statutes, is amended to read:

452 1008.345 Implementation of state system of school
453 improvement and education accountability.-

454 (6)

455 (d) The commissioner shall assign a community assessment
456 team to each school district or governing board with a
457 turnaround school that earned a grade of "F" or three
458 consecutive grades of "D" pursuant to s. 1008.34 to review the
459 school performance data and determine causes for the low
460 performance, including the role of school, area, and district
461 administrative personnel. The community assessment team shall
462 review a high school's graduation rate calculated without high



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463 school equivalency diploma recipients for the past 3 years,
464 disaggregated by student ethnicity. The team shall make
465 recommendations to the school board or the governing board and
466 to the State Board of Education based on the interventions and
467 support strategies identified pursuant to subsection (5) to
468 which address the causes of the school's low performance and to
469 incorporate the strategies and may be incorporated into the
470 school improvement plan. The assessment team shall include, but
471 not be limited to, a department representative, parents,
472 business representatives, educators, representatives of local
473 governments, and community activists, and shall represent the
474 demographics of the community from which they are appointed.

475 Section 6. Section 1012.732, Florida Statutes, is created
476 to read:

477 1012.732 The Florida Best and Brightest Teacher and
478 Principal Scholar Award Program.—

479 (1) INTENT.—The Legislature recognizes that, second only to
480 parents, teachers and principals play the most critical roles
481 within schools in preparing students to achieve a high level of
482 academic performance. The Legislature further recognizes that
483 research has linked student successes and performance outcomes
484 to the academic achievements and performance accomplishments of
485 the teachers and principals who most closely affect their
486 classroom and school learning environments. Therefore, it is the
487 intent of the Legislature to designate teachers and principals
488 who have achieved high academic standards during their own
489 education as Florida's best and brightest teacher and principal
490 scholars.

491 (2) PURPOSE.—There is created the Florida Best and



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492 Brightest Teacher and Principal Scholar Award Program, as a
493 performance-based scholarship award program, to be administered
494 by the Department of Education. The performance-based award
495 shall provide categorical funding for scholarships to be awarded
496 to full-time classroom teachers, as defined in s. 1012.01(2) (a),
497 and full-time school administrators, as defined in s.
498 1012.01(3) (c), excluding substitute teachers or substitute
499 school administrators, who have demonstrated a high level of
500 academic achievement and performance.

501 (3) ELIGIBILITY.—To be eligible for a scholarship, a full-
502 time classroom teacher or full-time school administrator must be
503 employed on an annual contract or probationary contract pursuant
504 to s. 1012.335, participate in the school district's performance
505 salary schedule pursuant to s. 1012.22, and meet at least one of
506 the achievement requirements under paragraph (a) and at least
507 one of the performance requirements under paragraph (b).

508 (a) Achievement requirements.—

509 1. For a classroom teacher, a score at or above the 90th
510 percentile on the Florida Teacher Certification Examination in a
511 subject that he or she is teaching;

512 2. For a school administrator, a score at or above the 90th
513 percentile on the Florida Educational Leadership Examination;

514 3. For a classroom teacher or school administrator, a
515 composite score at or above the 80th percentile on either the
516 SAT or the ACT based on the National Percentile Ranks in effect
517 when the classroom teacher or school administrator took the
518 assessment;

519 4. For a classroom teacher or school administrator, a
520 composite score on the GRE, LSAT, GMAT, or MCAT at or above a



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521 score adopted by the State Board of Education; or
522 5. For a classroom teacher or school administrator, a
523 cumulative undergraduate or graduate grade point average of at
524 least 3.5 on a 4.0 scale, as verified on the teacher's or
525 administrator's official final college transcript.
526 (b) Performance requirements.—The classroom teacher or
527 school administrator:
528 1. Must have been evaluated as highly effective pursuant to
529 s. 1012.34 in the school year immediately preceding the year in
530 which the scholarship will be awarded;
531 2. If he or she works in a low-performing school or a
532 school that was designated by the department as low-performing
533 within the previous 2 years and commits, pursuant to State Board
534 of Education rule, to working at the school for at least 3
535 years, must have been evaluated as highly effective pursuant to
536 s. 1012.34 in the school year immediately preceding the first
537 year in which the scholarship will be awarded and maintain a
538 highly effective evaluation rating in at least two of every
539 three annual performance evaluations, based on a rolling 3-year
540 period; or
541 3. Must be newly hired by the district school board, must
542 not have been evaluated pursuant to s. 1012.34, and must have
543 met at least one of the following conditions:
544 a. Be a recipient of the Florida Prepaid Tuition
545 Scholarship Program pursuant to s. 1009.984 who graduates with a
546 minimum 3.0 grade point average and commit, pursuant to State
547 Board of Education rule, to working in a Florida public school
548 for at least 3 years;
549 b. Have completed the college reach-out program pursuant to



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550 s. 1007.34 and graduated with a minimum 3.0 grade point average,
551 and commit, pursuant to State Board of Education rule, to
552 working in a Florida public school for at least 3 years; or
553 c. Be a Florida college or university graduate of a Florida
554 teacher preparation program approved pursuant to s. 1004.04,
555 have graduated with a minimum 3.0 grade point average, and
556 commit, pursuant to State Board of Education rule, to working in
557 a critical teacher shortage area under s. 1012.07 at a Florida
558 public school for at least 3 years.
559 (4) IMPLEMENTATION.—In order to implement and administer
560 the program, the following timelines and requirements apply:
561 (a) To demonstrate eligibility for an award, an eligible
562 classroom teacher or school administrator, as applicable, must
563 submit to the school district, no later than November 1, an
564 official record of his or her achievement of the eligibility
565 requirements specified in paragraph (3)(a). Once a classroom
566 teacher or school administrator is deemed eligible by the school
567 district, including teachers deemed eligible for the Florida
568 Best and Brightest Teacher Scholarship Program in the 2015-2016
569 or 2016-2017 fiscal years pursuant to s. 25 of chapter 2016-62,
570 Laws of Florida, the classroom teacher or school administrator
571 remains eligible as long as he or she remains employed by the
572 school district as a full-time classroom teacher or full-time
573 school administrator at the time of the award and continues to
574 meet the conditions specified under this section.
575 (b) Annually, by December 1, each school district shall
576 submit to the department the number of eligible classroom
577 teachers and school administrators who qualify for the
578 scholarship.



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579 (c) Annually, by February 1, the department shall disburse
580 scholarship funds to each school district for each eligible
581 classroom teacher and school administrator to receive a
582 scholarship as provided in the General Appropriations Act.

583 (d) Annually, by April 1, each school district shall award
584 the scholarship to each eligible classroom teacher and school
585 administrator.

586 (5) FUNDING.—A scholarship in the amount provided in the
587 General Appropriations Act shall be awarded to every eligible
588 classroom teacher and school administrator.

589 (a) If the number of eligible classroom teachers and school
590 administrators exceeds the total appropriation authorized in the
591 General Appropriations Act, the department shall prorate the
592 per-scholar scholarship award amount, except that prior to the
593 distribution of funds, the following priorities apply:

594 1. Classroom teachers and school administrators who commit,
595 pursuant to State Board of Education rule, to work in a low-
596 performing school and meet the performance requirements of
597 subparagraph (3)(b)2., shall receive an award equal to a full
598 scholarship award amount. Classroom teachers and school
599 administrators who do not fulfill the commitment made pursuant
600 to subparagraph (3)(b)2. may not receive this priority; and

601 2. Newly hired classroom teachers and school administrators
602 who commit, pursuant to State Board of Education rule, to work
603 in a Florida public school and meet the performance requirements
604 under subparagraph (3)(b)3., shall receive a one-time hiring
605 bonus of up to \$10,000. Classroom teachers and school
606 administrators who do not fulfill the commitment made pursuant
607 to subparagraph (3)(b)3. may not receive this priority.



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608 (b) Newly hired classroom teachers and newly hired school
609 administrators who initially participate in the program pursuant
610 to subparagraph (3)(b)3. may only receive the one-time hiring
611 bonus under subparagraph (a)2. In subsequent school years, such
612 classroom teachers and school administrators may earn a
613 scholarship award pursuant to subparagraph (3)(b)1. or
614 subparagraph (3)(b)2., if they also maintain their initial
615 commitments.

616 (6) DEFINITION.—For purposes of this section, the term
617 “school district” includes the Florida School for the Deaf and
618 the Blind and charter school governing boards.

619 (7) RULES.—The State Board of Education shall expeditiously
620 adopt rules to implement this section.

621 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.	<u>Bouck</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4.	_____	_____	<u>RC</u>	_____

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 teachers¹ 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 Ranks⁴ in effect when the classroom teacher took the assessment.
- An evaluation of highly effective⁵ 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 contract¹¹ 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 school¹⁴ 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 contract¹⁵ 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 Program¹⁸ 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 program¹⁹ 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 program²⁰ 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 area²¹ 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 performance²² 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 its 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.

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

By the Committee on Education; and Senator Simmons

581-03347-17

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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

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59 SAT or the ACT based on the National Percentile Ranks in effect
60 when the classroom teacher or school administrator took the
61 assessment;

62 4. For a classroom teacher or school administrator, a
63 composite score on the GRE, LSAT, GMAT, or MCAT at or above a
64 score adopted by the State Board of Education; or

65 5. For a classroom teacher or school administrator, a
66 cumulative undergraduate or graduate grade point average of at
67 least 3.5 on a 4.0 scale, as verified on the teacher's or
68 administrator's official final college transcript.

69 (b) Performance requirements.—The classroom teacher or
70 school administrator:

71 1. Must have been evaluated as highly effective pursuant to
72 s. 1012.34 in the school year immediately preceding the year in
73 which the scholarship will be awarded;

74 2. If he or she works in a low-performing school or a
75 school that was designated by the department as low-performing
76 within the previous 2 years and commits, pursuant to State Board
77 of Education rule, to working at the school for at least 3
78 years, must have been evaluated as highly effective pursuant to
79 s. 1012.34 in the school year immediately preceding the first
80 year in which the scholarship will be awarded and maintain a
81 highly effective evaluation rating in at least two of every
82 three annual performance evaluations, based on a rolling 3-year
83 period; or

84 3. Must be newly hired by the district school board, must
85 not have been evaluated pursuant to s. 1012.34, and must have
86 met at least one of the following conditions:

87 a. Be a recipient of the Florida Prepaid Tuition

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88 Scholarship Program pursuant to s. 1009.984 who graduates with a
89 minimum 3.0 grade point average and commit, pursuant to State
90 Board of Education rule, to working in a Florida public school
91 for at least 3 years;

92 b. Have completed the college reach-out program pursuant to
93 s. 1007.34 and graduated with a minimum 3.0 grade point average,
94 and commit, pursuant to State Board of Education rule, to
95 working in a Florida public school for at least 3 years; or

96 c. Be a Florida college or university graduate of a Florida
97 teacher preparation program approved pursuant to s. 1004.04,
98 have graduated with a minimum 3.0 grade point average, and
99 commit, pursuant to State Board of Education rule, to working in
100 a critical teacher shortage area under s. 1012.07 at a Florida
101 public school for at least 3 years.

102 (4) IMPLEMENTATION.—In order to implement and administer
103 the program, the following timelines and requirements apply:

104 (a) To demonstrate eligibility for an award, an eligible
105 classroom teacher or school administrator, as applicable, must
106 submit to the school district, no later than November 1, an
107 official record of his or her achievement of the eligibility
108 requirements specified in paragraph (3)(a). Once a classroom
109 teacher or school administrator is deemed eligible by the school
110 district, including teachers deemed eligible for the Florida
111 Best and Brightest Teacher Scholarship Program in the 2015-2016
112 or 2016-2017 fiscal years pursuant to s. 25 of chapter 2016-62,
113 Laws of Florida, the classroom teacher or school administrator
114 remains eligible as long as he or she remains employed by the
115 school district as a full-time classroom teacher or full-time
116 school administrator at the time of the award and continues to

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117 meet the conditions specified under this section.

118 (b) Annually, by December 1, each school district shall
 119 submit to the department the number of eligible classroom
 120 teachers and school administrators who qualify for the
 121 scholarship.

122 (c) Annually, by February 1, the department shall disburse
 123 scholarship funds to each school district for each eligible
 124 classroom teacher and school administrator to receive a
 125 scholarship as provided in the General Appropriations Act.

126 (d) Annually, by April 1, each school district shall award
 127 the scholarship to each eligible classroom teacher and school
 128 administrator.

129 (5) FUNDING.—A scholarship in the amount provided in the
 130 General Appropriations Act shall be awarded to every eligible
 131 classroom teacher and school administrator.

132 (a) If the number of eligible classroom teachers and school
 133 administrators exceeds the total appropriation authorized in the
 134 General Appropriations Act, the department shall prorate the
 135 per-scholar scholarship award amount, except that prior to the
 136 distribution of funds, the following priorities apply:

137 1. Classroom teachers and school administrators who commit,
 138 pursuant to State Board of Education rule, to work in a low-
 139 performing school and meet the performance requirements of
 140 subparagraph (3)(b)2., shall receive an award equal to a full
 141 scholarship award amount. Classroom teachers and school
 142 administrators who do not fulfill the commitment made pursuant
 143 to subparagraph (3)(b)2. may not receive this priority; and

144 2. Newly hired classroom teachers and school administrators
 145 who commit, pursuant to State Board of Education rule, to work

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146 in a Florida public school and meet the performance requirements
 147 under subparagraph (3)(b)3., shall receive a one-time hiring
 148 bonus of up to \$10,000. Classroom teachers and school
 149 administrators who do not fulfill the commitment made pursuant
 150 to subparagraph (3)(b)3. may not receive this priority.

151 (b) Newly hired classroom teachers and newly hired school
 152 administrators who initially participate in the program pursuant
 153 to subparagraph (3)(b)3. may only receive the one-time hiring
 154 bonus under subparagraph (a)2. In subsequent school years, such
 155 classroom teachers and school administrators may earn a
 156 scholarship award pursuant to subparagraph (3)(b)1. or
 157 subparagraph (3)(b)2., if they also maintain their initial
 158 commitments.

159 (6) DEFINITION.—For purposes of this section, the term
 160 "school district" includes the Florida School for the Deaf and
 161 the Blind and charter school governing boards.

162 (7) RULES.—The State Board of Education shall expeditiously
 163 adopt rules to implement this section.

164 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.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

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)

Topic Best & Brightest

Amendment Barcode (if applicable)

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.

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 1380

(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.

3-001 (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

Phone 813-794-2259

Land O' Lakes FL 34638
City State Zip

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.

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

Phone 772 204 1792

Street

Tallahassee FL 32301

City

State

Zip

Email lwvadvocacy@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.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Harkness</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 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 dispenser⁴ 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.

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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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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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)(e) "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



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57 provided in s. 775.082, s. 775.083, or s. 775.084, for a person
58 to use:

59 1. A scanning device or skimming device to access, read,
60 obtain, memorize, or store, temporarily or permanently,
61 information encoded on the computer chip, magnetic strip or
62 stripe, or other storage mechanism of a payment card without the
63 permission of the authorized user of the payment card and with
64 the intent to defraud the authorized user, the issuer of the
65 authorized user's payment card, or a merchant.

66 2. A reencoder to place information encoded on the computer
67 chip, magnetic strip or stripe, or other storage mechanism of a
68 payment card onto the computer chip, magnetic strip or stripe,
69 or other storage mechanism of a different card without the
70 permission of the authorized user of the card from which the
71 information is being reencoded and with the intent to defraud
72 the authorized user, the issuer of the authorized user's payment
73 card, or a merchant.

74 (b) A Any person who violates subparagraph (a)1. or
75 subparagraph (a)2. a second or subsequent time commits a felony
76 of the second degree, punishable as provided in s. 775.082, s.
77 775.083, or s. 775.084.

78 (c) It is a felony of the third degree, punishable as
79 provided in s. 775.082, s. 775.083, or s. 775.084, for a person
80 to knowingly possess, sell, or deliver a skimming device. This
81 paragraph does not apply to the following individuals while
82 acting within the scope of their official duties:

83 1. An employee, officer, or agent of:

84 a. A law enforcement agency or criminal prosecuting
85 authority for the state or the federal government;



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86 b. The state courts system as defined in s. 25.382 or the
87 federal court system; or

88 c. An executive branch agency in this state.

89 2. A financial or retail security investigator employed by
90 a merchant.

91 (d)(e) A Any person who commits a violation of this
92 subsection is violates subparagraph (a)1. or subparagraph (a)2-
93 shall also be subject to the provisions of ss. 932.701-932.7062.

94 Section 2. Paragraphs (d) and (e) of subsection (3) of
95 section 921.0022, Florida Statutes, are amended to read:
96 921.0022 Criminal Punishment Code; offense severity ranking
97 chart.-

98 (3) OFFENSE SEVERITY RANKING CHART

99 (d) LEVEL 4
100

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.



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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.



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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



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within 1,000 feet of a school.

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790.115(2)(b) 3rd Possessing electric weapon or device, destructive device, or other weapon on school property.

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790.115(2)(c) 3rd Possessing firearm on school property.

122

800.04(7)(c) 3rd Lewd or lascivious exhibition; offender less than 18 years.

123

810.02(4)(a) 3rd Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.

124

810.02(4)(b) 3rd Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.

125

810.06 3rd Burglary; possession of tools.

126

810.08(2)(c) 3rd Trespass on property, armed with firearm or dangerous weapon.

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812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000 or more but less than \$20,000.

128

812.014 (2)(c)4.-10. 3rd Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.

129

812.0195(2) 3rd Dealing in stolen property by use of the Internet; property stolen \$300 or more.

130

817.563(1) 3rd Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.

131

817.568(2)(a) 3rd Fraudulent use of personal identification information.

132

817.625(2)(a) 3rd Fraudulent use of scanning device, skimming device, or reencoder.

133

817.625(2)(c) 3rd Possession, sale, or delivery of skimming device.

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828.125(1) 2nd Kill, maim, or cause great bodily harm or permanent breeding disability to any



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135 registered horse or cattle.

136 837.02(1) 3rd Perjury in official
proceedings.

137 837.021(1) 3rd Make contradictory statements
in official proceedings.

138 838.022 3rd Official misconduct.

139 839.13(2) (a) 3rd Falsifying records of an
individual in the care and
custody of a state agency.

140 839.13(2) (c) 3rd Falsifying records of the
Department of Children and
Families.

141 843.021 3rd Possession of a concealed
handcuff key by a person in
custody.

142 843.025 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



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143 bond jumping).

144 847.0135(5) (c) 3rd Lewd or lascivious exhibition
using computer; offender less
than 18 years.

145 874.05(1) (a) 3rd Encouraging or recruiting
another to join a criminal
gang.

146 893.13(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).

147 914.14(2) 3rd Witnesses accepting bribes.

148 914.22(1) 3rd Force, threaten, etc., witness,
victim, or informant.

149 914.23(2) 3rd Retaliation against a witness,
victim, or informant, no bodily
injury.

150 918.12 3rd Tampering with jurors.

934.215 3rd Use of two-way communications
device to facilitate commission
of a crime.



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(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



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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



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			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.



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790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd		Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd		Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd		Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
812.015(8)	3rd		Retail theft; property stolen is valued at \$300 or more and one or more specified acts.



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181 812.019(1) 2nd Stolen property; dealing in or
trafficking in.
182 812.131(2)(b) 3rd Robbery by sudden snatching.
183 812.16(2) 3rd Owning, operating, or
conducting a chop shop.
184 817.034(4)(a)2. 2nd Communications fraud, value
\$20,000 to \$50,000.
185 817.234(11)(b) 2nd Insurance fraud; property value
\$20,000 or more but less than
\$100,000.
186 817.2341(1), 3rd Filing false financial
(2)(a) & (3)(a) 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



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187 information of 10 or more
persons.
188 817.611(2)(a) 2nd Traffic in or possess 5 to 14
counterfeit credit cards or
related documents.
189 817.625(2)(b) 2nd Second or subsequent fraudulent
use of scanning device,
skimming device, or reencoder.
190 825.1025(4) 3rd Lewd or lascivious exhibition
in the presence of an elderly
person or disabled adult.
191 827.071(4) 2nd Possess with intent to promote
any photographic material,
motion picture, etc., which
includes sexual conduct by a
child.
192 827.071(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



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193 custody of a state agency
involving great bodily harm or
death.

194 843.01 3rd Resist officer with violence to
person; resist arrest with
violence.

195 847.0135(5) (b) 2nd Lewd or lascivious exhibition
using computer; offender 18
years or older.

196 847.0137 3rd Transmission of pornography by
(2) & (3) electronic device or equipment.

197 847.0138 3rd Transmission of material
(2) & (3) harmful to minors to a minor by
electronic device or equipment.

198 874.05(1) (b) 2nd Encouraging or recruiting
another to join a criminal
gang; second or subsequent
offense.

199 874.05(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



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200 cocaine (or other s.
893.03(1) (a), (1) (b), (1) (d),
(2) (a), (2) (b), or (2) (c)4.
drugs).

201 893.13(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.

202 893.13(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.,



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(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.

203

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.

204

893.13(4) (b) 2nd Use or hire of minor; deliver
to minor other controlled
substance.

205

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

206

207

208

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.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Harkness</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 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 dispenser⁴ 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.

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)(e) "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

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59 to use:

60 1. A scanning device or skimming device to access, read,

61 obtain, memorize, or store, temporarily or permanently,

62 information encoded on the computer chip, magnetic strip or

63 stripe, or other storage mechanism of a payment card without the

64 permission of the authorized user of the payment card and with

65 the intent to defraud the authorized user, the issuer of the

66 authorized user's payment card, or a merchant.

67 2. A reencoder to place information encoded on the computer

68 chip, magnetic strip or stripe, or other storage mechanism of a

69 payment card onto the computer chip, magnetic strip or stripe,

70 or other storage mechanism of a different card without the

71 permission of the authorized user of the card from which the

72 information is being reencoded and with the intent to defraud

73 the authorized user, the issuer of the authorized user's payment

74 card, or a merchant.

75 (b) A Any person who violates subparagraph (a)1. or

76 subparagraph (a)2. a second or subsequent time commits a felony

77 of the second degree, punishable as provided in s. 775.082, s.

78 775.083, or s. 775.084.

79 (c) It is a felony of the third degree, punishable as

80 provided in s. 775.082, s. 775.083, or s. 775.084, for a person

81 to knowingly possess, sell, or deliver a skimming device. This

82 paragraph does not apply to the following individuals while

83 acting within the scope of their official duties:

84 1. An employee, officer, or agent of:

85 a. A law enforcement agency or criminal prosecuting

86 authority for the state or the federal government;

87 b. The state courts system as defined in s. 25.382 or the

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88 federal court system; or

89 c. An executive branch agency in this state.

90 2. A financial or retail security investigator employed by

91 a merchant.

92 ~~(d) (e) A Any~~ person who commits a violation of this

93 ~~subsection is violates subparagraph (a)1. or subparagraph (a)2.~~

94 ~~shall also be subject to the provisions of ss. 932.701-932.7062.~~

95 Section 2. Paragraphs (d) and (e) of subsection (3) of

96 section 921.0022, Florida Statutes, are amended to read:

97 921.0022 Criminal Punishment Code; offense severity ranking

98 chart.-

99 (3) OFFENSE SEVERITY RANKING CHART

100 (d) LEVEL 4

101

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.

103

104

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	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
105			
	517.07(1)	3rd	Failure to register securities.
106			
	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
107			
	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
108			
	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
109			
	784.075	3rd	Battery on detention or commitment facility staff.
110			
	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
111			
	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
112			
	784.081(3)	3rd	Battery on specified official or employee.
113			

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	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
114			
	784.083(3)	3rd	Battery on code inspector.
115			
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
116			
	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
117			
	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
118			
	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
119			
	787.07	3rd	Human smuggling.
120			
	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.

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121 790.115(2)(b) 3rd Possessing electric weapon or
device, destructive device, or
other weapon on school
property.

122 790.115(2)(c) 3rd Possessing firearm on school
property.

123 800.04(7)(c) 3rd Lewd or lascivious exhibition;
offender less than 18 years.

124 810.02(4)(a) 3rd Burglary, or attempted
burglary, of an unoccupied
structure; unarmed; no assault
or battery.

125 810.02(4)(b) 3rd Burglary, or attempted
burglary, of an unoccupied
conveyance; unarmed; no assault
or battery.

126 810.06 3rd Burglary; possession of tools.

127 810.08(2)(c) 3rd Trespass on property, armed
with firearm or dangerous
weapon.

128 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000

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129 or more but less than \$20,000.

812.014 3rd Grand theft, 3rd degree, a
(2)(c)4.-10. will, firearm, motor vehicle,
livestock, etc.

130 812.0195(2) 3rd Dealing in stolen property by
use of the Internet; property
stolen \$300 or more.

131 817.563(1) 3rd Sell or deliver substance other
than controlled substance
agreed upon, excluding s.
893.03(5) drugs.

132 817.568(2)(a) 3rd Fraudulent use of personal
identification information.

133 817.625(2)(a) 3rd Fraudulent use of scanning
device, skimming device, or
reencoder.

134 817.625(2)(c) 3rd Possession, sale, or delivery
of skimming device.

135 828.125(1) 2nd Kill, maim, or cause great
bodily harm or permanent
breeding disability to any
registered horse or cattle.

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136	591-03355-17		2017766c1
	837.02(1)	3rd	Perjury in official proceedings.
137	837.021(1)	3rd	Make contradictory statements in official proceedings.
138	838.022	3rd	Official misconduct.
139	839.13(2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
140	839.13(2) (c)	3rd	Falsifying records of the Department of Children and Families.
141	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
142	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
143	843.15(1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).

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144	591-03355-17		2017766c1
	847.0135(5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
145	874.05(1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
146	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).
147	914.14(2)	3rd	Witnesses accepting bribes.
148	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
149	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
150	918.12	3rd	Tampering with jurors.
151	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
152			

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153	(e) LEVEL 5		
154			
	Florida Statute	Felony Degree	Description
155	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
156	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
157	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
158	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
159	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
160	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

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			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.
161	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
162	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
163	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
164	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
165	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.

166	591-03355-17	2017766c1	
167	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
168	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
169	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
170	790.01(2)	3rd	Carrying a concealed firearm.
171	790.162	2nd	Threat to throw or discharge destructive device.
172	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
173	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
	790.23	2nd	Felons in possession of

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174	591-03355-17	2017766c1	firearms, ammunition, or electronic weapons or devices.
175	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
176	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
177	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
178	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
179	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
180	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.

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181 812.131(2)(b) 3rd Robbery by sudden snatching.

182 812.16(2) 3rd Owning, operating, or
conducting a chop shop.

183 817.034(4)(a)2. 2nd Communications fraud, value
\$20,000 to \$50,000.

184 817.234(11)(b) 2nd Insurance fraud; property value
\$20,000 or more but less than
\$100,000.

185 817.2341(1), 3rd Filing false financial
(2)(a) & (3)(a) statements, making false
entries of material fact or
false statements regarding
property values relating to the
solvency of an insuring entity.

186 817.568(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.

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187 817.611(2)(a) 2nd Traffic in or possess 5 to 14
counterfeit credit cards or
related documents.

188 817.625(2)(b) 2nd Second or subsequent fraudulent
use of scanning device,
skimming device, or reencoder.

189 825.1025(4) 3rd Lewd or lascivious exhibition
in the presence of an elderly
person or disabled adult.

190 827.071(4) 2nd Possess with intent to promote
any photographic material,
motion picture, etc., which
includes sexual conduct by a
child.

191 827.071(5) 3rd Possess, control, or
intentionally view any
photographic material, motion
picture, etc., which includes
sexual conduct by a child.

192 839.13(2)(b) 2nd Falsifying records of an
individual in the care and
custody of a state agency
involving great bodily harm or

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193 death.

194 843.01 3rd Resist officer with violence to
person; resist arrest with
violence.

195 847.0135(5)(b) 2nd Lewd or lascivious exhibition
using computer; offender 18
years or older.

196 847.0137 3rd Transmission of pornography by
(2) & (3) electronic device or equipment.

197 847.0138 3rd Transmission of material
(2) & (3) harmful to minors to a minor by
electronic device or equipment.

198 874.05(1)(b) 2nd Encouraging or recruiting
another to join a criminal
gang; second or subsequent
offense.

199 874.05(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),

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200 (2)(a), (2)(b), or (2)(c)4.
drugs).

201 893.13(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.

202 893.13(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.,

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(2) (c) 9., (3), or (4) within
 1,000 feet of property used for
 religious services or a
 specified business site.

203

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.

204

893.13(4)(b)

2nd

Use or hire of minor; deliver
 to minor other controlled
 substance.

205

893.1351(1)

3rd

Ownership, lease, or rental for
 trafficking in or manufacturing
 of controlled substance.

206

207

Section 3. 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)

April 25, 2017

Meeting Date

766

Bill Number (if applicable)

Topic Payment card offenses

Amendment Barcode (if applicable)

Name Chief Jeffrey Chudnow

Job Title Chief of Police

Address 2636 Mitcham Dr

Phone 850-219-3631

Street

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.

The Florida Senate
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.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	Fav/CS
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	Recommend: Fav/CS
3.	<u>Reagan</u>	<u>Hansen</u>	<u>AP</u>	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 feedstock³ 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

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.

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



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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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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56 gasification or pyrolysis. A pyrolysis facility meeting the
57 conditions of s. 403.7045(1)(e) is not a solid waste management
58 facility.

59 ~~(31)(27)~~ "Recycling" means any process by which solid
60 waste, or materials that would otherwise become solid waste, are
61 collected, separated, or processed and reused or returned to use
62 in the form of raw materials or intermediate or final products.
63 Such raw materials or intermediate or final products include,
64 but are not limited to, crude oil, fuels, and fuel substitutes.

65 ~~(36)(32)~~ "Solid waste" means sludge unregulated under the
66 federal Clean Water Act or Clean Air Act, sludge from a waste
67 treatment works, water supply treatment plant, or air pollution
68 control facility, or garbage, rubbish, refuse, special waste, or
69 other discarded material, including solid, liquid, semisolid, or
70 contained gaseous material resulting from domestic, industrial,
71 commercial, mining, agricultural, or governmental operations.
72 Recovered materials as defined in subsection ~~(28)~~ and post-use
73 polymers as defined in subsection (24) are not solid waste.

74 ~~(39)(35)~~ "Solid waste management facility" means any solid
75 waste disposal area, volume reduction plant, transfer station,
76 materials recovery facility, or other facility, the purpose of
77 which is resource recovery or the disposal, recycling,
78 processing, or storage of solid waste. The term does not include
79 recovered materials processing facilities or pyrolysis
80 facilities that meet the requirements of s. 403.7046, except the
81 portion of such facilities, if any, which is used for the
82 management of solid waste.

83 Section 2. Subsection (1) of section 403.7045, Florida
84 Statutes, is amended to read:



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85 403.7045 Application of act and integration with other
86 acts.-

87 (1) The following wastes or activities may ~~shall~~ not be
88 regulated pursuant to this act:

89 (a) Byproduct material, source material, and special
90 nuclear material, the generation, transportation, disposal,
91 storage, or treatment of which is regulated under chapter 404 or
92 the federal Atomic Energy Act of 1954, ch. 1073, 68 Stat. 923,
93 as amended.†

94 (b) Suspended solids and dissolved materials in domestic
95 sewage effluent or irrigation return flows or other discharges
96 which are point sources subject to permits pursuant to this
97 chapter or s. 402 of the Clean Water Act, Pub. L. No. 95-217.†

98 (c) Emissions to the air from a stationary installation or
99 source regulated under this chapter or the Clean Air Act, Pub.
100 L. No. 95-95.†

101 (d) Drilling fluids, produced waters, and other wastes
102 associated with the exploration for, or development and
103 production of, crude oil or natural gas which are regulated
104 under chapter 377.†~~†~~

105 (e) Recovered materials, post-use polymers, ~~or~~ recovered
106 materials processing facilities, or pyrolysis facilities, except
107 as provided in s. 403.7046, if:

108 1. A majority of the recovered materials or post-use
109 polymers at the facility are demonstrated to be sold, used, or
110 reused within 1 year. As used in this subparagraph, the terms
111 "used" or "reused" include, but are not limited to, the
112 conversion of post-use polymers into crude oil, fuels,
113 feedstocks, or other raw materials or intermediate or final



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114 products by gasification or pyrolysis, as defined in s. 403.703.

115 2. The recovered materials or post-use polymers handled by
116 the facility or the products or byproducts of operations that
117 process recovered materials or post-use polymers are not
118 discharged, deposited, injected, dumped, spilled, leaked, or
119 placed into or upon any land or water by the owner or operator
120 of the such facility so that the such recovered materials or
121 post-use polymers, products or byproducts, or any constituent
122 thereof may enter other lands or be emitted into the air or
123 discharged into any waters, including groundwaters, or otherwise
124 enter the environment such that a threat of contamination in
125 excess of applicable department standards and criteria is
126 caused.

127 3. The recovered materials or post-use polymers handled by
128 the facility are not hazardous wastes as defined in under s.
129 403.703, and rules adopted under this section promulgated
130 pursuant thereto.

131 4. The facility is registered as required in s. 403.7046.

132 (f) Industrial byproducts, if:

133 1. A majority of the industrial byproducts are demonstrated
134 to be sold, used, or reused within 1 year.

135 2. The industrial byproducts are not discharged, deposited,
136 injected, dumped, spilled, leaked, or placed upon any land or
137 water so that such industrial byproducts, or any constituent
138 thereof, may enter other lands or be emitted into the air or
139 discharged into any waters, including groundwaters, or otherwise
140 enter the environment such that a threat of contamination in
141 excess of applicable department standards and criteria or a
142 significant threat to public health is caused.



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143 3. The industrial byproducts are not hazardous wastes as
144 defined in under s. 403.703 and rules adopted under this
145 section.

146
147 Sludge from an industrial waste treatment works that meets the
148 exemption requirements of this paragraph is not solid waste as
149 defined in s. 403.703 s. 403.703(32).

150 Section 3. Subsection (1) of section 403.7046, Florida
151 Statutes, and paragraph (b) of subsection (3) of that section,
152 are amended to read:

153 403.7046 Regulation of recovered materials.-

154 (1) Any person who handles, purchases, receives, recovers,
155 sells, or is an end user of recovered materials or post-use
156 polymers shall annually certify to the department on forms
157 provided by the department. The department may by rule exempt
158 from this requirement generators of recovered materials or post-
159 use polymers; persons who handle or sell recovered materials or
160 post-use polymers as an activity which is incidental to the
161 normal primary business activities of that person; or persons
162 who handle, purchase, receive, recover, sell, or are end users
163 of recovered materials or post-use polymers in small quantities
164 as defined by the department. The department shall adopt rules
165 for the certification of and reporting by such persons and shall
166 establish criteria for revocation of such certification. Such
167 rules shall be designed to elicit, at a minimum, the amount and
168 types of recovered materials or post-use polymers handled by
169 registrants, and the amount and disposal site, or name of person
170 with whom such disposal was arranged, of any solid waste
171 generated by such facility. By February 1 of each year,



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172 registrants shall report all required information to the
173 department and to all counties from which it received materials.
174 Such rules may provide for the department to conduct periodic
175 inspections. The department may charge a fee of up to \$50 for
176 each registration, which shall be deposited into the Solid Waste
177 Management Trust Fund for implementation of the program.

178 (3) Except as otherwise provided in this section or
179 pursuant to a special act in effect on or before January 1,
180 1993, a local government may not require a commercial
181 establishment that generates source-separated recovered
182 materials to sell or otherwise convey its recovered materials to
183 the local government or to a facility designated by the local
184 government, nor may the local government restrict such a
185 generator's right to sell or otherwise convey such recovered
186 materials to any properly certified recovered materials dealer
187 who has satisfied the requirements of this section. A local
188 government may not enact any ordinance that prevents such a
189 dealer from entering into a contract with a commercial
190 establishment to purchase, collect, transport, process, or
191 receive source-separated recovered materials.

192 (b)1. Before engaging in business within the jurisdiction
193 of the local government, a recovered materials dealer or
194 pyrolysis facility must provide the local government with a copy
195 of the certification provided for in this section. In addition,
196 the local government may establish a registration process
197 whereby a recovered materials dealer or pyrolysis facility must
198 register with the local government before engaging in business
199 within the jurisdiction of the local government. Such
200 registration process is limited to requiring the dealer or



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201 pyrolysis facility to register its name, including the owner or
202 operator of the dealer or pyrolysis facility, and, if the dealer
203 or pyrolysis facility is a business entity, its general or
204 limited partners, its corporate officers and directors, its
205 permanent place of business, evidence of its certification under
206 this section, and a certification that the recovered materials
207 or post-use polymers will be processed at a recovered materials
208 processing facility or pyrolysis facility satisfying the
209 requirements of this section. The local government may not use
210 the information provided in the registration application to
211 compete unfairly with the recovered materials dealer until 90
212 days after receipt of the application. All counties, and
213 municipalities whose population exceeds 35,000 according to the
214 population estimates determined pursuant to s. 186.901, may
215 establish a reporting process that must be limited to the
216 regulations, reporting format, and reporting frequency
217 established by the department pursuant to this section, which
218 must, at a minimum, include requiring the dealer or pyrolysis
219 facility to identify the types and approximate amount of
220 recovered materials or post-use polymers collected, recycled, or
221 reused during the reporting period; the approximate percentage
222 of recovered materials or post-use polymers reused, stored, or
223 delivered to a recovered materials processing facility or
224 pyrolysis facility or disposed of in a solid waste disposal
225 facility; and the locations where any recovered materials or
226 post-use polymers were disposed of as solid waste. The local
227 government may charge the dealer or pyrolysis facility a
228 registration fee commensurate with and no greater than the cost
229 incurred by the local government in operating its registration



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230 program. Registration program costs are limited to those costs
231 associated with the activities described in this subparagraph.
232 Any reporting or registration process established by a local
233 government with regard to recovered materials or post-use
234 polymers is governed by this section and department rules
235 adopted pursuant thereto.

236 2. Information reported under this subsection which, if
237 disclosed, would reveal a trade secret, as defined in s.
238 812.081, is confidential and exempt from s. 119.07(1) and s.
239 24(a), Art. I of the State Constitution. This subparagraph is
240 subject to the Open Government Sunset Review Act in accordance
241 with s. 119.15 and shall stand repealed on October 2, 2021,
242 unless reviewed and saved from repeal through reenactment by the
243 Legislature.

244 Section 4. Subsection (2) of section 171.205, Florida
245 Statutes, is amended to read:

246 171.205 Consent requirements for annexation of land under
247 this part.—Notwithstanding part I, an interlocal service
248 boundary agreement may provide a process for annexation
249 consistent with this section or with part I.

250 (2) If the area to be annexed includes a privately owned
251 solid waste disposal facility as defined in s. 403.703 ~~s.~~
252 ~~403.703(33)~~ which receives municipal solid waste collected
253 within the jurisdiction of multiple local governments, the
254 annexing municipality must set forth in its plan the effects
255 that the annexation of the solid waste disposal facility will
256 have on the other local governments. The plan must also indicate
257 that the owner of the affected solid waste disposal facility has
258 been contacted in writing concerning the annexation, that an



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259 agreement between the annexing municipality and the solid waste
260 disposal facility to govern the operations of the solid waste
261 disposal facility if the annexation occurs has been approved,
262 and that the owner of the solid waste disposal facility does not
263 object to the proposed annexation.

264 Section 5. Subsection (28) of section 316.003, Florida
265 Statutes, is amended to read:

266 316.003 Definitions.—The following words and phrases, when
267 used in this chapter, shall have the meanings respectively
268 ascribed to them in this section, except where the context
269 otherwise requires:

270 (28) HAZARDOUS MATERIAL.—Any substance or material which
271 has been determined by the secretary of the United States
272 Department of Transportation to be capable of imposing an
273 unreasonable risk to health, safety, and property. This term
274 includes hazardous waste as defined in s. 403.703 ~~s.~~
275 ~~403.703(13)~~.

276 Section 6. Paragraph (f) of subsection (2) of section
277 377.709, Florida Statutes, is amended to read:

278 377.709 Funding by electric utilities of local governmental
279 solid waste facilities that generate electricity.—

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

281 (f) "Solid waste facility" means a facility owned or
282 operated by, or on behalf of, a local government for the purpose
283 of disposing of solid waste, as ~~that term is~~ defined in s.
284 403.703 ~~s. 403.703(32)~~, by any process that produces heat and
285 incorporates, as a part of the facility, the means of converting
286 heat to electrical energy in amounts greater than actually
287 required for the operation of the facility.



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288 Section 7. Subsection (1) of section 487.048, Florida
289 Statutes, is amended to read:

290 487.048 Dealer's license; records.—

291 (1) Each person holding or offering for sale, selling, or
292 distributing restricted-use pesticides must obtain a dealer's
293 license from the department. Application for the license shall
294 be filed with the department by using a form prescribed by the
295 department or by using the department's website. The license
296 must be obtained before entering into business or transferring
297 ownership of a business. The department may require examination
298 or other proof of competency of individuals to whom licenses are
299 issued or of individuals employed by persons to whom licenses
300 are issued. Demonstration of continued competency may be
301 required for license renewal, as set by rule. The license shall
302 be renewed annually as provided by rule. An annual license fee
303 not exceeding \$250 shall be established by rule. However, a user
304 of a restricted-use pesticide may distribute unopened containers
305 of a properly labeled pesticide to another user who is legally
306 entitled to use that restricted-use pesticide without obtaining
307 a pesticide dealer license. The exclusive purpose of
308 distribution of the restricted-use pesticide is to keep it from
309 becoming a hazardous waste as defined in s. 403.703 ~~s.~~
310 ~~403.703(13)~~.

311 Section 8. This act shall take effect July 1, 2017.

312

The Florida Senate
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.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	<u>Recommend: Fav/CS</u>
3.	<u>Reagan</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

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 feedstock³ 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

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.

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

By the Committee on Environmental Preservation and Conservation;
and Senator Perry

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1 A bill to be entitled
2 An act relating to resource recovery and management;
3 amending s. 403.703, F.S.; revising definitions;
4 defining the terms "gasification," "post-use polymer,"
5 "pyrolysis," and "pyrolysis facility"; amending s.
6 403.7045, F.S.; providing that certain pyrolysis
7 facilities are exempt from certain resource recovery
8 regulations; conforming a cross-reference; amending s.
9 403.7046, F.S.; authorizing recovered materials
10 dealers to use pyrolysis facilities for recovered
11 materials processing; amending ss. 171.205, 316.003,
12 377.709, and 487.048, F.S.; conforming cross-
13 references; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Present subsections (2) and (3) of section
18 403.703, Florida Statutes, are redesignated as subsections (3)
19 and (2), respectively, present subsections (10) through (22) of
20 that section are redesignated as subsections (11) through (23),
21 respectively, present subsection (23) of that section is
22 redesignated as subsection (25), present subsections (24)
23 through (43) of that section are redesignated as subsections
24 (28) through (47), respectively, present subsections (27), (32),
25 and (35) of that section are amended, and new subsections (10),
26 (24), (26), and (27) are added to that section, to read:
27 403.703 Definitions.—As used in this part, the term:
28 (10) "Gasification" means a process through which post-use
29 polymers are heated and converted to synthesis gas in an oxygen-

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

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30 deficient atmosphere, and then converted to crude oil, fuels, or
31 chemical feedstocks.
32 (24) "Post-use polymer" means a plastic polymer that is
33 derived from any domestic, commercial, or municipal activity;
34 that is not recycled in commercial markets; and may otherwise
35 become waste if not converted to manufacture crude oil, fuels,
36 or other raw materials or intermediate or final products using
37 gasification or pyrolysis. A post-use polymer may contain
38 incidental contaminants or impurities such as paper labels or
39 metal rings.
40 (26) "Pyrolysis" means a process through which post-use
41 polymers are heated in the absence of oxygen until melted and
42 thermally decomposed, and then cooled, condensed, and converted
43 to:
44 (a) Crude oil, diesel, gasoline, home heating oil, or
45 another fuel;
46 (b) Feedstocks;
47 (c) Diesel and gasoline blendstocks;
48 (d) Chemicals, waxes, or lubricants; or
49 (e) Other raw materials or intermediate or final products.
50 (27) "Pyrolysis facility" means a facility that receives,
51 separates, stores, and converts post-use polymers, using
52 gasification or pyrolysis. A pyrolysis facility meeting the
53 conditions of s. 403.7045(1)(e) is not a solid waste management
54 facility.
55 (31)-(27) "Recycling" means any process by which solid
56 waste, or materials that would otherwise become solid waste, are
57 collected, separated, or processed and reused or returned to use
58 in the form of raw materials or intermediate or final products.

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59 Such raw materials or intermediate or final products may
 60 include, but are not limited to, crude oil, fuels, and fuel
 61 substitutes.

62 ~~(36)-(32)~~ "Solid waste" means sludge unregulated under the
 63 federal Clean Water Act or Clean Air Act, sludge from a waste
 64 treatment works, water supply treatment plant, or air pollution
 65 control facility, or garbage, rubbish, refuse, special waste, or
 66 other discarded material, including solid, liquid, semisolid, or
 67 contained gaseous material resulting from domestic, industrial,
 68 commercial, mining, agricultural, or governmental operations.
 69 Recovered materials as defined in subsection (28) ~~(24)~~ are not
 70 solid waste.

71 (39) ~~(35)~~ "Solid waste management facility" means any solid
 72 waste disposal area, volume reduction plant, transfer station,
 73 materials recovery facility, or other facility, the purpose of
 74 which is resource recovery or the disposal, recycling,
 75 processing, or storage of solid waste. The term does not include
 76 recovered materials processing facilities or pyrolysis
 77 facilities that meet the requirements of s. 403.7046, except the
 78 portion of such facilities, if any, which is used for the
 79 management of solid waste.

80 Section 2. Subsection (1) of section 403.7045, Florida
 81 Statutes, is amended to read:

82 403.7045 Application of act and integration with other
 83 acts.—

84 (1) The following wastes or activities may ~~shall~~ not be
 85 regulated pursuant to this act:

86 (a) Byproduct material, source material, and special
 87 nuclear material, the generation, transportation, disposal,

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88 storage, or treatment of which is regulated under chapter 404 or
 89 the federal Atomic Energy Act of 1954, ch. 1073, 68 Stat. 923,
 90 as amended;

91 (b) Suspended solids and dissolved materials in domestic
 92 sewage effluent or irrigation return flows or other discharges
 93 which are point sources subject to permits pursuant to this
 94 chapter or s. 402 of the Clean Water Act, Pub. L. No. 95-217;

95 (c) Emissions to the air from a stationary installation or
 96 source regulated under this chapter or the Clean Air Act, Pub.
 97 L. No. 95-95;

98 (d) Drilling fluids, produced waters, and other wastes
 99 associated with the exploration for, or development and
 100 production of, crude oil or natural gas which are regulated
 101 under chapter 377; or

102 (e) Recovered materials, ~~or~~ recovered materials processing
 103 facilities, or pyrolysis facilities, except as provided in s.
 104 403.7046, if:

105 1. A majority of the recovered materials at the facility
 106 are demonstrated to be sold, used, or reused within 1 year. As
 107 used in this subparagraph, the terms "used" or "reused" include,
 108 but are not limited to, the conversion of post-use polymers into
 109 crude oil, fuels, feedstocks, or other raw materials or
 110 intermediate or final products by gasification or pyrolysis.

111 2. The recovered materials handled by the facility or the
 112 products or byproducts of operations that process recovered
 113 materials are not discharged, deposited, injected, dumped,
 114 spilled, leaked, or placed into or upon any land or water by the
 115 owner or operator of the ~~such~~ facility so that the ~~such~~
 116 recovered materials, products or byproducts, or any constituent

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117 thereof may enter other lands or be emitted into the air or
 118 discharged into any waters, including groundwaters, or otherwise
 119 enter the environment such that a threat of contamination in
 120 excess of applicable department standards and criteria is
 121 caused.

122 3. The recovered materials handled by the facility are not
 123 hazardous wastes as defined in ~~under~~ s. 403.703, and in rules
 124 adopted under this section promulgated pursuant thereto.

125 4. The facility is registered as required in s. 403.7046.

126 (f) Industrial byproducts, if:

127 1. A majority of the industrial byproducts are demonstrated
 128 to be sold, used, or reused within 1 year.

129 2. The industrial byproducts are not discharged, deposited,
 130 injected, dumped, spilled, leaked, or placed upon any land or
 131 water so that such industrial byproducts, or any constituent
 132 thereof, may enter other lands or be emitted into the air or
 133 discharged into any waters, including groundwaters, or otherwise
 134 enter the environment such that a threat of contamination in
 135 excess of applicable department standards and criteria or a
 136 significant threat to public health is caused.

137 3. The industrial byproducts are not hazardous wastes as
 138 defined in ~~under~~ s. 403.703 and in rules adopted under this
 139 section.

140
 141 Sludge from an industrial waste treatment works that meets the
 142 exemption requirements of this paragraph is not solid waste as
 143 defined in s. 403.703 ~~403.703(32)~~.

144 Section 3. Paragraph (b) of subsection (3) of section
 145 403.7046, Florida Statutes, is amended to read:

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146 403.7046 Regulation of recovered materials.-

147 (3) Except as otherwise provided in this section or
 148 pursuant to a special act in effect on or before January 1,
 149 1993, a local government may not require a commercial
 150 establishment that generates source-separated recovered
 151 materials to sell or otherwise convey its recovered materials to
 152 the local government or to a facility designated by the local
 153 government, nor may the local government restrict such a
 154 generator's right to sell or otherwise convey such recovered
 155 materials to any properly certified recovered materials dealer
 156 who has satisfied the requirements of this section. A local
 157 government may not enact any ordinance that prevents such a
 158 dealer from entering into a contract with a commercial
 159 establishment to purchase, collect, transport, process, or
 160 receive source-separated recovered materials.

161 (b)1. Before engaging in business within the jurisdiction
 162 of the local government, a recovered materials dealer must
 163 provide the local government with a copy of the certification
 164 provided for in this section. In addition, the local government
 165 may establish a registration process whereby a recovered
 166 materials dealer must register with the local government before
 167 engaging in business within the jurisdiction of the local
 168 government. Such registration process is limited to requiring
 169 the dealer to register its name, including the owner or operator
 170 of the dealer, and, if the dealer is a business entity, its
 171 general or limited partners, its corporate officers and
 172 directors, its permanent place of business, evidence of its
 173 certification under this section, and a certification that the
 174 recovered materials will be processed at a recovered materials

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175 processing facility or pyrolysis facility satisfying the
 176 requirements of this section. The local government may not use
 177 the information provided in the registration application to
 178 compete unfairly with the recovered materials dealer until 90
 179 days after receipt of the application. All counties, and
 180 municipalities whose population exceeds 35,000 according to the
 181 population estimates determined pursuant to s. 186.901, may
 182 establish a reporting process that must be limited to the
 183 regulations, reporting format, and reporting frequency
 184 established by the department pursuant to this section, which
 185 must, at a minimum, include requiring the dealer to identify the
 186 types and approximate amount of recovered materials collected,
 187 recycled, or reused during the reporting period; the approximate
 188 percentage of recovered materials reused, stored, or delivered
 189 to a recovered materials processing facility or pyrolysis
 190 facility or disposed of in a solid waste disposal facility; and
 191 the locations where any recovered materials were disposed of as
 192 solid waste. The local government may charge the dealer a
 193 registration fee commensurate with and no greater than the cost
 194 incurred by the local government in operating its registration
 195 program. Registration program costs are limited to those costs
 196 associated with the activities described in this subparagraph.
 197 Any reporting or registration process established by a local
 198 government with regard to recovered materials is governed by
 199 this section and department rules adopted pursuant thereto.
 200 2. Information reported under this subsection which, if
 201 disclosed, would reveal a trade secret, as defined in s.
 202 812.081, is confidential and exempt from s. 119.07(1) and s.
 203 24(a), Art. I of the State Constitution. This subparagraph is

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204 subject to the Open Government Sunset Review Act in accordance
 205 with s. 119.15 and shall stand repealed on October 2, 2021,
 206 unless reviewed and saved from repeal through reenactment by the
 207 Legislature.
 208 Section 4. Subsection (2) of section 171.205, Florida
 209 Statutes, is amended to read:
 210 171.205 Consent requirements for annexation of land under
 211 this part.—Notwithstanding part I, an interlocal service
 212 boundary agreement may provide a process for annexation
 213 consistent with this section or with part I.
 214 (2) If the area to be annexed includes a privately owned
 215 solid waste disposal facility as defined in s. 403.703
 216 ~~403.703(33)~~ which receives municipal solid waste collected
 217 within the jurisdiction of multiple local governments, the
 218 annexing municipality must set forth in its plan the effects
 219 that the annexation of the solid waste disposal facility will
 220 have on the other local governments. The plan must also indicate
 221 that the owner of the affected solid waste disposal facility has
 222 been contacted in writing concerning the annexation, that an
 223 agreement between the annexing municipality and the solid waste
 224 disposal facility to govern the operations of the solid waste
 225 disposal facility if the annexation occurs has been approved,
 226 and that the owner of the solid waste disposal facility does not
 227 object to the proposed annexation.
 228 Section 5. Subsection (28) of section 316.003, Florida
 229 Statutes, is amended to read:
 230 316.003 Definitions.—The following words and phrases, when
 231 used in this chapter, shall have the meanings respectively
 232 ascribed to them in this section, except where the context

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233 otherwise requires:

234 (28) HAZARDOUS MATERIAL.—Any substance or material which
 235 has been determined by the secretary of the United States
 236 Department of Transportation to be capable of imposing an
 237 unreasonable risk to health, safety, and property. This term
 238 includes hazardous waste as defined in s. 403.703 ~~403.703(13)~~.

239 Section 6. Paragraph (f) of subsection (2) of section
 240 377.709, Florida Statutes, is amended to read:

241 377.709 Funding by electric utilities of local governmental
 242 solid waste facilities that generate electricity.—

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

244 (f) "Solid waste facility" means a facility owned or
 245 operated by, or on behalf of, a local government for the purpose
 246 of disposing of solid waste, as ~~that term is~~ defined in s.
 247 403.703 ~~403.703(32)~~, by any process that produces heat and
 248 incorporates, as a part of the facility, the means of converting
 249 heat to electrical energy in amounts greater than actually
 250 required for the operation of the facility.

251 Section 7. Subsection (1) of section 487.048, Florida
 252 Statutes, is amended to read:

253 487.048 Dealer's license; records.—

254 (1) Each person holding or offering for sale, selling, or
 255 distributing restricted-use pesticides must obtain a dealer's
 256 license from the department. Application for the license shall
 257 be filed with the department by using a form prescribed by the
 258 department or by using the department's website. The license
 259 must be obtained before entering into business or transferring
 260 ownership of a business. The department may require examination
 261 or other proof of competency of individuals to whom licenses are

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262 issued or of individuals employed by persons to whom licenses
 263 are issued. Demonstration of continued competency may be
 264 required for license renewal, as set by rule. The license shall
 265 be renewed annually as provided by rule. An annual license fee
 266 not exceeding \$250 shall be established by rule. However, a user
 267 of a restricted-use pesticide may distribute unopened containers
 268 of a properly labeled pesticide to another user who is legally
 269 entitled to use that restricted-use pesticide without obtaining
 270 a pesticide dealer license. The exclusive purpose of
 271 distribution of the restricted-use pesticide is to keep it from
 272 becoming a hazardous waste as defined in s. 403.703 ~~403.703(13)~~.
 273 Section 8. This act shall take effect July 1, 2017.
 274



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.



Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

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
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City State Zip

Phone 941-323-2404

Email cullenasea@aol.com

Speaking: For Against Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17

Meeting Date

SB 1104

Bill Number (if applicable)

Topic RESOURCE RECOVERY + MANAGEMENT

Amendment Barcode (if applicable)

Name KEYNA CORY

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Email keynacory@paconsultants.com

City

State

Zip

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.

The Florida Senate
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.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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 contractor²³ 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

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.

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

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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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11 responsibilities who are charged with the responsibility for
12 direct regulatory administration or supervision of plan review,
13 enforcement, or inspection of building construction, erection,
14 repair, addition, remodeling, demolition, or alteration projects
15 that require permitting indicating compliance with building,
16 plumbing, mechanical, electrical, gas, fire prevention, energy,
17 accessibility, and other construction codes as required by state
18 law or municipal or county ordinance. This term is synonymous
19 with "building official" as used in the ~~administrative chapter~~
20 ~~of the Standard Building Code and the South Florida Building~~
21 Code. One person employed or contracted by each municipal or
22 county government as a building code administrator or building
23 official and who is so certified under this part may be
24 authorized to perform any plan review or inspection for which
25 certification is required by this part, including performing any
26 plan review or inspection as a currently designated standard
27 certified building official under an interagency service
28 agreement with a jurisdiction having a population of 50,000 or
29 less.

30 (4)-(2) "Building code inspector" means any of those
31 employees of local governments or state agencies, or any person
32 contracted, with building construction regulation
33 responsibilities who themselves conduct inspections of building
34 construction, erection, repair, addition, or alteration projects
35 that require permitting indicating compliance with building,
36 plumbing, mechanical, electrical, gas, fire prevention, energy,
37 accessibility, and other construction codes as required by state
38 law or municipal or county ordinance.

39 (1)-(3) "Board" means the Florida Building Code



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40 Administrators and Inspectors Board.

41 ~~(7)~~~~(4)~~ "Department" means the Department of Business and
42 Professional Regulation.

43 ~~(6)~~~~(5)~~ "Certificate" means a certificate of qualification
44 issued by the department as provided in this part.

45 ~~(5)~~~~(6)~~ "Categories of building code inspectors" include the
46 following:

47 (a) "Building inspector" means a person who is qualified to
48 inspect and determine that buildings and structures are
49 constructed in accordance with the provisions of the governing
50 building codes and state accessibility laws.

51 (b) "Coastal construction inspector" means a person who is
52 qualified to inspect and determine that buildings and structures
53 are constructed to resist near-hurricane and hurricane velocity
54 winds in accordance with the provisions of the governing
55 building code.

56 (c) "Commercial electrical inspector" means a person who is
57 qualified to inspect and determine the electrical safety of
58 commercial buildings and structures by inspecting for compliance
59 with the provisions of the National Electrical Code.

60 ~~(h)~~~~(d)~~ "Residential electrical inspector" means a person
61 who is qualified to inspect and determine the electrical safety
62 of one and two family dwellings and accessory structures by
63 inspecting for compliance with the applicable provisions of the
64 governing electrical code.

65 (e) "Mechanical inspector" means a person who is qualified
66 to inspect and determine that the mechanical installations and
67 systems for buildings and structures are in compliance with the
68 provisions of the governing mechanical code.



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69 (g)~~(f)~~ "Plumbing inspector" means a person who is qualified
70 to inspect and determine that the plumbing installations and
71 systems for buildings and structures are in compliance with the
72 provisions of the governing plumbing code.

73 (f)~~(g)~~ "One and two family dwelling inspector" means a
74 person who is qualified to inspect and determine that one and
75 two family dwellings and accessory structures are constructed in
76 accordance with the provisions of the governing building,
77 plumbing, mechanical, accessibility, and electrical codes.

78 (d)~~(h)~~ "Electrical inspector" means a person who is
79 qualified to inspect and determine the electrical safety of
80 commercial and residential buildings and accessory structures by
81 inspecting for compliance with the provisions of the National
82 Electrical Code.

83 (8)~~(7)~~ "Plans examiner" means a person who is qualified to
84 determine that plans submitted for purposes of obtaining
85 building and other permits comply with the applicable building,
86 plumbing, mechanical, electrical, gas, fire prevention, energy,
87 accessibility, and other applicable construction codes. The term
88 includes a residential plans examiner who is qualified to
89 determine that plans submitted for purposes of obtaining
90 building and other permits comply with the applicable
91 residential building, plumbing, mechanical, electrical, gas,
92 energy, accessibility, and other applicable construction codes.

93 Categories of plans examiners include:

- 94 (a) Building plans examiner.
- 95 (b) Plumbing plans examiner.
- 96 (c) Mechanical plans examiner.
- 97 (d) Electrical plans examiner.



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98 (3)~~(8)~~ "Building code enforcement official" or "enforcement
99 official" means a licensed building code administrator, building
100 code inspector, or plans examiner.

101 Section 2. Paragraph (c) of subsection (2), paragraphs (a)
102 and (d) of subsection (7), and subsection (10) of section
103 468.609, Florida Statutes, are amended to read:

104 468.609 Administration of this part; standards for
105 certification; additional categories of certification.—

106 (2) A person may take the examination for certification as
107 a building code inspector or plans examiner pursuant to this
108 part if the person:

109 (c) Meets eligibility requirements according to one of the
110 following criteria:

111 1. Demonstrates 5 years' combined experience in the field
112 of construction or a related field, building code inspection, or
113 plans review corresponding to the certification category sought;

114 2. Demonstrates a combination of postsecondary education in
115 the field of construction or a related field and experience
116 which totals 4 years, with at least 1 year of such total being
117 experience in construction, building code inspection, or plans
118 review;

119 3. Demonstrates a combination of technical education in the
120 field of construction or a related field and experience which
121 totals 4 years, with at least 1 year of such total being
122 experience in construction, building code inspection, or plans
123 review;

124 4. Currently holds a standard certificate issued by the
125 board or a firesafety inspector license issued pursuant to
126 chapter 633, has a minimum of 3 years' verifiable full-time



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127 experience in inspection or plan review, and has satisfactorily
128 completed a building code inspector or plans examiner training
129 program that provides at least 100 hours but not more than 200
130 hours of cross-training in the certification category sought.
131 The board shall establish by rule criteria for the development
132 and implementation of the training programs. The board shall
133 accept all classroom training offered by an approved provider if
134 the content substantially meets the intent of the classroom
135 component of the training program;

136 5. Demonstrates a combination of the completion of an
137 approved training program in the field of building code
138 inspection or plan review and a minimum of 2 years' experience
139 in the field of building code inspection, plan review, fire code
140 inspections and fire plans review of new buildings as a
141 firesafety inspector certified under s. 633.216, or
142 construction. The approved training portion of this requirement
143 shall include proof of satisfactory completion of a training
144 program that provides at least 200 hours but not more than 300
145 hours of cross-training that is approved by the board in the
146 chosen category of building code inspection or plan review in
147 the certification category sought with at least 20 hours but not
148 more than 30 hours of instruction in state laws, rules, and
149 ethics relating to professional standards of practice, duties,
150 and responsibilities of a certificateholder. The board shall
151 coordinate with the Building Officials Association of Florida,
152 Inc., to establish by rule the development and implementation of
153 the training program. However, the board shall accept all
154 classroom training offered by an approved provider if the
155 content substantially meets the intent of the classroom



156 component of the training program; ~~or~~

157 6. Currently holds a standard certificate issued by the
158 board or a firesafety inspector license issued pursuant to
159 chapter 633 and:

160 a. Has at least 5 years' verifiable full-time experience as
161 an inspector or plans examiner in a standard certification
162 category currently held or has a minimum of 5 years' verifiable
163 full-time experience as a firesafety inspector licensed pursuant
164 to chapter 633;~~or~~

165 b. Has satisfactorily completed a building code inspector
166 or plans examiner classroom training course or program that
167 provides at least 200 but not more than 300 hours in the
168 certification category sought, except for one-family and two-
169 family dwelling training programs, which must provide at least
170 500 but not more than 800 hours of training as prescribed by the
171 board. The board shall establish by rule criteria for the
172 development and implementation of classroom training courses and
173 programs in each certification category; or

174 7.a. Has completed a 4-year internship certification
175 program as a building code inspector or plans examiner while
176 employed full-time by a municipality, county, or other
177 governmental jurisdiction, under the direct supervision of a
178 certified building official. Proof of graduation with a related
179 vocational degree or college degree or of verifiable work
180 experience may be exchanged for the internship experience
181 requirement year-for-year, but may reduce the requirement to no
182 less than 1 year;

183 b. Has passed an examination administered by the
184 International Code Council in the certification category sought.



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185 Such examination must be passed before beginning the internship
186 certification program;

187 c. Has passed the principles and practice examination
188 before completing the internship certification program;

189 d. Has passed a board-approved 40-hour code training course
190 in the certification category sought before completing the
191 internship certification program; and

192 e. Has obtained a favorable recommendation from the
193 supervising building official after completion of the internship
194 certification program.

195 (7) (a) The board shall provide for the issuance of
196 provisional certificates valid for 1 year, as specified by board
197 rule, to any ~~newly employed or promoted~~ building code inspector
198 or plans examiner who meets the eligibility requirements
199 described in subsection (2) and any newly employed or promoted
200 building code administrator who meets the eligibility
201 requirements described in subsection (3). The provisional
202 license may be renewed by the board for just cause; however, a
203 provisional license is not valid for longer than 3 years.

204 (d) A ~~newly employed or hired~~ person may perform the duties
205 of a plans examiner or building code inspector for 120 days if a
206 provisional certificate application has been submitted if such
207 person is under the direct supervision of a certified building
208 code administrator who holds a standard certification and who
209 has found such person qualified for a provisional certificate.
210 Direct supervision and the determination of qualifications may
211 also be provided by a building code administrator who holds a
212 limited or provisional certificate in a county having a
213 population of fewer than 75,000 and in a municipality located



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214 within such county.

215 (10) (a) The board may by rule create categories of
216 certification in addition to those defined in s. 468.603(5) and
217 (8) ~~468.603(6) and (7)~~. Such certification categories shall not
218 be mandatory and shall not act to diminish the scope of any
219 certificate created by statute.

220 (b) The board shall by rule establish:

221 1. Reciprocity of certification with any other state that
222 requires an examination administered by the International Code
223 Council.

224 2. An applicant for certification as a building code
225 inspector or plans examiner may apply for a provisional
226 certificate valid for the duration of the internship period.

227 3. Partial completion of an internship program may be
228 transferred between jurisdictions on a form prescribed by the
229 board.

230 4. An applicant may apply for a standard certificate on a
231 form prescribed by the board upon successful completion of an
232 internship certification program.

233 5. An applicant may apply for a standard certificate at
234 least 30 days and no more than 60 days before completing the
235 internship certification program.

236 6. A building code inspector or plans examiner who has
237 standard certification may seek an additional certification in
238 another category by completing an additional nonconcurrent 1-
239 year internship program in the certification category sought and
240 passing an examination administered by the International Code
241 Council and a board-approved 40-hour code training course.

242 Section 3. Subsection (3) of section 468.617, Florida



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243 Statutes, is amended to read:

244 468.617 Joint building code inspection department; other
245 arrangements.—

246 (3) Nothing in this part shall prohibit any county or
247 municipal government, school board, community college board,
248 state university, or state agency from entering into any
249 contract with any person or entity for the provision of building
250 code administrator, building official, or building code
251 inspection services regulated under this part, and
252 notwithstanding any other statutory provision, such county or
253 municipal governments may enter into contracts.

254 Section 4. Paragraphs (d) and (i) of subsection (1) of
255 section 553.791, Florida Statutes, are amended to read:

256 553.791 Alternative plans review and inspection.—

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

258 (d) "Building code inspection services" means those
259 services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~
260 involving the review of building plans to determine compliance
261 with applicable codes and those inspections required by law of
262 each phase of construction for which permitting by a local
263 enforcement agency is required to determine compliance with
264 applicable codes.

265 (i) "Private provider" means a person licensed as a
266 building code administrator under part XII of chapter 468, as an
267 engineer under chapter 471, or as an architect under chapter
268 481. For purposes of performing inspections under this section
269 for additions and alterations that are limited to 1,000 square
270 feet or less to residential buildings, the term "private
271 provider" also includes a person who holds a standard



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272 certificate under part XII of chapter 468.

273 Section 5. Subsection (10) of section 468.609, Florida
274 Statutes, is amended to read:

275 468.609 Administration of this part; standards for
276 certification; additional categories of certification.—

277 (10) The board may by rule create categories of
278 certification in addition to those defined in s. 468.603(5) and
279 (8) ~~468.603(6) and (7)~~. Such certification categories shall not
280 be mandatory and shall not act to diminish the scope of any
281 certificate created by statute.

282 Section 6. Section 471.045, Florida Statutes, is amended to
283 read:

284 471.045 Professional engineers performing building code
285 inspector duties.—Notwithstanding any other provision of law, a
286 person who is currently licensed under this chapter to practice
287 as a professional engineer may provide building code inspection
288 services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~
289 to a local government or state agency upon its request, without
290 being certified by the Florida Building Code Administrators and
291 Inspectors Board under part XII of chapter 468. When performing
292 these building code inspection services, the professional
293 engineer is subject to the disciplinary guidelines of this
294 chapter and s. 468.621(1)(c)-(h). Any complaint processing,
295 investigation, and discipline that arise out of a professional
296 engineer's performing building code inspection services shall be
297 conducted by the Board of Professional Engineers rather than the
298 Florida Building Code Administrators and Inspectors Board. A
299 professional engineer may not perform plans review as an
300 employee of a local government upon any job that the



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301 professional engineer or the professional engineer's company
302 designed.

303 Section 7. Section 481.222, Florida Statutes, is amended to
304 read:

305 481.222 Architects performing building code inspection
306 services.—Notwithstanding any other provision of law, a person
307 who is currently licensed to practice as an architect under this
308 part may provide building code inspection services described in
309 s. 468.603(5) and (8) ~~468.603(6) and (7)~~ to a local government
310 or state agency upon its request, without being certified by the
311 Florida Building Code Administrators and Inspectors Board under
312 part XII of chapter 468. With respect to the performance of such
313 building code inspection services, the architect is subject to
314 the disciplinary guidelines of this part and s. 468.621(1)(c)-
315 (h). Any complaint processing, investigation, and discipline
316 that arise out of an architect's performance of building code
317 inspection services shall be conducted by the Board of
318 Architecture and Interior Design rather than the Florida
319 Building Code Administrators and Inspectors Board. An architect
320 may not perform plans review as an employee of a local
321 government upon any job that the architect or the architect's
322 company designed.

323
324 ===== T I T L E A M E N D M E N T =====

325 And the title is amended as follows:

326 Delete line 2

327 and insert:

328 An act relating to building-related contracting;
329 amending s. 468.603, F.S.; revising definitions;



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330 amending s. 468.609, F.S.; revising eligibility
331 requirements for the examination for certification as
332 a building code inspector or plans examiner to include
333 an internship certification program; removing an
334 eligibility condition from provisions related to
335 provisional certificates; requiring the Florida
336 Building Code Administrators and Inspectors Board to
337 establish rules; amending s. 468.617, F.S.;
338 authorizing specified entities to contract for the
339 provision of building code administrator and building
340 official services; amending s. 553.791, F.S.;
341 conforming provisions to changes made by the act;
342 revising a definition; amending ss. 468.609, 471.045,
343 and 481.222, F.S.; conforming cross-references;



806082

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



806082

11 self-closing device.

12

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

14 And the directory clause is amended as follows:

15 Delete lines 53 - 54

16 and insert:

17 of that section, subsections (7) and (8) and paragraphs (a) and
18 (b) of subsection (9) of that section are amended, and
19 subsection (20) is added to that section, to read:

20

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

22 And the title is amended as follows:

23 Between lines 32 and 33

24 insert:

25 prohibiting the commission from adopting certain
26 provisions into the Florida Building Code;

By the Committees on Community Affairs; and Regulated
Industries; and Senator Perry

578-03979-17

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1 A bill to be entitled
2 An act relating to building-related contracting;
3 amending s. 489.516, F.S.; specifying that provisions
4 regulating certified electrical contractors and
5 certified alarm system contractors do not prevent such
6 contractors from acting as a prime contractor or from
7 subcontracting work to other licensed contractors
8 under certain circumstances; amending s. 553.73, F.S.;
9 requiring the Florida Building Commission to use
10 certain entities and codes for updates to the Florida
11 Building Code; revising voting requirements for a
12 technical advisory committee to make a favorable
13 recommendation to the commission; providing that
14 certain technical amendments to the Florida Building
15 Code which are adopted by a local government are not
16 rendered void when the code is updated; specifying
17 that such amendments are subject to review or
18 modification if carried forward into the next edition
19 of the code; requiring the commission to update the
20 Florida Building Code through a review of the most
21 current updates of specified codes; requiring the
22 commission to adopt specified provisions from certain
23 codes; deleting provisions limiting how long an
24 amendment or modification is effective; deleting a
25 provision requiring certain amendments or
26 modifications to be carried forward into the next
27 edition of the code, subject to certain conditions;
28 deleting certain requirements for the resubmission of
29 expired amendments; deleting a provision prohibiting a

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30 proposed amendment from being included in the code if
31 it has been addressed in the international code;
32 conforming provisions to changes made by the act;
33 amending s. 553.76, F.S.; requiring the commission to
34 adopt the Florida Building Code, and amendments
35 thereto, by a minimum percentage of votes; providing
36 an effective date.
37
38 Be It Enacted by the Legislature of the State of Florida:
39
40 Section 1. Present subsection (5) of section 489.516,
41 Florida Statutes, is renumbered as subsection (6), and a new
42 subsection (5) is added to that section, to read:
43 489.516 Qualifications to practice; restrictions;
44 prerequisites.—
45 (5) This part does not prevent any certified electrical or
46 alarm system contractor from acting as a prime contractor where
47 the majority of the work to be performed under the contract is
48 within the scope of his or her license or from subcontracting to
49 other licensed contractors that remaining work that is part of
50 the project contracted.
51 Section 2. Subsection (3) of section 553.73, Florida
52 Statutes, is amended, paragraph (d) is added to subsection (4)
53 of that section, and subsections (7) and (8) and paragraphs (a)
54 and (b) of subsection (9) of that section are amended, to read:
55 553.73 Florida Building Code.—
56 (3) The commission shall use the ~~International Codes~~
57 ~~published by the~~ International Code Council, the National
58 Electric Code (NFPA 70), or other nationally adopted model codes

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59 and standards ~~for updates to needed to develop the base code in~~
 60 ~~Florida to form the foundation for~~ the Florida Building Code.
 61 The ~~Florida Building~~ commission may approve technical amendments
 62 to the code as provided in, subject to subsections (8) and (9),
 63 ~~after the amendments have been~~ subject to all of the following
 64 conditions:

65 (a) The proposed amendment must have ~~has~~ been published on
 66 the commission's website for a minimum of 45 days and all the
 67 associated documentation must have ~~has~~ been made available to
 68 any interested party before ~~any~~ consideration by a technical
 69 advisory committee. ~~+~~

70 (b) In order for a technical advisory committee to make a
 71 favorable recommendation to the commission, the proposal must
 72 receive a two-thirds ~~three-fourths~~ vote of the members present
 73 at the ~~technical advisory committee meeting.~~ and At least half
 74 of the regular members must be present in order to conduct a
 75 meeting. ~~+~~

76 (c) After the technical advisory committee has considered
 77 and recommended consideration and a recommendation for approval
 78 of any proposed amendment, the proposal must be published on the
 79 commission's website for at least 45 days before ~~any~~
 80 consideration by the commission. ~~+~~ and

81 (d) A proposal may be modified by the commission based on
 82 public testimony and evidence from a public hearing held in
 83 accordance with chapter 120.

84
 85 The commission shall incorporate within ~~sections of~~ the Florida
 86 Building Code provisions that which address regional and local
 87 concerns and variations. The commission shall make every effort

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88 to minimize conflicts between the Florida Building Code, the
 89 Florida Fire Prevention Code, and the Life Safety Code.

90 (4)

91 (d) A technical amendment to the Florida Building Code
 92 related to water conservation practices or design criteria
 93 adopted by a local government pursuant to this subsection is not
 94 rendered void when the code is updated if the technical
 95 amendment is necessary to protect or provide for more efficient
 96 use of water resources as provided in s. 373.621. However, any
 97 such technical amendment carried forward into the next edition
 98 of the code pursuant to this paragraph is subject to review or
 99 modification as provided in this part.

100 (7) (a) The commission, ~~by rule adopted pursuant to ss.~~
 101 ~~120.536(1) and 120.54,~~ shall adopt an updated update the Florida
 102 Building Code every 3 years through review of. when updating the
 103 Florida Building Code, ~~the commission shall select the most~~
 104 current updates version of the International Building Code, the
 105 International Fuel Gas Code, the International Mechanical Code,
 106 the International Plumbing Code, and the International
 107 Residential Code, all of which are copyrighted and published by
 108 ~~adopted~~ by the International Code Council, and the National
 109 Electrical Code, which is copyrighted and published ~~adopted~~ by
 110 the National Fire Protection Association. At a minimum, the
 111 commission shall adopt any updates to such codes or any other
 112 code necessary to maintain eligibility for federal funding from
 113 the National Flood Insurance Program, the Federal Emergency
 114 Management Agency, and the United States Department of Housing
 115 and Urban Development, ~~to form the foundation codes of the~~
 116 ~~updated Florida Building Code, if the version has been adopted~~

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117 ~~by the applicable model code entity.~~ The commission shall also
 118 review and adopt updates based substantially on select the most
 119 ~~current version of the International Energy Conservation Code~~
 120 ~~(IECC) as a foundation code; however, the IECC shall be modified~~
 121 ~~by the commission shall to~~ maintain the efficiencies of the
 122 Florida Energy Efficiency Code for Building Construction adopted
 123 and amended pursuant to s. 553.901. The commission shall adopt
 124 updated codes by rule.

125 (b) Codes regarding noise contour lines shall be reviewed
 126 annually, and the most current federal guidelines shall be
 127 adopted.

128 (c) The commission may adopt as a technical amendment to
 129 the Florida Building Code ~~modify~~ any portion of the ~~foundation~~
 130 ~~codes identified in paragraph (a), but only as needed to~~
 131 accommodate the specific needs of this state. Standards or
 132 criteria adopted from these ~~referenced by the~~ codes shall be
 133 incorporated by reference to the specific provisions adopted. If
 134 a referenced standard or criterion requires amplification or
 135 modification to be appropriate for use in this state, only the
 136 amplification or modification shall be set forth in the Florida
 137 Building Code. The commission may approve technical amendments

138 to the updated Florida Building Code after the amendments have
 139 been subject to the conditions set forth in paragraphs (3)(a)-

140 (d). Amendments ~~that to the foundation codes which~~ are adopted
 141 in accordance with this subsection shall be clearly marked in
 142 printed versions of the Florida Building Code so that the fact
 143 that the provisions are ~~Florida-specific amendments to the~~
 144 ~~foundation codes~~ is readily apparent.

145 (d) The commission shall further consider the commission's

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146 own interpretations, declaratory statements, appellate
 147 decisions, and approved statewide and local technical amendments
 148 and shall incorporate such interpretations, statements,
 149 decisions, and amendments into the updated Florida Building Code
 150 only to the extent that they are needed to ~~modify the foundation~~
 151 ~~codes to~~ accommodate the specific needs of the state. A change
 152 made by an institute or standards organization to any standard
 153 or criterion that is adopted by reference in the Florida
 154 Building Code does not become effective statewide until it has
 155 been adopted by the commission. Furthermore, the edition of the
 156 Florida Building Code which is in effect on the date of
 157 application for any permit authorized by the code governs the
 158 permitted work for the life of the permit and any extension
 159 granted to the permit.

160 (e) A rule updating the Florida Building Code in accordance
 161 with this subsection shall take effect no sooner than 6 months
 162 after publication of the updated code. Any amendment to the
 163 Florida Building Code which is adopted upon a finding by the
 164 commission that the amendment is necessary to protect the public
 165 from immediate threat of harm takes effect immediately.

166 (f) Provisions of the Florida Building Code ~~foundation~~
 167 ~~codes~~, including those contained in referenced standards and
 168 criteria, relating to wind resistance or the prevention of water
 169 intrusion may not be modified to diminish those construction
 170 requirements; however, the commission may, subject to conditions
 171 in this subsection, modify the provisions to enhance those
 172 construction requirements.

173 ~~(g) Amendments or modifications to the foundation code~~
 174 ~~pursuant to this subsection shall remain effective only until~~

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175 the effective date of a new edition of the Florida Building Code
 176 every third year. Amendments or modifications related to state
 177 agency regulations which are adopted and integrated into an
 178 edition of the Florida Building Code shall be carried forward
 179 into the next edition of the code, subject to modification as
 180 provided in this part. Amendments or modifications related to
 181 the wind-resistance design of buildings and structures within
 182 the high-velocity hurricane zone of Miami-Dade and Broward
 183 Counties which are adopted to an edition of the Florida Building
 184 Code do not expire and shall be carried forward into the next
 185 edition of the code, subject to review or modification as
 186 provided in this part. If amendments that expire pursuant to
 187 this paragraph are resubmitted through the Florida Building
 188 commission code adoption process, the amendments must
 189 specifically address whether:

190 1. The provisions contained in the proposed amendment are
 191 addressed in the applicable international code.

192 2. The amendment demonstrates by evidence or data that the
 193 geographical jurisdiction of Florida exhibits a need to
 194 strengthen the foundation code beyond the needs or regional
 195 variations addressed by the foundation code, and why the
 196 proposed amendment applies to this state.

197 3. The proposed amendment was submitted or attempted to be
 198 included in the foundation codes to avoid resubmission to the
 199 Florida Building Code amendment process.

200
 201 If the proposed amendment has been addressed in the
 202 international code in a substantially equivalent manner, the
 203 Florida Building commission may not include the proposed

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204 ~~amendment in the foundation Code.~~

205 (8) Notwithstanding ~~the provisions of~~ subsection (3) or
 206 subsection (7), the commission may address issues identified in
 207 this subsection by amending the code pursuant only to the rule
 208 adoption procedures ~~contained~~ in chapter 120. ~~Provisions of~~ The
 209 Florida Building Code, including provisions ~~those~~ contained in
 210 referenced standards and criteria which relate, ~~relating~~ to wind
 211 resistance or the prevention of water intrusion, may not be
 212 amended pursuant to this subsection to diminish those standards
 213 ~~construction requirements~~; however, the commission may, ~~subject~~
 214 ~~to conditions in this subsection~~, amend the Florida Building
 215 Code ~~the provisions~~ to enhance such standards ~~those construction~~
 216 ~~requirements~~. Following the approval of any amendments to the
 217 Florida Building Code by the commission and publication of the
 218 amendments on the commission's website, authorities having
 219 jurisdiction to enforce the Florida Building Code may enforce
 220 the amendments. The commission may approve amendments that are
 221 needed to address:

222 (a) Conflicts within the updated code;

223 (b) Conflicts between the updated code and the Florida Fire
 224 Prevention Code adopted pursuant to chapter 633;

225 (c) Unintended results from the integration of previously
 226 adopted ~~Florida-specific~~ amendments with the model code;

227 (d) Equivalency of standards;

228 (e) Changes to or inconsistencies with federal or state
 229 law; or

230 (f) Adoption of an updated edition of the National
 231 Electrical Code if the commission finds that delay of
 232 implementing the updated edition causes undue hardship to

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233 stakeholders or otherwise threatens the public health, safety,
234 and welfare.

235 (9) (a) The commission may approve technical amendments to
236 the Florida Building Code once each year for statewide or
237 regional application upon a finding that the amendment:

238 1. Is needed in order to accommodate the specific needs of
239 this state.

240 2. Has a reasonable and substantial connection with the
241 health, safety, and welfare of the general public.

242 3. Strengthens or improves the Florida Building Code, or in
243 the case of innovation or new technology, will provide
244 equivalent or better products or methods or systems of
245 construction.

246 4. Does not discriminate against materials, products,
247 methods, or systems of construction of demonstrated
248 capabilities.

249 5. Does not degrade the effectiveness of the Florida
250 Building Code.

251
252 The Florida Building Commission may approve technical amendments
253 to the code once each year to incorporate into the Florida
254 Building Code its own interpretations of the code which are
255 embodied in its opinions, final orders, declaratory statements,
256 and interpretations of hearing officer panels under s.
257 553.775(3)(c), but only to the extent that the incorporation of
258 interpretations is needed to modify the code ~~foundation codes~~ to
259 accommodate the specific needs of this state. Amendments
260 approved under this paragraph shall be adopted by rule after the
261 amendments have been subjected to subsection (3).

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262 (b) A proposed amendment must include a fiscal impact
263 statement that documents the costs and benefits of the proposed
264 amendment. Criteria for the fiscal impact statement shall be
265 established by rule by the commission and shall include the
266 impact to local government relative to enforcement, the impact
267 to property and building owners, and the impact to industry,
268 relative to the cost of compliance. The amendment must
269 demonstrate by evidence or data that the state's geographical
270 jurisdiction exhibits a need to strengthen the ~~foundation~~ code
271 beyond the needs or regional variations addressed by the
272 ~~foundation~~ code and why the proposed amendment applies to this
273 state.

274 Section 3. Subsection (2) of section 553.76, Florida
275 Statutes, is amended to read:

276 553.76 General powers of the commission.—The commission is
277 authorized to:

278 (2) Issue memoranda of procedure for its internal
279 management and control. The commission may adopt rules related
280 to its consensus-based decisionmaking process, including, but
281 not limited to, super majority voting requirements ~~for~~
282 ~~commission actions relating to the adoption of the Florida~~
283 ~~Building Code or amendments to the code. However, the commission~~
284 must adopt the Florida Building Code, and amendments thereto, by
285 at least a two-thirds vote of the members present at a meeting.

286 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.

Phone 850.727.7087

Street

TALLAHASSEE FL 32301

City

State

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

1372

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

4-25-17

Meeting Date

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

CS/CS/SB 1372

Bill Number (if applicable)

Topic BUILDING CODES / CONSTRUCTION

Amendment Barcode (if applicable)

Name CAM FENTRESS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQ # 3-243

Phone

Street

TALL

City

FL

State

32312

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing FCA. ROOFING + SHEET METAL CONTRACTORS ASSN
FCA. 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.

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

SB1372

Bill Number (if applicable)

Topic Electrical Contracting

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist

Address P.O. Box 3739

Phone 863 581-4250

Street

Lake land FL 33802

Email sheppesstrategy.com

City

State

Zip

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-14

Meeting Date

50 1372

Bill Number (if applicable)

Topic Contracting - Codes

Amendment Barcode (if applicable)

Name KARI HERBRANK

Job Title

Address 113 East College Ave.

Phone 850-566-824

Street Tallahassee FL 32301

Email Kherbrank@wilson.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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

1312
Bill Number (if applicable)

Meeting Date _____

Amendment Barcode (if applicable) _____

Topic _____

Name Daphnee Sainvil

Job Title Legislative Coordinator

Address 115 South Andrews Avenue, GC426

Phone 954-351-7577

Street

Fort Lauderdale

FL

33301

Email dsainvil@broward.org

City

State

Zip

Speaking: For Against Information

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

Representing Broward County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 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.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Recommend: Favorable
3.	<u>Fournier</u>	<u>Hansen</u>	<u>AP</u>	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.

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. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 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).

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

By Senator Passidomo

28-00007-17

2017176__

1 A bill to be entitled
 2 An act relating to a sales and use tax exemption for
 3 feminine hygiene products; amending s. 212.08, F.S.;
 4 exempting the sale of feminine hygiene products from
 5 the sales and use tax; defining the term "feminine
 6 hygiene product"; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Paragraph (ooo) is added to subsection (7) of
 11 section 212.08, Florida Statutes, to read:
 12 212.08 Sales, rental, use, consumption, distribution, and
 13 storage tax; specified exemptions.—The sale at retail, the
 14 rental, the use, the consumption, the distribution, and the
 15 storage to be used or consumed in this state of the following
 16 are hereby specifically exempt from the tax imposed by this
 17 chapter.
 18 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
 19 entity by this chapter do not inure to any transaction that is
 20 otherwise taxable under this chapter when payment is made by a
 21 representative or employee of the entity by any means,
 22 including, but not limited to, cash, check, or credit card, even
 23 when that representative or employee is subsequently reimbursed
 24 by the entity. In addition, exemptions provided to any entity by
 25 this subsection do not inure to any transaction that is
 26 otherwise taxable under this chapter unless the entity has
 27 obtained a sales tax exemption certificate from the department
 28 or the entity obtains or provides other documentation as
 29 required by the department. Eligible purchases or leases made
 30 with such a certificate must be in strict compliance with this
 31 subsection and departmental rules, and any person who makes an
 32 exempt purchase with a certificate that is not in strict

Page 1 of 2

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

28-00007-17

2017176__

33 compliance with this subsection and the rules is liable for and
 34 shall pay the tax. The department may adopt rules to administer
 35 this subsection.
 36 ~~(ooo) Feminine hygiene products.~~The sale of a feminine
 37 hygiene product is exempt from the tax imposed by this chapter.
 38 As used in this paragraph, the term "feminine hygiene product"
 39 means a product used to absorb or contain menstrual flow,
 40 including, but not limited to, tampons, sanitary napkins, panty
 41 liners, and menstrual cups.
 42 Section 2. This act shall take effect January 1, 2018.

Page 2 of 2

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



**SENATOR KATHLEEN
PASSIDOMO**
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:

Joint Select Committee on Collective
Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

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,

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

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 / 25 / 2017

Meeting Date

Topic _____

Bill Number 176E
(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"

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

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, *Bureau 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

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:

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).

- Venipuncture³⁵ - BLL, Complete Blood Count, or EP and ZPP³⁶ 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 as a capillary stick. *See Medicare Fee, Payment, Procedure code, ICD, Denial, CPT 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 GNASAC 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%20guidelines%20OFL.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 screened⁵³ 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.

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

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1 A bill to be entitled
 2 An act relating to laboratory screening; amending s.
 3 381.004, F.S.; clarifying that certain requirements
 4 related to the reporting of positive HIV test results
 5 to county health departments apply only to testing
 6 performed in a nonhealth care setting; amending s.
 7 381.0202, F.S.; authorizing the Department of Health
 8 to perform laboratory testing for other states;
 9 amending s. 381.983, F.S.; redefining the term
 10 "elevated blood-lead levels"; amending s. 381.984,
 11 F.S.; revising requirements of a public information
 12 initiative on lead-based-paint hazards; revising
 13 requirements on the distribution of information on
 14 childhood lead poisoning developed by the State
 15 Surgeon General or his or her designee; amending s.
 16 381.985, F.S.; revising requirements for the State
 17 Surgeon General's program for early identification of
 18 persons at risk of having elevated blood-lead levels;
 19 requiring the department to maintain records showing
 20 elevated blood-lead levels; requiring that health care
 21 providers report to the individual who was screened
 22 the results that indicate elevated blood-lead levels;
 23 amending s. 383.14, F.S.; authorizing the State Public
 24 Health Laboratory to release the results of a
 25 newborn's hearing and metabolic tests to certain
 26 individuals; requiring the department to promote the
 27 availability of services to promote detection of
 28 genetic conditions; clarifying that the membership of
 29 the Genetics and Newborn Screening Advisory Council

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30 must include one member each from four of the medical
 31 schools in this state; providing an effective date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. Paragraph (a) of subsection (2) of section
 36 381.004, Florida Statutes, is amended to read:
 37 381.004 HIV testing.—
 38 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;
 39 RESULTS; COUNSELING; CONFIDENTIALITY.—
 40 (a) Before performing an HIV test:
 41 1. In a health care setting, the person to be tested shall
 42 be notified orally or in writing that the test is planned and
 43 that he or she has the right to decline the test. If the person
 44 to be tested declines the test, such decision shall be
 45 documented in the medical record. A person who has signed a
 46 general consent form for medical care is not required to sign or
 47 otherwise provide a separate consent for an HIV test during the
 48 period in which the general consent form is in effect.
 49 2. In a nonhealth care setting, a provider shall obtain the
 50 informed consent of the person upon whom the test is to be
 51 performed. Informed consent shall be preceded by an explanation
 52 of the right to confidential treatment of information
 53 identifying the subject of the test and the results of the test
 54 as provided by law. The provider shall also inform the test
 55 subject that a positive HIV test result will be reported to the
 56 county health department with sufficient information to identify
 57 the test subject and provide him or her with information on the
 58 availability and location of sites where anonymous testing is

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59 performed. As required in paragraph (3)(c), each county health
 60 department shall maintain a list of sites where anonymous
 61 testing is performed which includes site locations, telephone
 62 numbers, and hours of operation.

63 ~~The test subject shall also be informed that a positive HIV test~~
 64 ~~result will be reported to the county health department with~~
 65 ~~sufficient information to identify the test subject and of the~~
 66 ~~availability and location of sites at which anonymous testing is~~
 67 ~~performed. As required in paragraph (3)(c), each county health~~
 68 ~~department shall maintain a list of sites at which anonymous~~
 69 ~~testing is performed, including the locations, telephone~~
 70 ~~numbers, and hours of operation of the sites.~~

71 Section 2. Section 381.0202, Florida Statutes, is amended
 72 to read:

73 381.0202 Laboratory services.—

74 (1) The department shall establish and maintain, in
 75 suitable and convenient places in the state, laboratories for
 76 microbiological and chemical analyses and any other purposes it
 77 determines necessary for the protection of the public health.

78 (2) The department may contract or agree with any person or
 79 public or private agency to provide laboratory services relating
 80 to or having potential impact on the public health or relating
 81 to the health of clients directly under the care of the state.

82 (3) The department is authorized to establish and collect
 83 reasonable fees and charges for laboratory services provided.
 84 Such fees and charges shall be deposited in a trust fund
 85 administered by the department and shall be used solely for this
 86 purpose.
 87

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88 (4) The department may perform laboratory testing related
 89 to public health for other states on a fee-for-service basis.

90 Section 3. Subsection (3) of section 381.983, Florida
 91 Statutes, is amended to read:

92 381.983 Definitions.—As used in this act, the term:

93 (3) "Elevated blood-lead level" means a quantity of lead in
 94 the whole venous blood, measured from a venous or capillary draw
 95 expressed in micrograms per deciliter (ug/dL), which exceeds the
 96 cutpoint specified in department rule. The determination of
 97 elevated blood-lead level must be based on national
 98 recommendations developed by the Council of State and
 99 Territorial Epidemiologists and the Centers for Disease Control
 100 and Prevention. 10 ug/dL or such other level as specifically
 101 provided in this act.

102 Section 4. Subsections (2) and (3) of section 381.984,
 103 Florida Statutes, are amended to read:

104 381.984 Educational programs.—

105 (2) PUBLIC INFORMATION INITIATIVE.—The Governor, in
 106 conjunction with the State Surgeon General and his or her
 107 designee, shall sponsor a series of public service announcements
 108 on radio, television, or the Internet, or in ~~and~~ print media
 109 about the nature of lead-based-paint hazards, the importance of
 110 standards for lead poisoning prevention in properties, and the
 111 purposes and responsibilities set forth in this act. In
 112 developing and coordinating this public information initiative,
 113 the sponsors shall seek the participation and involvement of
 114 private industry organizations, including those involved in real
 115 estate, insurance, mortgage banking, or ~~and~~ pediatrics.

116 (3) DISTRIBUTION OF INFORMATION LITERATURE ABOUT CHILDHOOD

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117 LEAD POISONING. ~~By January 1, 2007,~~ The State Surgeon General or
 118 his or her designee shall develop culturally and linguistically
 119 appropriate information and distribution methods ~~pamphlets~~
 120 regarding childhood lead poisoning, the importance of testing
 121 for elevated blood-lead levels, prevention of childhood lead
 122 poisoning, treatment of childhood lead poisoning, and, as where
 123 appropriate, the requirements of this act. ~~This~~ These
 124 information ~~pamphlets~~ shall be distributed to parents or ~~the~~
 125 ~~other~~ legal guardians of children 6 years of age or younger on
 126 the following occasions:

127 (a) By a health care provider at the time of a child's
 128 birth and at the time of any childhood immunization or
 129 vaccination unless it is established that such information
 130 ~~pamphlet~~ has been provided ~~previously~~ to the parent or legal
 131 guardian by the health care provider within the prior 12 months.

132 (b) By the owner or operator of any child care facility or
 133 preschool or kindergarten class on or before each October 15 ~~of~~
 134 ~~the calendar year.~~

135 Section 5. Section 381.985, Florida Statutes, is amended to
 136 read:

137 381.985 Screening program.—

138 (1) The State Surgeon General shall establish guidelines ~~a~~
 139 ~~program~~ for early identification of persons at risk of having
 140 elevated blood-lead levels and for the systematic screening of ~~r~~
 141 ~~Such program shall systematically screen~~ children under 6 years
 142 of age in the target populations identified in subsection (2)
 143 for the presence of elevated blood-lead levels. Children within
 144 the specified target populations shall be screened with a blood-
 145 lead test at age 12 months and age 24 months, or between the

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146 ages of 36 months and 72 months if they have not previously been
 147 screened. The State Surgeon General shall, after consultation
 148 with recognized professional medical groups and such other
 149 sources as the State Surgeon General deems appropriate, adopt
 150 rules to follow established national guidelines or
 151 recommendations such as those issued by the Council of State and
 152 Territorial Epidemiologists and the Centers for Disease Control
 153 and Prevention related to reporting elevated blood-lead levels
 154 and screening results to the department pursuant to this
 155 section. ~~promulgate rules establishing:~~

156 ~~(a) The means by which and the intervals at which such~~
 157 ~~children under 6 years of age shall be screened for lead~~
 158 ~~poisoning and elevated blood lead levels.~~

159 ~~(b) Guidelines for the medical followup on children found~~
 160 ~~to have elevated blood-lead levels.~~

161 (2) In developing screening programs to identify persons at
 162 risk with elevated blood-lead levels, priority shall be given to
 163 persons within the following categories:

164 (a) All children enrolled in the Medicaid program at ages
 165 12 months and 24 months, or between the ages of 36 months and 72
 166 months if they have not previously been screened.

167 (b) Children under the age of 6 years exhibiting delayed
 168 cognitive development or other symptoms of childhood lead
 169 poisoning.

170 (c) Persons at risk residing in the same household, or
 171 recently residing in the same household, as another person at
 172 risk with an elevated ~~a~~ blood-lead level ~~of 10 ug/dl or greater.~~

173 (d) Persons at risk residing, or who have recently resided,
 174 in buildings or geographical areas in which significant numbers

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175 of cases of lead poisoning or elevated blood-lead levels have
176 recently been reported.

177 (e) Persons at risk residing, or who have recently resided,
178 in an affected property contained in a building that during the
179 preceding 3 years has been subject to enforcement for violations
180 of lead-poisoning-prevention statutes, ordinances, rules, or
181 regulations ~~as specified by the State Surgeon General.~~

182 (f) Persons at risk residing, or who have recently resided,
183 in a room or group of rooms contained in a building whose owner
184 also owns a building containing affected properties which,
185 during the preceding 3 years, has been subject to an enforcement
186 action for a violation of lead-poisoning-prevention statutes,
187 ordinances, rules, or regulations.

188 (g) Persons at risk residing in other buildings or
189 geographical areas in which the State Surgeon General reasonably
190 determines there is to be a significant risk of affected
191 individuals having an elevated blood-lead level. ~~a blood-lead~~
192 ~~level of 10 ug/dL or greater.~~

193 (3) The ~~department State Surgeon General~~ shall maintain
194 comprehensive records of all screenings indicating an elevated
195 blood-lead level. ~~conducted pursuant to this section. Such~~
196 ~~records shall be indexed geographically and by owner in order to~~
197 ~~determine the location of areas of relatively high incidence of~~
198 ~~lead poisoning and other elevated blood-lead levels.~~

199 ~~All cases or probable cases of lead poisoning found in the~~
200 ~~course of screenings conducted pursuant to this section shall be~~
201 ~~reported to the affected individual, to his or her parent or~~
202 ~~legal guardian if he or she is a minor, and to the State Surgeon~~
203

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204 ~~General.~~

205 (4) The results of screenings conducted pursuant to this
206 section shall be reported by the health care provider who
207 conducted or ordered the screening to the individual who was
208 screened, or to the individual's parent or legal guardian if he
209 or she is a minor.

210 Section 6. Paragraph (c) of subsection (1), paragraph (f)
211 of subsection (3), and subsection (5) of section 383.14, Florida
212 Statutes, are amended to read:

213 383.14 Screening for metabolic disorders, other hereditary
214 and congenital disorders, and environmental risk factors.—

215 (1) SCREENING REQUIREMENTS.—To help ensure access to the
216 maternal and child health care system, the Department of Health
217 shall promote the screening of all newborns born in Florida for
218 metabolic, hereditary, and congenital disorders known to result
219 in significant impairment of health or intellect, as screening
220 programs accepted by current medical practice become available
221 and practical in the judgment of the department. The department
222 shall also promote the identification and screening of all
223 newborns in this state and their families for environmental risk
224 factors such as low income, poor education, maternal and family
225 stress, emotional instability, substance abuse, and other high-
226 risk conditions associated with increased risk of infant
227 mortality and morbidity to provide early intervention,
228 remediation, and prevention services, including, but not limited
229 to, parent support and training programs, home visitation, and
230 case management. Identification, perinatal screening, and
231 intervention efforts shall begin prior to and immediately
232 following the birth of the child by the attending health care

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233 provider. Such efforts shall be conducted in hospitals,
 234 perinatal centers, county health departments, school health
 235 programs that provide prenatal care, and birthing centers, and
 236 reported to the Office of Vital Statistics.

237 (c) *Release of screening results.*—Notwithstanding any law
 238 to the contrary, the State Public Health Laboratory may release,
 239 directly or through the Children’s Medical Services program, the
 240 results of a newborn’s hearing and metabolic tests or screenings
 241 to the newborn’s health care practitioner, the newborn’s parent
 242 or legal guardian, the newborn’s personal representative, or a
 243 person designated by the newborn’s parent or legal guardian. As
 244 used in this paragraph, the term “health care practitioner”
 245 means a physician or physician assistant licensed under chapter
 246 458; an osteopathic physician or physician assistant licensed
 247 under chapter 459; an advanced registered nurse practitioner,
 248 registered nurse, or licensed practical nurse licensed under
 249 part I of chapter 464; a midwife licensed under chapter 467; a
 250 speech-language pathologist or audiologist licensed under part I
 251 of chapter 468; or a dietician or nutritionist licensed under
 252 part X of chapter 468.

253 (3) DEPARTMENT OF HEALTH; POWERS AND DUTIES.—The department
 254 shall administer and provide certain services to implement the
 255 provisions of this section and shall:

256 (f) Promote the availability of genetic studies, services,
 257 and counseling in order that the parents, siblings, and affected
 258 newborns may benefit from detection and available knowledge of
 259 the condition.

260
 261 All provisions of this subsection must be coordinated with the

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262 provisions and plans established under this chapter, chapter
 263 411, and Pub. L. No. 99-457.

264 (5) ADVISORY COUNCIL.—There is established a Genetics and
 265 Newborn Screening Advisory Council made up of 15 members
 266 appointed by the State Surgeon General. The council shall be
 267 composed of two consumer members, three practicing
 268 pediatricians, at least one of whom must be a pediatric
 269 hematologist, one ~~member representative from~~ each ~~from~~ ~~of the~~
 270 four of the medical schools in this ~~the~~ state, the State Surgeon
 271 General or his or her designee, one representative from the
 272 Department of Health representing Children’s Medical Services,
 273 one representative from the Florida Hospital Association, one
 274 individual with experience in newborn screening programs, one
 275 individual representing audiologists, and one representative
 276 from the Agency for Persons with Disabilities. All appointments
 277 shall be for a term of 4 years. The chairperson of the council
 278 shall be elected from the membership of the council and shall
 279 serve for a period of 2 years. The council shall meet at least
 280 semiannually or upon the call of the chairperson. The council
 281 may establish ad hoc or temporary technical advisory groups to
 282 assist the council with specific topics which come before the
 283 council. Council members shall serve without pay. Pursuant to
 284 the provisions of s. 112.061, the council members are entitled
 285 to be reimbursed for per diem and travel expenses. It is the
 286 purpose of the council to advise the department about:

287 (a) Conditions for which testing should be included under
 288 the screening program and the genetics program.

289 (b) Procedures for collection and transmission of specimens
 290 and recording of results.

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291 (c) Methods whereby screening programs and genetics
292 services for children now provided or proposed to be offered in
293 the state may be more effectively evaluated, coordinated, and
294 consolidated.

295 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,

A handwritten signature in cursive script that reads "Bill Montford".

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.

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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

4-25-17
Meeting Date

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

1144
Bill Number (if applicable)

Topic Laboratory Screening

Amendment Barcode (if applicable)

Name Tom Joos

Job Title Department of Health

Address 2985 merchants row blvd
Street

Phone 850.245-4006

Tallahassee FL 32389
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.

The Florida Senate
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.	<u>Androff</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Favorable
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting
4.	_____	_____	<u>RC</u>	_____

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.shtml> (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.

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

By Senator Mayfield

17-01052-17

2017808__

1 A bill to be entitled
 2 An act relating to maximum class size; amending s.
 3 1002.31, F.S.; deleting a provision relating to
 4 compliance with maximum class size requirements for
 5 certain public schools of choice; amending s. 1002.33,
 6 F.S.; revising requirements for charter school
 7 compliance with maximum class size requirements;
 8 amending s. 1002.451, F.S.; revising requirements for
 9 district innovation school of technology compliance
 10 with maximum class size requirements; amending s.
 11 1003.03, F.S.; calculating a school district's class
 12 size categorical allocation reduction at the school
 13 average when maximum class size requirements are not
 14 met; providing an exemption from the reduction of a
 15 school district's class size categorical allocation
 16 for specified fiscal years; requiring an updated plan
 17 for compliance with class size requirements from
 18 certain districts for a specified fiscal year;
 19 amending s. 1011.6202, F.S.; revising requirements for
 20 compliance with maximum class size requirements for a
 21 school participating in the Principal Autonomy Pilot
 22 Project Program; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Subsection (5) of section 1002.31, Florida
 27 Statutes, is amended to read:
 28 1002.31 Controlled open enrollment; Public school parental
 29 choice.-
 30 ~~(5) For a school or program that is a public school of~~
 31 ~~choice under this section, the calculation for compliance with~~
 32 ~~maximum class size pursuant to s. 1003.03(4) is the average~~

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33 ~~number of students at the school level.~~
 34 Section 2. Paragraph (b) of subsection (16) of section
 35 1002.33, Florida Statutes, is amended to read:
 36 1002.33 Charter schools.-
 37 (16) EXEMPTION FROM STATUTES.-
 38 (b) Additionally, a charter school shall be in compliance
 39 with the following statutes:
 40 1. Section 286.011, relating to public meetings and
 41 records, public inspection, and criminal and civil penalties.
 42 2. Chapter 119, relating to public records.
 43 3. Section 1003.03, relating to the maximum class size,
 44 ~~except that the calculation for compliance pursuant to s.~~
 45 ~~1003.03 shall be the average at the school level.~~
 46 4. Section 1012.22(1)(c), relating to compensation and
 47 salary schedules.
 48 5. Section 1012.33(5), relating to workforce reductions.
 49 6. Section 1012.335, relating to contracts with
 50 instructional personnel hired on or after July 1, 2011.
 51 7. Section 1012.34, relating to the substantive
 52 requirements for performance evaluations for instructional
 53 personnel and school administrators.
 54 Section 3. Paragraph (a) of subsection (5) of section
 55 1002.451, Florida Statutes, is amended to read:
 56 1002.451 District innovation school of technology program.-
 57 (5) EXEMPTION FROM STATUTES.-
 58 (a) An innovation school of technology is exempt from
 59 chapters 1000-1013. However, an innovation school of technology
 60 shall comply with the following provisions of those chapters:
 61 1. Laws pertaining to the following:

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- 62 a. Schools of technology, including this section.
 63 b. Student assessment program and school grading system.
 64 c. Services to students who have disabilities.
 65 d. Civil rights, including s. 1000.05, relating to
 66 discrimination.
 67 e. Student health, safety, and welfare.
- 68 2. Laws governing the election and compensation of district
 69 school board members and election or appointment and
 70 compensation of district school superintendents.
- 71 3. Section 1003.03, governing maximum class size, ~~except~~
 72 ~~that the calculation for compliance pursuant to s. 1003.03 is~~
 73 ~~the average at the school level.~~
- 74 4. Sections 1012.22(1)(c) and 1012.27(2), relating to
 75 compensation and salary schedules.
- 76 5. Section 1012.33(5), relating to workforce reductions,
 77 for annual contracts for instructional personnel. This
 78 subparagraph does not apply to at-will employees.
- 79 6. Section 1012.335, relating to contracts with
 80 instructional personnel hired on or after July 1, 2011, for
 81 annual contracts for instructional personnel. This subparagraph
 82 does not apply to at-will employees.
- 83 7. Section 1012.34, relating to requirements for
 84 performance evaluations of instructional personnel and school
 85 administrators.
- 86 Section 4. Subsection (4) of section 1003.03, Florida
 87 Statutes, is amended to read:
 88 1003.03 Maximum class size.—
 89 (4) ACCOUNTABILITY.—
 90 (a) If the department determines that the number of

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2017808__

- 91 students assigned to any individual class exceeds the class size
 92 maximum, as required in subsection (1), based upon the October
 93 student membership survey, the department shall:
- 94 1. ~~Identify, for each grade group, the number of classes in~~
 95 ~~which the number of students exceeds the maximum and the total~~
 96 ~~number of students which exceeds the maximum for all classes.~~
- 97 ~~2.~~ Determine the number of FTE students which exceeds the
 98 maximum for each grade group calculated at the school average.
- 99 ~~2.3.~~ Multiply the total number of FTE students which
 100 exceeds the maximum for each grade group calculated at the
 101 school average by the district's FTE dollar amount of the class
 102 size categorical allocation for that year and calculate the
 103 total for all three grade groups.
- 104 ~~3.4.~~ Multiply the total number of FTE students which
 105 exceeds the maximum for all classes calculated at the school
 106 average by an amount equal to 50 percent of the base student
 107 allocation adjusted by the district cost differential ~~for each~~
 108 ~~of the 2010-2011 through 2013-2014 fiscal years and by an amount~~
 109 ~~equal to the base student allocation adjusted by the district~~
 110 ~~cost differential in the 2014-2015 fiscal year and thereafter.~~
- 111 ~~4.5.~~ Reduce the district's class size categorical
 112 allocation by an amount equal to the sum of the calculations in
 113 subparagraphs 2. and 3. and ~~4.~~
- 114 (b) The amount of funds reduced shall be the lesser of the
 115 amount calculated in paragraph (a) or the undistributed balance
 116 of the district's class size categorical allocation. The Florida
 117 Education Finance Program Appropriation Allocation Conference
 118 shall verify the department's calculation in paragraph (a). The
 119 commissioner may withhold distribution of the class size

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120 categorical allocation to the extent necessary to comply with
121 paragraph (a).

122 (c) In lieu of the reduction calculation in paragraph (a),
123 if the Commissioner of Education has evidence that a district
124 was unable to meet the class size requirements despite
125 appropriate efforts to do so or because of an extreme emergency,
126 the commissioner may recommend by February 15, subject to
127 approval of the Legislative Budget Commission, the reduction of
128 an alternate amount of funds from the district's class size
129 categorical allocation.

130 (d) Upon approval of the reduction calculation in
131 paragraphs (a)-(c), the commissioner must prepare a reallocation
132 of the funds made available for the districts that have fully
133 met the class size requirements. The funds shall be reallocated
134 by calculating an amount of up to 5 percent of the base student
135 allocation multiplied by the total district FTE students. The
136 reallocation total may not exceed 25 percent of the total funds
137 reduced.

138 (e) Each district that has not complied with the
139 requirements in subsection (1) shall submit to the commissioner
140 by February 1 a plan certified by the district school board that
141 describes the specific actions the district will take in order
142 to fully comply with the requirements in subsection (1) by
143 October of the following school year. If a district submits the
144 certified plan by the required deadline, the funds remaining
145 after the reallocation calculation in paragraph (d) shall be
146 added back to the district's class size categorical allocation
147 based on each qualifying district's proportion of the total
148 reduction for all qualifying districts for which a reduction was

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149 calculated in paragraphs (a)-(c). However, no district shall
150 have an amount added back that is greater than the amount that
151 was reduced.

152 (f) The department shall adjust school district class size
153 reduction categorical allocation distributions based on the
154 calculations in paragraphs (a)-(e).

155 (g) A district that has not complied with the requirements
156 in subsection (1) based on the October student membership survey
157 for the 2017-2018 school year and has timely submitted the
158 required plan under paragraph (e) may not have its class size
159 categorical allocation reduced for the 2017-2018 and 2018-2019
160 fiscal years. The district shall have until the October student
161 membership survey for the 2018-2019 school year to comply with
162 subsection (1); however, the district must provide an updated
163 plan by February 1, 2019, to the commissioner to ensure the
164 district is working to comply with the requirements of
165 subsection (1).

166 Section 5. Paragraph (b) of subsection (3) of section
167 1011.6202, Florida Statutes, is amended to read:

168 1011.6202 Principal Autonomy Pilot Program Initiative.—The
169 Principal Autonomy Pilot Program Initiative is created within
170 the Department of Education. The purpose of the pilot program is
171 to provide the highly effective principal of a participating
172 school with increased autonomy and authority to operate his or
173 her school in a way that produces significant improvements in
174 student achievement and school management while complying with
175 constitutional requirements. The State Board of Education may,
176 upon approval of a principal autonomy proposal, enter into a
177 performance contract with up to seven district school boards for

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178 participation in the pilot program.

179 (3) EXEMPTION FROM LAWS.—

180 (b) A participating school shall comply with the provisions

181 of chapters 1000-1013, and rules of the state board that

182 implement those provisions, pertaining to the following:

183 1. Those laws relating to the election and compensation of

184 district school board members, the election or appointment and

185 compensation of district school superintendents, public meetings

186 and public records requirements, financial disclosure, and

187 conflicts of interest.

188 2. Those laws relating to the student assessment program

189 and school grading system, including chapter 1008.

190 3. Those laws relating to the provision of services to

191 students with disabilities.

192 4. Those laws relating to civil rights, including s.

193 1000.05, relating to discrimination.

194 5. Those laws relating to student health, safety, and

195 welfare.

196 6. Section 1001.42(4)(f), relating to the uniform opening

197 date for public schools.

198 7. Section 1003.03, governing maximum class size, ~~except~~

199 ~~that the calculation for compliance pursuant to s. 1003.03 is~~

200 ~~the average at the school level for a participating school.~~

201 8. Sections 1012.22(1)(c) and 1012.27(2), relating to

202 compensation and salary schedules.

203 9. Section 1012.33(5), relating to workforce reductions for

204 annual contracts for instructional personnel. This subparagraph

205 does not apply to at-will employees.

206 10. Section 1012.335, relating to annual contracts for

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207 instructional personnel hired on or after July 1, 2011. This

208 subparagraph does not apply to at-will employees.

209 11. Section 1012.34, relating to personnel evaluation

210 procedures and criteria.

211 12. Those laws pertaining to educational facilities,

212 including chapter 1013, except that s. 1013.20, relating to

213 covered walkways for relocatables, and s. 1013.21, relating to

214 the use of relocatable facilities exceeding 20 years of age, are

215 eligible for exemption.

216 13. Those laws pertaining to participating school

217 districts, including this section and ss. 1011.69(2) and

218 1012.28(8).

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

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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,

A handwritten signature in cursive script, appearing to read "Debbie Mayfield".

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

Phone 772 209 1792

Street

Tallahassee

FL

State

32301

Zip

Email lwvadvocacy@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.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
3.	<u>Loe</u>	<u>Williams</u>	<u>AHS</u>	<u>Recommend: Favorable</u>
4.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/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

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 preventive⁹ 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 criteria¹⁰ 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 policy¹² or high deductible, health insurance plans¹³ 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

⁶ Eskew and Klink, *supra* 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 Certificate¹⁹ 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 clinics²² 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 requirements²³ 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

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

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 negotiate³⁷ 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.

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



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



12 opportunity to enter into a direct primary care agreement with
13 identified network primary care providers. Plans are encouraged
14 to enter into alternative payment arrangements with primary care
15 providers in their networks to allow for the election by a
16 recipient for a direct primary care agreement within the
17 Statewide Medicaid Managed Care program. In addition, each plan
18 shall:

19 (a) Provide information to each enrollee on the importance
20 of and procedure for selecting a primary care provider, and
21 thereafter automatically assign to a primary care provider any
22 enrollee who fails to choose a primary care provider.

23 (b) If the enrollee was not a Medicaid recipient before
24 enrollment in the plan, assist the enrollee in scheduling an
25 appointment with the primary care provider. If possible the
26 appointment should be made within 30 days after enrollment in
27 the plan. For enrollees who become eligible for Medicaid between
28 January 1, 2014, and December 31, 2015, the appointment should
29 be scheduled within 6 months after enrollment in the plan.

30 (c) Report to the agency the number of enrollees assigned
31 to each primary care provider within the plan's network.

32 (d) Report to the agency the number of enrollees who have
33 not had an appointment with their primary care provider within
34 their first year of enrollment.

35 (e) Report to the agency the number of emergency room
36 visits by enrollees who have not had at least one appointment
37 with their primary care provider.

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

40 And the title is amended as follows:



183112

41 Delete lines 3 - 9
42 and insert:
43 409.973, F.S.; requiring plans operating in the
44 managed medical assistance program to provide
45 enrollees an opportunity to enter into a direct
46 primary care agreement with identified network primary
47 care providers; encouraging such plans to enter into
48 alternative payment arrangements with network primary
49 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

1 A bill to be entitled
2 An act relating to direct primary care; amending s.
3 409.977, F.S.; requiring the Agency for Health Care
4 Administration to provide specified financial
5 assistance to certain Medicaid recipients; requiring
6 the agency to resubmit, by a specified date, certain
7 federal waivers or waiver amendments to specified
8 federal entities to incorporate recipient elections of
9 certain direct primary care agreements; creating s.
10 456.0625, F.S.; defining terms; authorizing primary
11 care providers or their agents to enter into direct
12 primary care agreements for providing primary care
13 services; providing applicability; specifying
14 requirements for direct primary care agreements;
15 creating s. 624.27, F.S.; providing construction and
16 applicability of the Florida Insurance Code as to
17 direct primary care agreements; providing an exception
18 for primary care providers or their agents from
19 certain requirements under the code under certain
20 circumstances; providing an effective date.

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

23
24 Section 1. Subsection (4) of section 409.977, Florida
25 Statutes, is amended to read:

26 409.977 Enrollment.—

27 (4) The agency shall:

28 (a) Develop a process to enable a recipient with access to
29 employer-sponsored health care coverage to opt out of all

Page 1 of 5

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

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30 managed care plans and to use Medicaid financial assistance to
31 pay for the recipient's share of the cost in such employer-
32 sponsored coverage.

33 (b) Contingent upon federal approval, ~~the agency shall also~~
34 enable recipients with access to other insurance or related
35 products providing access to health care services created
36 pursuant to state law, including any product available under the
37 Florida Health Choices Program, or any health exchange, to opt
38 out.

39 (c) ~~Provide~~ The amount of financial assistance ~~provided~~ for
40 each recipient in an amount ~~may not to~~ exceed the amount of the
41 Medicaid premium which that would have been paid to a managed
42 care plan for that recipient opting to receive services under
43 this subsection.

44 (d) ~~The agency shall~~ Seek federal approval to require
45 Medicaid recipients with access to employer-sponsored health
46 care coverage to enroll in that coverage and use Medicaid
47 financial assistance to pay for the recipient's share of the
48 cost for such coverage. The amount of financial assistance
49 provided for each recipient may not exceed the amount of the
50 Medicaid premium that would have been paid to a managed care
51 plan for that recipient.

52 (e) By January 1, 2018, resubmit an appropriate federal
53 waiver or waiver amendment to the Centers for Medicare and
54 Medicaid Services, the United States Department of Health and
55 Human Services, or any other designated federal entity to
56 incorporate the election by a recipient for a direct primary
57 care agreement, as defined in s. 456.0625, within the Statewide
58 Medicaid Managed Care program.

Page 2 of 5

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

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59 Section 2. Section 456.0625, Florida Statutes, is created
60 to read:

61 456.0625 Direct primary care agreements.-

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

63 (a) "Direct primary care agreement" means a contract
64 between a primary care provider and a patient, the patient's
65 legal representative, or an employer which meets the
66 requirements specified under subsection (3) and which does not
67 indemnify for services provided by a third party.

68 (b) "Primary care provider" means a health care
69 practitioner licensed under chapter 458, chapter 459, chapter
70 460, or chapter 464 or a primary care group practice that
71 provides medical services to patients which are commonly
72 provided without referral from another health care provider.

73 (c) "Primary care service" means the screening, assessment,
74 diagnosis, and treatment of a patient for the purpose of
75 promoting health or detecting and managing disease or injury
76 within the competency and training of the primary care provider.

77 (2) A primary care provider or an agent of the primary care
78 provider may enter into a direct primary care agreement for
79 providing primary care services. Section 624.27 applies to a
80 direct primary care agreement.

81 (3) A direct primary care agreement must:

82 (a) Be in writing.

83 (b) Be signed by the primary care provider or an agent of
84 the primary care provider and the patient, the patient's legal
85 representative, or an employer.

86 (c) Allow a party to terminate the agreement by giving the
87 other party at least 30 days' advance written notice. The

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88 agreement may provide for immediate termination due to a
89 violation of the physician-patient relationship or a breach of
90 the terms of the agreement.

91 (d) Describe the scope of primary care services that are
92 covered by the monthly fee.

93 (e) Specify the monthly fee and any fees for primary care
94 services not covered by the monthly fee.

95 (f) Specify the duration of the agreement and any automatic
96 renewal provisions.

97 (g) Offer a refund to the patient of monthly fees paid in
98 advance if the primary care provider ceases to offer primary
99 care services for any reason.

100 (h) Contain, in contrasting color and in not less than 12-
101 point type, the following statements on the same page as the
102 applicant's signature:

103 1. This agreement is not health insurance, and the primary
104 care provider will not file any claims against the patient's
105 health insurance policy or plan for reimbursement of any primary
106 care services covered by this agreement.

107 2. This agreement does not qualify as minimum essential
108 coverage to satisfy the individual shared responsibility
109 provision of the federal Patient Protection and Affordable Care
110 Act, Pub. L. No. 111-148.

111 3. This agreement is not workers' compensation insurance
112 and may not replace the employer's obligations under chapter
113 440, Florida Statutes.

114 Section 3. Section 624.27, Florida Statutes, is created to
115 read:

116 624.27 Application of code as to direct primary care

588-01932-17

2017240c2

117 agreements.-

118 (1) A direct primary care agreement, as defined in s.
119 456.0625, does not constitute insurance and is not subject to
120 any chapter of the Florida Insurance Code. The act of entering
121 into a direct primary care agreement does not constitute the
122 business of insurance and is not subject to any chapter of the
123 Florida Insurance Code.

124 (2) A primary care provider or an agent of a primary care
125 provider is not required to obtain a certificate of authority or
126 license under any chapter of the Florida Insurance Code to
127 market, sell, or offer to sell a direct primary care agreement
128 pursuant to s. 456.0625.

129 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.

A handwritten signature in blue ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25/2017
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 Noland

Job Title _____

Address 1000 Riverside Ave #240

Phone 904-233-3051

Street

Jacksonville, FL 32209

Email nolandlaw@aol.com

City

State

Zip

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.

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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

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@gimedical.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.

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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

240

Bill Number (if applicable)

Topic DIRECT PRIMARY CARE

Amendment Barcode (if applicable)

Name SAL NUZZO

Job Title VP POLICY

Address 100 N DUVAL

Phone 850-322-9941

Street TALL

City State FL Zip 32301

Email

Speaking: [] For [] Against [] Information

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

Representing THE JAMES MADISON INST.

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

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.

Phone 878-7364

Street

Tallahassee

State

FL

Zip

32301

Email winnsr@earthlink.net

City

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)

Topic DIRECT PRIMARY CARE

Amendment Barcode (if applicable)

Name JACK HEBERT

Job Title GOVT. RELATIONS DIR.

Address 2861 EXECUTIVE PR.

Phone 727 560 3323

Street
CLEARWATER FL 33762

City State Zip

Email JACK@FCACHIRO.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.

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.

Phone 850-445-5367

Tallahassee FL 32301
City State Zip

Email tim.nungesser@fla.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.

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 Lyn

Job Title _____

Address 119 South Monroe Street

Phone 850-205-9000

Street

TLH

FL

32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Academy of Family 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.

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

210

Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave

Phone 0

Street

Tallahassee

City

FL

State

Zip

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.	<u>Ryon/Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Parks</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Sneed</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

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 Act¹ exists to rectify the economic disadvantage of service-disabled veterans² and to recognize wartime veterans³ 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

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_casenum=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 certificate²⁸ may be issued to an applicant who does not qualify for the professional certificate, but meets the basic eligibility requirements for certification²⁹ 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 knowledge³² within one calendar year after employment in order to remain employed in a

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.shtml> (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).

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.

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



818190

LEGISLATIVE ACTION

Senate

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House

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



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11 College System institutions to provide alternative treatment
12 options for veterans who have been certified by the United
13 States Department of Veterans Affairs or any branch of the
14 United States Armed Forces as having a traumatic brain injury or
15 posttraumatic stress disorder. For purposes of this section, the
16 term "alternative treatment" means a therapeutic service that is
17 not part of the standard of medical care established by the
18 United States Department of Veterans Affairs for treating
19 traumatic brain injury or posttraumatic stress disorder but has
20 been shown by at least one scientific or medical peer-reviewed
21 study to have some positive effect on traumatic brain injury or
22 posttraumatic stress disorder. Alternative treatment must be
23 provided under the direction and supervision of an individual
24 licensed under chapter 458, chapter 459, chapter 460, chapter
25 464, chapter 490, or chapter 491.

26 (2) Each contracted individual or entity shall report
27 annually to the department each alternative treatment provided,
28 the number of veterans served, and the treatment outcomes.

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

31 And the title is amended as follows:

32 Delete lines 3 - 12

33 and insert:

34 creating s. 295.156, F.S.; requiring the Department of
35 Veterans' Affairs, subject to appropriation, to
36 contract with individuals and entities to provide
37 alternative treatment options for certain veterans;
38 defining the term "alternative treatment"; requiring
39 alternative treatment to be provided under the



818190

40 direction and supervision of certain licensed
41 individuals; requiring a contracted individual or
42 entity to submit an annual report to the department;



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LEGISLATIVE ACTION

Senate

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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

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1 A bill to be entitled
 2 An act relating to military and veteran support;
 3 amending s. 83.683, F.S.; requiring landlords,
 4 condominium associations, cooperative associations,
 5 and homeowners' associations that require a
 6 servicemember's spouse or certain adult dependents to
 7 submit a rental application to complete the processing
 8 of the application of within a specified timeframe;
 9 amending s. 295.187, F.S.; requiring the Department of
 10 Veterans' Affairs to create a website to streamline
 11 the procedure for businesses applying for
 12 certification as a veteran business enterprise;
 13 amending s. 454.021, F.S.; authorizing the Supreme
 14 Court to admit on motion a bar applicant who is the
 15 spouse of a servicemember stationed in this state
 16 under certain circumstances; amending s. 1012.56,
 17 F.S.; requiring the Department of Education to
 18 expedite the processing of an application for educator
 19 certification submitted by a spouse of a servicemember
 20 stationed in this state; requiring the State Board of
 21 Education to adopt rules regarding extending validity
 22 of a temporary certificate if the applicant is a
 23 spouse of a servicemember stationed in this state;
 24 providing legislative findings and intent regarding
 25 continuing education for veterans of the United States
 26 Armed Forces; providing legislative intent to require
 27 collaboration between the State Board of Education and
 28 the Board of Governors of the State University System
 29 in achieving specified goals regarding educational

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30 opportunities for veterans; providing an effective
 31 date.

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

35 Section 1. Section 83.683, Florida Statutes, is amended to
 36 read:

37 83.683 Rental application by a servicemember.—

38 (1) If a landlord requires a prospective tenant to complete
 39 a rental application before residing in a rental unit, the
 40 landlord must complete processing of a rental application
 41 submitted by a prospective tenant who is a servicemember, as
 42 defined in s. 250.01, within 7 days after submission and must,
 43 within that 7-day period, notify the servicemember in writing of
 44 an application approval or denial and, if denied, the reason for
 45 denial. If the landlord requires the servicemember's spouse or
 46 any adult dependents of the servicemember who are to reside in
 47 the same rental unit to submit a rental application, the
 48 landlord must process those applications within the same 7-day
 49 period. Absent a timely denial of the rental application, the
 50 landlord must lease the rental unit to the servicemember if all
 51 other terms of the application and lease are complied with.

52 (2) If a condominium association, as defined in chapter
 53 718, a cooperative association, as defined in chapter 719, or a
 54 homeowners' association, as defined in chapter 720, requires a
 55 prospective tenant of a condominium unit, cooperative unit, or
 56 parcel within the association's control to complete a rental
 57 application before residing in a rental unit or parcel, the
 58 association must complete processing of a rental application

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59 submitted by a prospective tenant who is a servicemember, as
 60 defined in s. 250.01, within 7 days after submission and must,
 61 within that 7-day period, notify the servicemember in writing of
 62 an application approval or denial and, if denied, the reason for
 63 denial. If the association requires the servicemember's spouse
 64 or any adult dependents of the servicemember who are to reside
 65 in the same unit or parcel to submit a rental application, the
 66 association must process those applications within the same 7-
 67 day period. Absent a timely denial of the rental application,
 68 the association must allow the unit or parcel owner to lease the
 69 rental unit or parcel to the servicemember and the landlord must
 70 lease the rental unit or parcel to the servicemember if all
 71 other terms of the application and lease are complied with.

72 (3) The provisions of this section may not be waived or
 73 modified by the agreement of the parties under any
 74 circumstances.

75 Section 2. Present paragraph (d) of subsection (6) of
 76 section 295.187, Florida Statutes, is redesignated as paragraph
 77 (e), and a new paragraph (d) is added to that subsection, to
 78 read:

79 295.187 Florida Veteran Business Enterprise Opportunity
 80 Act.—

81 (6) DUTIES OF THE DEPARTMENT OF VETERANS' AFFAIRS.—The
 82 department shall:

83 (d) Create a website to streamline the procedure for
 84 applying for certification as a veteran business enterprise.

85 Section 3. Subsection (4) is added to section 454.021,
 86 Florida Statutes, to read:

87 454.021 Attorneys; admission to practice law; Supreme Court

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88 to govern and regulate.—

89 (4) (a) The Supreme Court of Florida may admit on motion an
 90 applicant as an attorney at law authorized to practice in this
 91 state if the applicant is a spouse of a servicemember, as
 92 defined in s. 250.01, stationed in this state and upon
 93 certification by the Florida Board of Bar Examiners that the
 94 applicant meets the following requirements:

95 1. The applicant has registered in the Defense Enrollment
 96 Eligibility Reporting System established by the United States
 97 Department of Defense;

98 2. The applicant holds a Juris Doctor or Bachelor of Laws
 99 from a law school accredited by the American Bar Association;

100 3. The applicant is licensed to practice law in another
 101 state, the District of Columbia, or a territory of the United
 102 States after having passed a written exam;

103 4. The applicant can establish that he or she is a member
 104 in good standing in all jurisdictions where licensed to practice
 105 law and that he or she is not currently subject to discipline or
 106 a pending disciplinary matter relating to the practice of law;

107 5. The applicant can demonstrate his or her presence in
 108 this state as a spouse of a servicemember; and

109 6. The applicant has otherwise fulfilled all requirements
 110 for admission to practice law in this state.

111 (b) The Supreme Court of Florida may specify circumstances
 112 under which the license and authorization to practice law in
 113 this state of an attorney licensed in accordance with paragraph
 114 (a) terminates.

115 Section 4. Subsections (1) and (7) of section 1012.56,
 116 Florida Statutes, are amended to read:

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117 1012.56 Educator certification requirements.—
 118 (1) APPLICATION.—Each person seeking certification pursuant
 119 to this chapter shall submit a completed application containing
 120 the applicant's social security number to the Department of
 121 Education and remit the fee required pursuant to s. 1012.59 and
 122 rules of the State Board of Education. Pursuant to the federal
 123 Personal Responsibility and Work Opportunity Reconciliation Act
 124 of 1996, each party is required to provide his or her social
 125 security number in accordance with this section. Disclosure of
 126 social security numbers obtained through this requirement is
 127 limited to the purpose of administration of the Title IV-D
 128 program of the Social Security Act for child support
 129 enforcement. Pursuant to s. 120.60, the department shall issue
 130 within 90 calendar days after the stamped receipted date of the
 131 completed application:

132 (a) If the applicant meets the requirements, a professional
 133 certificate covering the classification, level, and area for
 134 which the applicant is deemed qualified and a document
 135 explaining the requirements for renewal of the professional
 136 certificate;

137 (b) If the applicant meets the requirements and if
 138 requested by an employing school district or an employing
 139 private school with a professional education competence
 140 demonstration program pursuant to paragraphs (6) (f) and (8) (b),
 141 a temporary certificate covering the classification, level, and
 142 area for which the applicant is deemed qualified and an official
 143 statement of status of eligibility; or

144 (c) If the ~~an~~ applicant does not meet the requirements for
 145 either certificate, an official statement of status of

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146 eligibility. The statement of status of eligibility must advise
 147 the applicant of any qualifications that must be completed to
 148 qualify for certification. Each statement of status of
 149 eligibility is valid for 3 years after its date of issuance,
 150 except as provided in paragraph (2) (d).
 151

152 If the applicant is the spouse of a servicemember, as defined in
 153 s. 250.01, stationed in this state and if the applicant holds a
 154 current professional standard teaching certificate issued by
 155 another state, the department shall expedite the processing of
 156 the application and issue a certificate or statement as provided
 157 under paragraphs (a)-(c) within 60 calendar days after the
 158 stamped receipted date of the completed application.

159 (7) TYPES AND TERMS OF CERTIFICATION.—
 160 (a) The Department of Education shall issue a professional
 161 certificate for a period not to exceed 5 years to any applicant
 162 who meets all the requirements outlined in subsection (2) or,
 163 for a professional certificate covering grades 6 through 12, any
 164 applicant who:

- 165 1. Meets the requirements of paragraphs (2) (a)-(h).
- 166 2. Holds a master's or higher degree in the area of
 167 science, technology, engineering, or mathematics.
- 168 3. Teaches a high school course in the subject of the
 169 advanced degree.
- 170 4. Is rated highly effective as determined by the teacher's
 171 performance evaluation under s. 1012.34, based in part on
 172 student performance as measured by a statewide, standardized
 173 assessment or an Advanced Placement, Advanced International
 174 Certificate of Education, or International Baccalaureate

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175 examination.

176 5. Achieves a passing score on the Florida professional
177 education competency examination required by state board rule.178 (b) The department shall issue a temporary certificate to
179 any applicant who completes the requirements outlined in
180 paragraphs (2) (a)-(f) and completes the subject area content
181 requirements specified in state board rule or demonstrates
182 mastery of subject area knowledge pursuant to subsection (5) and
183 holds an accredited degree or a degree approved by the
184 Department of Education at the level required for the subject
185 area specialization in state board rule.186 (c) The department shall issue one nonrenewable 2-year
187 temporary certificate and one nonrenewable 5-year professional
188 certificate to a qualified applicant who holds a bachelor's
189 degree in the area of speech-language impairment to allow for
190 completion of a master's degree program in speech-language
191 impairment.192 Each temporary certificate is valid for 3 school fiscal years
193 and is nonrenewable. However, the requirement in paragraph
194 (2) (g) must be met within 1 calendar year of the date of
195 employment under the temporary certificate. Individuals who are
196 employed under contract at the end of the 1 calendar year time
197 period may continue to be employed through the end of the school
198 year in which they have been contracted. A school district shall
199 not employ, or continue the employment of, an individual in a
200 position for which a temporary certificate is required beyond
201 this time period if the individual has not met the requirement
202 of paragraph (2) (g). The State Board of Education shall adopt
203

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204 rules to allow the department to extend the validity period of a
205 temporary certificate for 2 years when the requirements for the
206 professional certificate, not including the requirement in
207 paragraph (2) (g), were not completed due to the serious illness
208 or injury of the applicant, due to the fact that the applicant
209 is the spouse of a servicemember stationed in this state, or due
210 to other extraordinary extenuating circumstances. The department
211 shall reissue the temporary certificate for 2 additional years
212 upon approval by the Commissioner of Education. A written
213 request for reissuance of the certificate shall be submitted by
214 the district school superintendent, the governing authority of a
215 university lab school, the governing authority of a state-
216 supported school, or the governing authority of a private
217 school.218 Section 5. Legislative findings and intent; continuing
219 education of veterans of the United States Armed Forces.—The
220 Legislature finds that many veterans of the United States Armed
221 Forces in this state have completed training and coursework
222 during their military service, including overseas deployments,
223 resulting in tangible and quantifiable strides in their pursuit
224 of a postsecondary degree. The Legislature further finds that
225 the State Board of Education and the Board of Governors of the
226 State University System must work together to ensure that
227 military training and coursework are granted academic credit in
228 order to assist veterans in continuing their education.
229 Therefore, it is the intent of the Legislature that the State
230 Board of Education and the Board of Governors work
231 collaboratively to:232 (1) Align existing degree programs, including, but not

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233 limited to, vocational and technical degrees, at each state
234 university and Florida College System institution with
235 applicable military training and experience to maximize academic
236 credit awarded for such training and experience.

237 (2) Appoint and train specific faculty within each degree
238 program at each state university and Florida College System
239 institution as liaisons and contacts for veterans.

240 (3) Incorporate outreach services tailored to disabled
241 veterans into existing disability services on the campus of each
242 state university and Florida College System institution to make
243 available to such veterans information on disability services
244 provided by the United States Department of Veterans Affairs,
245 other federal and state agencies, and private entities.

246 (4) Facilitate statewide meetings for personnel at state
247 universities and Florida College System institutions who provide
248 student services for veterans to discuss and develop best
249 practices, exchange ideas and experiences, and attend
250 presentations by individuals with expertise in the unique needs
251 of veterans.

252 (5) Make every effort to provide veterans with sufficient
253 courses required for graduation, including, but not limited to,
254 giving priority registration to veterans.

255 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.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Sadberry</u>	<u>Hansen</u>	<u>AP</u>	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:

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 violence¹⁰ 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 disposition²³ 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.

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.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

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).



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11 Section 8. The Legislature determines and declares that
12 this act fulfills an important state interest.

13
14 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

15 And the directory clause is amended as follows:

16 Delete line 368

17 and insert:

18 Section 7. Subsections (1) and (7) of section 985.35,
19 Florida

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete line 39

24 and insert:

25 unless such child requests a delay; revising the
26 circumstances under which an adjudication of
27 delinquency for a felony disqualifies a person from
28 possessing a firearm; providing a declaration of
29 important state interest; amending s.



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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



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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



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57 detention criteria and hearings, to incorporate the
58 amendment made by this act to s. 985.26, F.S., in a
59 reference thereto; reenacting s. 985.275(1), F.S.,
60 relating to detention of an escapee or absconder, to
61 incorporate the amendment made by this act to s.
62 985.255, F.S., in a reference thereto; reenacting s.
63 985.319(6), F.S., relating to process and service, to
64 incorporate the amendment made by this act to s.
65 985.255, F.S., in a reference thereto; providing an
66 appropriation; providing an effective date.

67
68 Be It Enacted by the Legislature of the State of Florida:

69
70 Section 1. Subsection (3) of section 382.0255, Florida
71 Statutes, is amended to read:

72 382.0255 Fees.—

73 (3) Fees shall be established by rule. However, until rules
74 are adopted, the fees assessed pursuant to this section shall be
75 the minimum fees cited. The fees established by rule must be
76 sufficient to meet the cost of providing the service. All fees
77 shall be paid by the person requesting the record, are due and
78 payable at the time services are requested, and are
79 nonrefundable, except that, when a search is conducted and no
80 vital record is found, any fees paid for additional certified
81 copies shall be refunded. The department may waive all or part
82 of the fees required under this section for any government
83 entity. The department shall waive all fees required under this
84 section for a certified copy of a birth certificate issued for
85 purposes of an inmate acquiring a state identification card



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86 before release pursuant to s. 944.605(7) and for a juvenile
87 offender who is in the custody or under the supervision of the
88 Department of Juvenile Justice and receiving services under s.
89 985.461.

90 Section 2. Subsection (1) of section 985.25, Florida
91 Statutes, is amended to read:

92 985.25 Detention intake.—

93 (1) The department shall receive custody of a child who has
94 been taken into custody from the law enforcement agency or court
95 and shall review the facts in the law enforcement report or
96 probable cause affidavit and make such further inquiry as may be
97 necessary to determine whether detention care is appropriate.

98 (a) During the period of time from the taking of the child
99 into custody to the date of the detention hearing, the initial
100 decision as to the child's placement into ~~secure or nonsecure~~
101 detention care shall be made by the department under ss. 985.24
102 and 985.245(1).

103 (b) The department shall base the decision whether to place
104 the child into ~~secure or nonsecure~~ detention care on an
105 assessment of risk in accordance with the risk assessment
106 instrument and procedures developed by the department under s.
107 985.245, ~~except that. However,~~ a child shall be placed in secure
108 detention care until the child's detention hearing if the child
109 meets the criteria specified in s. 985.255(1)(j), is charged
110 with possessing or discharging a firearm on school property in
111 violation of s. 790.115, or shall be placed in secure detention
112 care. A child who has been taken into custody on three or more
113 separate occasions within a 60-day period shall be placed in
114 secure detention care until the child's detention hearing.



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115 (c) If the final score on the child's risk assessment
116 instrument indicates detention care is appropriate, but the
117 department otherwise determines the child should be released,
118 the department shall contact the state attorney, who may
119 authorize release.

120 (d) If the final score on the risk assessment instrument
121 indicates detention is not appropriate, the child may be
122 released by the department in accordance with ss. 985.115 and
123 985.13.
124

125 Under no circumstances shall the department or the state
126 attorney or law enforcement officer authorize the detention of
127 any child in a jail or other facility intended or used for the
128 detention of adults, without an order of the court.

129 Section 3. Subsections (1) and (3) of section 985.255,
130 Florida Statutes, are amended to read:

131 985.255 Detention criteria; detention hearing.—

132 (1) Subject to s. 985.25(1), a child taken into custody and
133 placed into ~~secure or nonsecure~~ detention care shall be given a
134 hearing within 24 hours after being taken into custody. At the
135 hearing, the court may order continued detention if:

136 (a) The child is alleged to be an escapee from a
137 residential commitment program; or an absconder from a
138 nonresidential commitment program, a probation program, or
139 conditional release supervision; or is alleged to have escaped
140 while being lawfully transported to or from a residential
141 commitment program.

142 (b) The child is wanted in another jurisdiction for an
143 offense which, if committed by an adult, would be a felony.



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144 (c) The child is charged with a delinquent act or violation
145 of law and requests in writing through legal counsel to be
146 detained for protection from an imminent physical threat to his
147 or her personal safety.

148 (d) The child is charged with committing an offense of
149 domestic violence as defined in s. 741.28 and is detained as
150 provided in subsection (2).

151 (e) The child is charged with possession of or discharging
152 a firearm on school property in violation of s. 790.115 or the
153 illegal possession of a firearm.

154 (f) The child is charged with a capital felony, a life
155 felony, a felony of the first degree, a felony of the second
156 degree that does not involve a violation of chapter 893, or a
157 felony of the third degree that is also a crime of violence,
158 including any such offense involving the use or possession of a
159 firearm.

160 (g) The child is charged with any second degree or third
161 degree felony involving a violation of chapter 893 or any third
162 degree felony that is not also a crime of violence, and the
163 child:

- 164 1. Has a record of failure to appear at court hearings
165 after being properly notified in accordance with the Rules of
166 Juvenile Procedure;
- 167 2. Has a record of law violations prior to court hearings;
- 168 3. Has already been detained or has been released and is
169 awaiting final disposition of the case;
- 170 4. Has a record of violent conduct resulting in physical
171 injury to others; or
- 172 5. Is found to have been in possession of a firearm.



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173 (h) The child is alleged to have violated the conditions of
174 the child's probation or conditional release supervision.
175 However, a child detained under this paragraph may be held only
176 in a consequence unit as provided in s. 985.439. If a
177 consequence unit is not available, the child shall be placed on
178 nonsecure detention with electronic monitoring.

179 (i) The child is detained on a judicial order for failure
180 to appear and has previously willfully failed to appear, after
181 proper notice:

182 1. For an adjudicatory hearing on the same case regardless
183 of the results of the risk assessment instrument; or

184 2. At two or more court hearings of any nature on the same
185 case regardless of the results of the risk assessment
186 instrument.

187
188 A child may be held in secure detention for up to 72 hours in
189 advance of the next scheduled court hearing pursuant to this
190 paragraph. The child's failure to keep the clerk of court and
191 defense counsel informed of a current and valid mailing address
192 where the child will receive notice to appear at court
193 proceedings does not provide an adequate ground for excusal of
194 the child's nonappearance at the hearings.

195 (j) The child is a prolific juvenile offender. A child is a
196 prolific juvenile offender if the child:

197 1. Is charged with a delinquent act that would be a felony
198 if committed by an adult;

199 2. Has been adjudicated or had adjudication withheld for a
200 felony offense, or a delinquent act that would be a felony if
201 committed by an adult, before the charge under subparagraph 1.;



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202 and

203 3. In addition to meeting the requirements of subparagraphs
204 1. and 2., has five or more of any of the following, at least
205 three of which must have been for felony offenses or delinquent
206 acts that would have been felonies if committed by an adult:

207 a. An arrest event for which a disposition, as defined in
208 s. 985.26, has not been entered;

209 b. An adjudication; or

210 c. An adjudication withheld.

211
212 As used in this subparagraph, the term "arrest event" means an
213 arrest or referral for one or more criminal offenses or
214 delinquent acts arising out of the same episode, act, or
215 transaction.

216 (3) (a) The purpose of the detention hearing required under
217 subsection (1) is to determine the existence of probable cause
218 that the child has committed the delinquent act or violation of
219 law that he or she is charged with and the need for continued
220 detention. Unless a child is detained under paragraph (1) (d) or
221 paragraph (1) (e), the court shall use the results of the risk
222 assessment performed by the department and, based on the
223 criteria in subsection (1), shall determine the need for
224 continued detention. If a child is a prolific juvenile offender
225 who is detained under s. 985.26(2)(c), the court shall use the
226 results of the risk assessment performed by the department and
227 the criteria in subsection (1) or subsection (2) only to
228 determine whether the prolific juvenile offender should be held
229 in secure detention.

230 (b) If the court orders a placement more restrictive than



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231 indicated by the results of the risk assessment instrument, the
232 court shall state, in writing, clear and convincing reasons for
233 such placement.

234 (c) Except as provided in s. 790.22(8) or ~~in~~ s. 985.27,
235 when a child is placed into ~~secure or nonsecure~~ detention care,
236 or into a respite home or other placement pursuant to a court
237 order following a hearing, the court order must include specific
238 instructions that direct the release of the child from such
239 placement no later than 5 p.m. on the last day of the detention
240 period specified in s. 985.26 or s. 985.27, whichever is
241 applicable, unless the requirements of such applicable provision
242 have been met or an order of continuance has been granted under
243 s. 985.26(4). If the court order does not include a release
244 date, the release date shall be requested from the court on the
245 same date that the child is placed in detention care. If a
246 subsequent hearing is needed to provide additional information
247 to the court for safety planning, the initial order placing the
248 child in detention care shall reflect the next detention review
249 hearing, which shall be held within 3 calendar days after the
250 child's initial detention placement.

251 Section 4. Subsections (1) through (4) of section 985.26,
252 Florida Statutes, are amended to read:

253 985.26 Length of detention.—

254 (1) A child may not be placed into or held in ~~secure or~~
255 ~~nonsecure~~ detention care for longer than 24 hours unless the
256 court orders such detention care, and the order includes
257 specific instructions that direct the release of the child from
258 such detention care, in accordance with s. 985.255. The order
259 shall be a final order, reviewable by appeal under s. 985.534



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260 and the Florida Rules of Appellate Procedure. Appeals of such
261 orders shall take precedence over other appeals and other
262 pending matters.

263 (2) (a) Except as provided in paragraph (b) or paragraph
264 (c), a child may not be held in ~~secure or nonsecure~~ detention
265 care under a special detention order for more than 21 days
266 unless an adjudicatory hearing for the case has been commenced
267 in good faith by the court.

268 (b) ~~However,~~ Upon good cause being shown that the nature of
269 the charge requires additional time for the prosecution or
270 defense of the case, the court may extend the length of
271 detention for an additional 9 days if the child is charged with
272 an offense that would be, if committed by an adult, a capital
273 felony, a life felony, a felony of the first degree, or a felony
274 of the second degree involving violence against any individual.

275 (c) A prolific juvenile offender under s. 985.255(1)(j)
276 shall be placed on nonsecure detention care with electronic
277 monitoring or in secure detention care under a special detention
278 order until disposition. If secure detention care is ordered by
279 the court, it must be authorized under this part and may not
280 exceed:

281 1. Twenty-one days unless an adjudicatory hearing for the
282 case has been commenced in good faith by the court or the period
283 is extended by the court pursuant to paragraph (b); or

284 2. Fifteen days after the entry of an order of
285 adjudication.

286
287 As used in this paragraph, the term "disposition" means a
288 declination to file under s. 985.15(1)(h), the entry of nolle



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289 prosecute for the charges, the filing of an indictment under s.
290 985.56 or an information under s. 985.557, a dismissal of the
291 case, or an order of final disposition by the court.

292 (3) Except as provided in subsection (2), a child may not
293 be held in ~~secure or nonsecure~~ detention care for more than 15
294 days following the entry of an order of adjudication.

295 (4)(a) The time limits in subsections (2) and (3) do not
296 include periods of delay resulting from a continuance granted by
297 the court for cause on motion of the child or his or her counsel
298 or of the state. Upon the issuance of an order granting a
299 continuance for cause on a motion by either the child, the
300 child's counsel, or the state, the court shall conduct a hearing
301 at the end of each 72-hour period, excluding Saturdays, Sundays,
302 and legal holidays, to determine the need for continued
303 detention of the child and the need for further continuance of
304 proceedings for the child or the state.

305 (b) The period for nonsecure detention care under this
306 section is tolled on the date that the department or a law
307 enforcement officer alleges that the child has violated a
308 condition of the child's nonsecure detention care until the
309 court enters a ruling on the violation. Notwithstanding the
310 tolling of nonsecure detention care, the court retains
311 jurisdiction over the child for a violation of a condition of
312 nonsecure detention care during the tolling period. If the court
313 finds that a child has violated his or her nonsecure detention
314 care, the number of days that the child served in any type of
315 detention care before commission of the violation shall be
316 excluded from the time limits under subsections (2) and (3).

317 Section 5. Subsection (2) of section 985.265, Florida



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318 Statutes, is amended to read:

319 985.265 Detention transfer and release; education; adult
320 jails.-

321 (2) If a child is on release status and not detained under
322 this part, the child may be placed into ~~secure or nonsecure~~
323 detention care only pursuant to a court hearing in which the
324 original risk assessment instrument and the newly discovered
325 evidence or changed circumstances are introduced into evidence
326 with a rescored risk assessment instrument.

327 Section 6. Section 985.27, Florida Statutes, is amended to
328 read:

329 985.27 Postdisposition detention while awaiting residential
330 commitment placement.-

331 ~~(1) The court must place all children who are adjudicated~~
332 ~~and awaiting placement in a nonsecure, high-risk, or maximum-~~
333 ~~risk residential commitment program in secure detention care~~
334 ~~until the placement or commitment is accomplished. Children who~~
335 ~~are in nonsecure detention care may be placed on electronic~~
336 ~~monitoring.-~~

337 ~~(a) A child who is awaiting placement in a nonsecure~~
338 ~~residential program must be removed from detention within 5~~
339 ~~days, excluding Saturdays, Sundays, and legal holidays. Any~~
340 ~~child held in secure detention during the 5 days must meet~~
341 ~~detention admission criteria under this part. The department may~~
342 ~~seek an order from the court authorizing continued detention for~~
343 ~~a specific period of time necessary for the appropriate~~
344 ~~residential placement of the child. However, such continued~~
345 ~~detention in secure detention care may not exceed 15 days after~~
346 ~~entry of the commitment order, excluding Saturdays, Sundays, and~~



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347 ~~legal holidays, and except as otherwise provided in this~~
348 ~~section. A child who is placed in nonsecure detention care or~~
349 ~~nonsecure detention care with electronic monitoring, while~~
350 ~~awaiting placement in a nonsecure residential program, may be~~
351 ~~held in secure detention care for 5 days, if the child violates~~
352 ~~the conditions of the nonsecure detention care or the electronic~~
353 ~~monitoring agreement. For any subsequent violation, the court~~
354 ~~may impose an additional 5 days in secure detention care.~~

355 ~~(b) If the child is committed to a high-risk residential~~
356 ~~program, the child must be held in secure detention care until~~
357 ~~placement or commitment is accomplished.~~

358 ~~(c) If the child is committed to a maximum-risk residential~~
359 ~~program, the child must be held in secure detention care until~~
360 ~~placement or commitment is accomplished.~~

361 ~~(2) Regardless of detention status, a child being~~
362 ~~transported by the department to a residential commitment~~
363 ~~facility of the department may be placed in secure detention~~
364 ~~overnight, not to exceed a 24-hour period, for the specific~~
365 ~~purpose of ensuring the safe delivery of the child to his or her~~
366 ~~residential commitment program, court, appointment, transfer, or~~
367 ~~release.~~

368 Section 7. Subsection (1) of section 985.35, Florida
369 Statutes, is amended to read:

370 985.35 Adjudicatory hearings; withheld adjudications;
371 orders of adjudication.-

372 (1) (a) Except as provided in paragraph (b), the
373 adjudicatory hearing must be held as soon as practicable after
374 the petition alleging that a child has committed a delinquent
375 act or violation of law is filed and in accordance with the



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376 Florida Rules of Juvenile Procedure; but reasonable delay for
377 the purpose of investigation, discovery, or procuring counsel or
378 witnesses shall be granted. If the child is being detained, the
379 time limitations in s. 985.26(2) and (3) apply.

380 (b) If the child is a prolific juvenile offender under s.
381 985.255(1)(j), the adjudicatory hearing must be held within 45
382 days after the child is taken into custody unless a delay is
383 requested by the child.

384 Section 8. Subsection (1) of section 985.514, Florida
385 Statutes, is amended to read:

386 985.514 Responsibility for cost of care; fees.-

387 (1) When any child is placed into ~~secure or nonsecure~~
388 detention care or into other placement for the purpose of being
389 supervised by the department pursuant to a court order following
390 a detention hearing, the court shall order the child's parents
391 to pay fees to the department as provided in s. 985.039.

392 Section 9. For the purpose of incorporating the amendments
393 made by this act to sections 985.25, 985.255, and 985.26,
394 Florida Statutes, in references thereto, subsection (8) of
395 section 790.22, Florida Statutes, is reenacted to read:

396 790.22 Use of BB guns, air or gas-operated guns, or
397 electric weapons or devices by minor under 16; limitation;
398 possession of firearms by minor under 18 prohibited; penalties.-

399 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor
400 is charged with an offense that involves the use or possession
401 of a firearm, including a violation of subsection (3), or is
402 charged for any offense during the commission of which the minor
403 possessed a firearm, the minor shall be detained in secure
404 detention, unless the state attorney authorizes the release of



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405 the minor, and shall be given a hearing within 24 hours after
406 being taken into custody. At the hearing, the court may order
407 that the minor continue to be held in secure detention in
408 accordance with the applicable time periods specified in s.
409 985.26(1)-(5), if the court finds that the minor meets the
410 criteria specified in s. 985.255, or if the court finds by clear
411 and convincing evidence that the minor is a clear and present
412 danger to himself or herself or the community. The Department of
413 Juvenile Justice shall prepare a form for all minors charged
414 under this subsection which states the period of detention and
415 the relevant demographic information, including, but not limited
416 to, the gender, age, and race of the minor; whether or not the
417 minor was represented by private counsel or a public defender;
418 the current offense; and the minor's complete prior record,
419 including any pending cases. The form shall be provided to the
420 judge for determining whether the minor should be continued in
421 secure detention under this subsection. An order placing a minor
422 in secure detention because the minor is a clear and present
423 danger to himself or herself or the community must be in
424 writing, must specify the need for detention and the benefits
425 derived by the minor or the community by placing the minor in
426 secure detention, and must include a copy of the form provided
427 by the department.

428 Section 10. For the purpose of incorporating the amendments
429 made by this act to sections 985.255 and 985.26, Florida
430 Statutes, in references thereto, subsection (2) of section
431 985.115, Florida Statutes, is reenacted to read:

432 985.115 Release or delivery from custody.—

433 (2) Unless otherwise ordered by the court under s. 985.255



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434 or s. 985.26, and unless there is a need to hold the child, a
435 person taking a child into custody shall attempt to release the
436 child as follows:

437 (a) To the child's parent, guardian, or legal custodian or,
438 if the child's parent, guardian, or legal custodian is
439 unavailable, unwilling, or unable to provide supervision for the
440 child, to any responsible adult. Prior to releasing the child to
441 a responsible adult, other than the parent, guardian, or legal
442 custodian, the person taking the child into custody may conduct
443 a criminal history background check of the person to whom the
444 child is to be released. If the person has a prior felony
445 conviction, or a conviction for child abuse, drug trafficking,
446 or prostitution, that person is not a responsible adult for the
447 purposes of this section. The person to whom the child is
448 released shall agree to inform the department or the person
449 releasing the child of the child's subsequent change of address
450 and to produce the child in court at such time as the court may
451 direct, and the child shall join in the agreement.

452 (b) Contingent upon specific appropriation, to a shelter
453 approved by the department or to an authorized agent.

454 (c) If the child is believed to be suffering from a serious
455 physical condition which requires either prompt diagnosis or
456 prompt treatment, to a law enforcement officer who shall deliver
457 the child to a hospital for necessary evaluation and treatment.

458 (d) If the child is believed to be mentally ill as defined
459 in s. 394.463(1), to a law enforcement officer who shall take
460 the child to a designated public receiving facility as defined
461 in s. 394.455 for examination under s. 394.463.

462 (e) If the child appears to be intoxicated and has



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463 threatened, attempted, or inflicted physical harm on himself or
464 herself or another, or is incapacitated by substance abuse, to a
465 law enforcement officer who shall deliver the child to a
466 hospital, addictions receiving facility, or treatment resource.

467 (f) If available, to a juvenile assessment center equipped
468 and staffed to assume custody of the child for the purpose of
469 assessing the needs of the child in custody. The center may then
470 release or deliver the child under this section with a copy of
471 the assessment.

472 Section 11. For the purpose of incorporating the amendments
473 made by this act to sections 985.255 and 985.26, Florida
474 Statutes, in references thereto, subsection (2) of section
475 985.13, Florida Statutes, is reenacted to read:

476 985.13 Probable cause affidavits.—

477 (2) A person taking a child into custody who determines,
478 under part V, that the child should be detained or released to a
479 shelter designated by the department, shall make a reasonable
480 effort to immediately notify the parent, guardian, or legal
481 custodian of the child and shall, without unreasonable delay,
482 deliver the child to the appropriate juvenile probation officer
483 or, if the court has so ordered under s. 985.255 or s. 985.26,
484 to a detention center or facility. Upon delivery of the child,
485 the person taking the child into custody shall make a written
486 report or probable cause affidavit to the appropriate juvenile
487 probation officer. Such written report or probable cause
488 affidavit must:

489 (a) Identify the child and, if known, the parents,
490 guardian, or legal custodian.

491 (b) Establish that the child was legally taken into



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492 custody, with sufficient information to establish the
493 jurisdiction of the court and to make a prima facie showing that
494 the child has committed a violation of law.

495 Section 12. For the purpose of incorporating the amendment
496 made by this act to section 985.255, Florida Statutes, in a
497 reference thereto, paragraph (b) of subsection (2) of section
498 985.245, Florida Statutes, is reenacted to read:

499 985.245 Risk assessment instrument.—

500 (2)

501 (b) The risk assessment instrument shall take into
502 consideration, but need not be limited to, prior history of
503 failure to appear, prior offenses, offenses committed pending
504 adjudication, any unlawful possession of a firearm, theft of a
505 motor vehicle or possession of a stolen motor vehicle, and
506 probation status at the time the child is taken into custody.
507 The risk assessment instrument shall also take into
508 consideration appropriate aggravating and mitigating
509 circumstances, and shall be designed to target a narrower
510 population of children than s. 985.255. The risk assessment
511 instrument shall also include any information concerning the
512 child's history of abuse and neglect. The risk assessment shall
513 indicate whether detention care is warranted, and, if detention
514 care is warranted, whether the child should be placed into
515 secure or nonsecure detention care.

516 Section 13. For the purpose of incorporating the amendment
517 made by this act to section 985.26, Florida Statutes, in a
518 reference thereto, subsection (2) of section 985.255, Florida
519 Statutes, is reenacted to read:

520 985.255 Detention criteria; detention hearing.—



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521 (2) A child who is charged with committing an offense that
522 is classified as an act of domestic violence as defined in s.
523 741.28 and whose risk assessment instrument indicates secure
524 detention is not appropriate may be held in secure detention if
525 the court makes specific written findings that:

526 (a) Respite care for the child is not available.

527 (b) It is necessary to place the child in secure detention
528 in order to protect the victim from injury.

529

530 The child may not be held in secure detention under this
531 subsection for more than 48 hours unless ordered by the court.
532 After 48 hours, the court shall hold a hearing if the state
533 attorney or victim requests that secure detention be continued.
534 The child may continue to be held in detention care if the court
535 makes a specific, written finding that detention care is
536 necessary to protect the victim from injury. However, the child
537 may not be held in detention care beyond the time limits set
538 forth in this section or s. 985.26.

539 Section 14. For the purpose of incorporating the amendment
540 made by this act to section 985.255, Florida Statutes, in a
541 reference thereto, subsection (1) of section 985.275, Florida
542 Statutes, is reenacted to read:

543 985.275 Detention of escapee or absconder on authority of
544 the department.—

545 (1) If an authorized agent of the department has reasonable
546 grounds to believe that any delinquent child committed to the
547 department has escaped from a residential commitment facility or
548 from being lawfully transported thereto or therefrom, or has
549 absconded from a nonresidential commitment facility, the agent



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550 shall notify law enforcement and, if the offense would require
551 notification under chapter 960, notify the victim. The agent
552 shall make every reasonable effort as permitted within existing
553 resources provided to the department to locate the delinquent
554 child, and the child may be returned to the facility or, if it
555 is closer, to a detention center for return to the facility.
556 However, a child may not be held in detention longer than 24
557 hours, excluding Saturdays, Sundays, and legal holidays, unless
558 a special order so directing is made by the judge after a
559 detention hearing resulting in a finding that detention is
560 required based on the criteria in s. 985.255. The order shall
561 state the reasons for such finding. The reasons shall be
562 reviewable by appeal or in habeas corpus proceedings in the
563 district court of appeal.

564 Section 15. For the purpose of incorporating the amendment
565 made by this act to section 985.255, Florida Statutes, in a
566 reference thereto, subsection (6) of section 985.319, Florida
567 Statutes, is reenacted to read:

568 985.319 Process and service.—

569 (6) If the petition alleges that the child has committed a
570 delinquent act or violation of law and the judge deems it
571 advisable to do so, under the criteria of s. 985.255, the judge
572 may, by endorsement upon the summons and after the entry of an
573 order in which valid reasons are specified, order the child to
574 be taken into custody immediately, and in such case the person
575 serving the summons shall immediately take the child into
576 custody.

577 Section 16. For the 2017-2018 fiscal year, the sums of
578 \$2,978,012 in recurring funds and \$2,978,012 in nonrecurring



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579 funds from the General Revenue Fund are appropriated to the
580 Department of Juvenile Justice for the purpose of implementing
581 this act.

582 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.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sadberry</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 violence¹⁰ and is detained.¹¹
- Charged with possession of or discharging a firearm on school property or the illegal possession of a firearm.

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 disposition²³ 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

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 its 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

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1 A bill to be entitled
 2 An act relating to juvenile justice; amending s.
 3 985.24, F.S.; revising requirements for placement of a
 4 child in detention care; revising terminology;
 5 amending s. 985.245, F.S.; providing that a child who
 6 is designated a prolific juvenile offender does not
 7 require a risk assessment to be placed in detention
 8 care; amending s. 985.25, F.S.; revising terminology;
 9 providing that a child meeting specified criteria
 10 shall be placed in secure detention care until the
 11 child's detention hearing; amending s. 985.255, F.S.;
 12 revising terminology; providing criteria for a child
 13 to be designated a prolific juvenile offender;
 14 defining the term "arrest event"; conforming
 15 provisions to changes made by the act; amending s.
 16 985.26, F.S.; revising terminology; requiring the
 17 court to place a prolific juvenile offender in secure
 18 detention care under a special detention order until
 19 disposition; defining the term "disposition"; revising
 20 terminology; providing for the tolling of the period
 21 of detention care for an alleged violation of
 22 detention care conditions; providing for the retention
 23 of jurisdiction by the court over a child during the
 24 tolling period; revising the calculation of detention
 25 days served if a child violates detention care;
 26 amending s. 985.265, F.S.; revising terminology;
 27 amending s. 985.27, F.S.; requiring secure detention
 28 for all children awaiting placement in a commitment
 29 program until the placement or commitment is

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30 accomplished; deleting provisions relating to the
 31 detention of children; amending s. 985.35, F.S.;
 32 requiring the adjudicatory hearing for a child
 33 designated a prolific juvenile offender to be held
 34 within a specified period unless such child requests a
 35 delay; amending s. 985.514, F.S.; revising
 36 terminology; reenacting s. 790.22(8), F.S., relating
 37 to secure detention for minors charged with an offense
 38 involving firearms, to incorporate the amendments made
 39 by the act to ss. 985.24, 985.25, 985.255, and 985.26,
 40 F.S., in references thereto; reenacting s. 985.115(2),
 41 F.S., relating to release or delivery from custody, to
 42 incorporate the amendments made by the act to ss.
 43 985.255 and 985.26, F.S., in references thereto;
 44 reenacting s. 985.13(2), F.S., relating to probable
 45 cause affidavits, to incorporate the amendments made
 46 by the act to ss. 985.255 and 985.26, F.S., in
 47 references thereto; reenacting s. 985.245(2)(b), F.S.,
 48 relating to risk assessment instruments, to
 49 incorporate the amendment made by this act to s.
 50 985.255, F.S., in a reference thereto; reenacting s.
 51 985.255(2), F.S., relating to detention criteria and
 52 hearings, to incorporate the amendment made by this
 53 act to s. 985.26, F.S., in a reference thereto;
 54 reenacting s. 985.275(1), F.S., relating to detention
 55 of an escapee or absconder, to incorporate the
 56 amendment made by this act to s. 985.255, F.S., in a
 57 reference thereto; reenacting s. 985.319(6), F.S.,
 58 relating to process and service, to incorporate the

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59 amendment made by this act to s. 985.255, F.S., in a
60 reference thereto; providing an effective date.

61
62 Be It Enacted by the Legislature of the State of Florida:

63
64 Section 1. Paragraphs (d) and (e) of subsection (1) and
65 subsection (2) of section 985.24, Florida Statutes, are amended,
66 and paragraph (f) is added to subsection (1) of that section, to
67 read:

68 985.24 Use of detention; prohibitions.—

69 (1) All determinations and court orders regarding the use
70 of detention care shall be based primarily upon findings that
71 the child:

72 (d) Has committed contempt of court by:

73 1. Intentionally disrupting the administration of the
74 court;

75 2. Intentionally disobeying a court order; or

76 3. Engaging in a punishable act or speech in the court's
77 presence which shows disrespect for the authority and dignity of
78 the court; ~~or~~

79 (e) Requests protection from imminent bodily harm; or

80 (f) Is at risk for recidivism.

81 (2) A child alleged to have committed a delinquent act or
82 violation of law may not be placed into ~~secure or nonsecure~~
83 detention care for any of the following reasons:

84 (a) To allow a parent to avoid his or her legal
85 responsibility.

86 (b) To permit more convenient administrative access to the
87 child.

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88 (c) To facilitate further interrogation or investigation.

89 (d) Due to a lack of more appropriate facilities.

90 Section 2. Subsection (1) of section 985.245, Florida
91 Statutes, is amended to read:

92 985.245 Risk assessment instrument.—

93 (1) All determinations and court orders regarding placement
94 of a child into detention care shall comply with all
95 requirements and criteria provided in this part and shall be
96 based on a risk assessment of the child, unless the child is
97 placed into detention care under as provided in s. 985.255(2) or
98 is designated a prolific juvenile offender under s.
99 985.255(1)(j).

100 Section 3. Subsection (1) of section 985.25, Florida
101 Statutes, is amended to read:

102 985.25 Detention intake.—

103 (1) The department shall receive custody of a child who has
104 been taken into custody from the law enforcement agency or court
105 and shall review the facts in the law enforcement report or
106 probable cause affidavit and make such further inquiry as may be
107 necessary to determine whether detention care is appropriate.

108 (a) During the period of time from the taking of the child
109 into custody to the date of the detention hearing, the initial
110 decision as to the child's placement into ~~secure or nonsecure~~
111 detention care shall be made by the department under ss. 985.24
112 and 985.245(1).

113 (b) The department shall base the decision whether to place
114 the child into ~~secure or nonsecure~~ detention care on an
115 assessment of risk in accordance with the risk assessment
116 instrument and procedures developed by the department under s.

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117 985.245, except that, however, a child shall be placed in secure
 118 detention care until the child's detention hearing if the child
 119 meets the criteria specified in s. 985.255(1)(j), is charged
 120 with possessing or discharging a firearm on school property in
 121 violation of s. 790.115, ~~or shall be placed in secure detention~~
 122 ~~care. A child who has been taken into custody on three or more~~
 123 ~~separate occasions within a 60-day period shall be placed in~~
 124 ~~secure detention care until the child's detention hearing.~~

125 (c) If the final score on the child's risk assessment
 126 instrument indicates detention care is appropriate, but the
 127 department otherwise determines the child should be released,
 128 the department shall contact the state attorney, who may
 129 authorize release.

130 (d) If the final score on the risk assessment instrument
 131 indicates detention is not appropriate, the child may be
 132 released by the department in accordance with ss. 985.115 and
 133 985.13.

134
 135 Under no circumstances shall the department or the state
 136 attorney or law enforcement officer authorize the detention of
 137 any child in a jail or other facility intended or used for the
 138 detention of adults, without an order of the court.

139 Section 4. Subsection (1) and paragraphs (a) and (c) of
 140 subsection (3) of section 985.255, Florida Statutes, are amended
 141 to read:

142 985.255 Detention criteria; detention hearing.—

143 (1) Subject to s. 985.25(1), a child taken into custody and
 144 placed into ~~secure or nonsecure~~ detention care shall be given a
 145 hearing within 24 hours after being taken into custody. At the

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146 hearing, the court may order continued detention if:

147 (a) The child is alleged to be an escapee from a
 148 residential commitment program; or an absconder from a
 149 nonresidential commitment program, a probation program, or
 150 conditional release supervision; or is alleged to have escaped
 151 while being lawfully transported to or from a residential
 152 commitment program.

153 (b) The child is wanted in another jurisdiction for an
 154 offense which, if committed by an adult, would be a felony.

155 (c) The child is charged with a delinquent act or violation
 156 of law and requests in writing through legal counsel to be
 157 detained for protection from an imminent physical threat to his
 158 or her personal safety.

159 (d) The child is charged with committing an offense of
 160 domestic violence as defined in s. 741.28 and is detained as
 161 provided in subsection (2).

162 (e) The child is charged with possession of or discharging
 163 a firearm on school property in violation of s. 790.115 or the
 164 illegal possession of a firearm.

165 (f) The child is charged with a capital felony, a life
 166 felony, a felony of the first degree, a felony of the second
 167 degree that does not involve a violation of chapter 893, or a
 168 felony of the third degree that is also a crime of violence,
 169 including any such offense involving the use or possession of a
 170 firearm.

171 (g) The child is charged with any second degree or third
 172 degree felony involving a violation of chapter 893 or any third
 173 degree felony that is not also a crime of violence, and the
 174 child:

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175 1. Has a record of failure to appear at court hearings
 176 after being properly notified in accordance with the Rules of
 177 Juvenile Procedure;

178 2. Has a record of law violations prior to court hearings;

179 3. Has already been detained or has been released and is
 180 awaiting final disposition of the case;

181 4. Has a record of violent conduct resulting in physical
 182 injury to others; or

183 5. Is found to have been in possession of a firearm.

184 (h) The child is alleged to have violated the conditions of
 185 the child's probation or conditional release supervision.
 186 However, a child detained under this paragraph may be held only
 187 in a consequence unit as provided in s. 985.439. If a
 188 consequence unit is not available, the child shall be placed on
 189 nonsecure detention with electronic monitoring.

190 (i) The child is detained on a judicial order for failure
 191 to appear and has previously willfully failed to appear, after
 192 proper notice:

193 1. For an adjudicatory hearing on the same case regardless
 194 of the results of the risk assessment instrument; or

195 2. At two or more court hearings of any nature on the same
 196 case regardless of the results of the risk assessment
 197 instrument.

198 A child may be held in secure detention for up to 72 hours in
 199 advance of the next scheduled court hearing pursuant to this
 200 paragraph. The child's failure to keep the clerk of court and
 201 defense counsel informed of a current and valid mailing address
 202 where the child will receive notice to appear at court
 203

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204 proceedings does not provide an adequate ground for excusal of
 205 the child's nonappearance at the hearings.

206 (j) The child is a prolific juvenile offender. A child must
 207 be designated by the court as a prolific juvenile offender if
 208 the child:

209 1. Is charged with a delinquent act that would be a felony
 210 if committed by an adult;

211 2. Has been adjudicated or had adjudication withheld for a
 212 felony offense or delinquent act that would be a felony if
 213 committed by an adult, before the charge under subparagraph 1.;
 214 and

215 3. Has 5 or more of any of the following, at least 3 of
 216 which must have been for felony offenses or delinquent acts that
 217 would have been felonies if committed by an adult:

218 a. An arrest event for which a disposition, as defined in
 219 s. 985.26, has not been entered;

220 b. An adjudication; or

221 c. An adjudication withheld.

222

223 This subparagraph excludes the arrest event that resulted in the
 224 charge under subparagraph 1. and the adjudication or
 225 adjudication withheld under subparagraph 2. As used in this
 226 subparagraph, the term "arrest event" means an arrest for one or
 227 more criminal offenses or delinquent acts arising out of the
 228 same episode, act, or transaction.

229 (3) (a) The purpose of the detention hearing required under
 230 subsection (1) is to determine the existence of probable cause
 231 that the child has committed the delinquent act or violation of
 232 law that he or she is charged with and the need for continued

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233 detention. Unless a child is detained under paragraph (1)(d), ~~or~~
 234 paragraph (1)(e), or paragraph (1)(j), the court shall use the
 235 results of the risk assessment performed by the department and,
 236 based on the criteria in subsection (1), shall determine the
 237 need for continued detention.

238 (c) Except as provided in s. 790.22(8), s. 985.26(2)(b), or
 239 ~~in~~ s. 985.27, when a child is placed into ~~secure or nonsecure~~
 240 detention care, or into a respite home or other placement
 241 pursuant to a court order following a hearing, the court order
 242 must include specific instructions that direct the release of
 243 the child from such placement no later than 5 p.m. on the last
 244 day of the detention period specified in s. 985.26 or s. 985.27,
 245 whichever is applicable, unless the requirements of such
 246 applicable provision have been met or an order of continuance
 247 has been granted under s. 985.26(4). If the court order does not
 248 include a release date, the release date shall be requested from
 249 the court on the same date that the child is placed in detention
 250 care. If a subsequent hearing is needed to provide additional
 251 information to the court for safety planning, the initial order
 252 placing the child in detention care shall reflect the next
 253 detention review hearing, which shall be held within 3 calendar
 254 days after the child's initial detention placement.

255 Section 5. Subsections (1) through (4) of section 985.26,
 256 Florida Statutes, are amended to read:

257 985.26 Length of detention.—

258 (1) A child may not be placed into or held in ~~secure or~~
 259 ~~nonsecure~~ detention care for longer than 24 hours unless the
 260 court orders such detention care, and the order includes
 261 specific instructions that direct the release of the child from

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262 such detention care, in accordance with s. 985.255. The order
 263 shall be a final order, reviewable by appeal under s. 985.534
 264 and the Florida Rules of Appellate Procedure. Appeals of such
 265 orders shall take precedence over other appeals and other
 266 pending matters.

267 (2) (a) Except as provided in paragraph (b), a child may not
 268 be held in ~~secure or nonsecure~~ detention care under a special
 269 detention order for more than 21 days unless an adjudicatory
 270 hearing for the case has been commenced in good faith by the
 271 court. However, upon good cause being shown that the nature of
 272 the charge requires additional time for the prosecution or
 273 defense of the case, the court may extend the length of
 274 detention for an additional 9 days if the child is charged with
 275 an offense that would be, if committed by an adult, a capital
 276 felony, a life felony, a felony of the first degree, or a felony
 277 of the second degree involving violence against any individual.

278 (b) A child who is designated a prolific juvenile offender
 279 under s. 985.255(1)(j) shall be held in secure detention care
 280 under a special detention order until disposition. As used in
 281 this paragraph, the term "disposition" means the entry of a
 282 nolle prosequi for the charges, a dismissal of the case, or the
 283 entry of a disposition order by the court.

284 (3) Except as provided in subsection (2), a child may not
 285 be held in ~~secure or nonsecure~~ detention care for more than 15
 286 days following the entry of an order of adjudication.

287 (4) (a) The time limits in subsections (2) and (3) do not
 288 include periods of delay resulting from a continuance granted by
 289 the court for cause on motion of the child or his or her counsel
 290 or of the state. Upon the issuance of an order granting a

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 291 continuance for cause on a motion by either the child, the
 292 child's counsel, or the state, the court shall conduct a hearing
 293 at the end of each 72-hour period, excluding Saturdays, Sundays,
 294 and legal holidays, to determine the need for continued
 295 detention of the child and the need for further continuance of
 296 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:

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 320 985.27 Postdisposition detention while awaiting commitment
 321 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~~

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349 ~~program, the child must be held in secure detention care until~~
 350 ~~placement or commitment is accomplished.~~

351 ~~(2) Regardless of detention status, a child being~~
 352 ~~transported by the department to a residential commitment~~
 353 ~~facility of the department may be placed in secure detention~~
 354 ~~overnight, not to exceed a 24-hour period, for the specific~~
 355 ~~purpose of ensuring the safe delivery of the child to his or her~~
 356 ~~residential commitment program, court, appointment, transfer, or~~
 357 ~~release.~~

358 Section 8. Subsection (1) of section 985.35, Florida
 359 Statutes, is amended to read:

360 985.35 Adjudicatory hearings; withheld adjudications;
 361 orders of adjudication.—

362 (1) (a) Except as provided in paragraph (b), the
 363 adjudicatory hearing must be held as soon as practicable after
 364 the petition alleging that a child has committed a delinquent
 365 act or violation of law is filed and in accordance with the
 366 Florida Rules of Juvenile Procedure; but reasonable delay for
 367 the purpose of investigation, discovery, or procuring counsel or
 368 witnesses shall be granted. If the child is being detained, the
 369 time limitations in s. 985.26(2) and (3) apply.

370 (b) If the child is designated a prolific juvenile offender
 371 under s. 985.255(1)(j), the adjudicatory hearing must be held
 372 within 45 days after the petition alleging that the child has
 373 committed a delinquent act or violation of law has been filed
 374 unless a delay is requested by the child.

375 Section 9. Subsection (1) of section 985.514, Florida
 376 Statutes, is amended to read:

377 985.514 Responsibility for cost of care; fees.—

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378 (1) When any child is placed into ~~secure or nonsecure~~
 379 detention care or into other placement for the purpose of being
 380 supervised by the department pursuant to a court order following
 381 a detention hearing, the court shall order the child's parents
 382 to pay fees to the department as provided in s. 985.039.

383 Section 10. For the purpose of incorporating the amendments
 384 made by this act to sections 985.24, 985.25, 985.255, and
 385 985.26, Florida Statutes, in references thereto, subsection (8)
 386 of section 790.22, Florida Statutes, is reenacted to read:

387 790.22 Use of BB guns, air or gas-operated guns, or
 388 electric weapons or devices by minor under 16; limitation;
 389 possession of firearms by minor under 18 prohibited; penalties.—

390 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor
 391 is charged with an offense that involves the use or possession
 392 of a firearm, including a violation of subsection (3), or is
 393 charged for any offense during the commission of which the minor
 394 possessed a firearm, the minor shall be detained in secure
 395 detention, unless the state attorney authorizes the release of
 396 the minor, and shall be given a hearing within 24 hours after
 397 being taken into custody. At the hearing, the court may order
 398 that the minor continue to be held in secure detention in
 399 accordance with the applicable time periods specified in s.
 400 985.26(1)-(5), if the court finds that the minor meets the
 401 criteria specified in s. 985.255, or if the court finds by clear
 402 and convincing evidence that the minor is a clear and present
 403 danger to himself or herself or the community. The Department of
 404 Juvenile Justice shall prepare a form for all minors charged
 405 under this subsection which states the period of detention and
 406 the relevant demographic information, including, but not limited

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407 to, the gender, age, and race of the minor; whether or not the
 408 minor was represented by private counsel or a public defender;
 409 the current offense; and the minor's complete prior record,
 410 including any pending cases. The form shall be provided to the
 411 judge for determining whether the minor should be continued in
 412 secure detention under this subsection. An order placing a minor
 413 in secure detention because the minor is a clear and present
 414 danger to himself or herself or the community must be in
 415 writing, must specify the need for detention and the benefits
 416 derived by the minor or the community by placing the minor in
 417 secure detention, and must include a copy of the form provided
 418 by the department.

419 Section 11. For the purpose of incorporating the amendment
 420 made by this act to sections 985.255 and 985.26, Florida
 421 Statutes, in references thereto, subsection (2) of section
 422 985.115, Florida Statutes, is reenacted to read:

423 985.115 Release or delivery from custody.—

424 (2) Unless otherwise ordered by the court under s. 985.255
 425 or s. 985.26, and unless there is a need to hold the child, a
 426 person taking a child into custody shall attempt to release the
 427 child as follows:

428 (a) To the child's parent, guardian, or legal custodian or,
 429 if the child's parent, guardian, or legal custodian is
 430 unavailable, unwilling, or unable to provide supervision for the
 431 child, to any responsible adult. Prior to releasing the child to
 432 a responsible adult, other than the parent, guardian, or legal
 433 custodian, the person taking the child into custody may conduct
 434 a criminal history background check of the person to whom the
 435 child is to be released. If the person has a prior felony

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436 conviction, or a conviction for child abuse, drug trafficking,
 437 or prostitution, that person is not a responsible adult for the
 438 purposes of this section. The person to whom the child is
 439 released shall agree to inform the department or the person
 440 releasing the child of the child's subsequent change of address
 441 and to produce the child in court at such time as the court may
 442 direct, and the child shall join in the agreement.

443 (b) Contingent upon specific appropriation, to a shelter
 444 approved by the department or to an authorized agent.

445 (c) If the child is believed to be suffering from a serious
 446 physical condition which requires either prompt diagnosis or
 447 prompt treatment, to a law enforcement officer who shall deliver
 448 the child to a hospital for necessary evaluation and treatment.

449 (d) If the child is believed to be mentally ill as defined
 450 in s. 394.463(1), to a law enforcement officer who shall take
 451 the child to a designated public receiving facility as defined
 452 in s. 394.455 for examination under s. 394.463.

453 (e) If the child appears to be intoxicated and has
 454 threatened, attempted, or inflicted physical harm on himself or
 455 herself or another, or is incapacitated by substance abuse, to a
 456 law enforcement officer who shall deliver the child to a
 457 hospital, addictions receiving facility, or treatment resource.

458 (f) If available, to a juvenile assessment center equipped
 459 and staffed to assume custody of the child for the purpose of
 460 assessing the needs of the child in custody. The center may then
 461 release or deliver the child under this section with a copy of
 462 the assessment.

463 Section 12. For the purpose of incorporating the amendment
 464 made by this act to section 985.255 and 985.26, Florida

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465 Statutes, in references thereto, subsection (2) of section
 466 985.13, Florida Statutes, is reenacted to read:
 467 985.13 Probable cause affidavits.—
 468 (2) A person taking a child into custody who determines,
 469 under part V, that the child should be detained or released to a
 470 shelter designated by the department, shall make a reasonable
 471 effort to immediately notify the parent, guardian, or legal
 472 custodian of the child and shall, without unreasonable delay,
 473 deliver the child to the appropriate juvenile probation officer
 474 or, if the court has so ordered under s. 985.255 or s. 985.26,
 475 to a detention center or facility. Upon delivery of the child,
 476 the person taking the child into custody shall make a written
 477 report or probable cause affidavit to the appropriate juvenile
 478 probation officer. Such written report or probable cause
 479 affidavit must:
 480 (a) Identify the child and, if known, the parents,
 481 guardian, or legal custodian.
 482 (b) Establish that the child was legally taken into
 483 custody, with sufficient information to establish the
 484 jurisdiction of the court and to make a prima facie showing that
 485 the child has committed a violation of law.
 486 Section 13. For the purpose of incorporating the amendment
 487 made by this act to section 985.255, Florida Statutes, in a
 488 reference thereto, paragraph (b) of subsection (2) of section
 489 985.245, Florida Statutes, is reenacted to read:
 490 985.245 Risk assessment instrument.—
 491 (2)
 492 (b) The risk assessment instrument shall take into
 493 consideration, but need not be limited to, prior history of

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494 failure to appear, prior offenses, offenses committed pending
 495 adjudication, any unlawful possession of a firearm, theft of a
 496 motor vehicle or possession of a stolen motor vehicle, and
 497 probation status at the time the child is taken into custody.
 498 The risk assessment instrument shall also take into
 499 consideration appropriate aggravating and mitigating
 500 circumstances, and shall be designed to target a narrower
 501 population of children than s. 985.255. The risk assessment
 502 instrument shall also include any information concerning the
 503 child's history of abuse and neglect. The risk assessment shall
 504 indicate whether detention care is warranted, and, if detention
 505 care is warranted, whether the child should be placed into
 506 secure or nonsecure detention care.
 507 Section 14. For the purpose of incorporating the amendment
 508 made by this act to section 985.26, Florida Statutes, in a
 509 reference thereto, subsection (2) of section 985.255, Florida
 510 Statutes, is reenacted to read:
 511 985.255 Detention criteria; detention hearing.—
 512 (2) A child who is charged with committing an offense that
 513 is classified as an act of domestic violence as defined in s.
 514 741.28 and whose risk assessment instrument indicates secure
 515 detention is not appropriate may be held in secure detention if
 516 the court makes specific written findings that:
 517 (a) Respite care for the child is not available.
 518 (b) It is necessary to place the child in secure detention
 519 in order to protect the victim from injury.
 520
 521 The child may not be held in secure detention under this
 522 subsection for more than 48 hours unless ordered by the court.

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523 After 48 hours, the court shall hold a hearing if the state
 524 attorney or victim requests that secure detention be continued.
 525 The child may continue to be held in detention care if the court
 526 makes a specific, written finding that detention care is
 527 necessary to protect the victim from injury. However, the child
 528 may not be held in detention care beyond the time limits set
 529 forth in this section or s. 985.26.

530 Section 15. For the purpose of incorporating the amendment
 531 made by this act to section 985.255, Florida Statutes, in a
 532 reference thereto, subsection (1) of section 985.275, Florida
 533 Statutes, is reenacted to read:

534 985.275 Detention of escapee or absconder on authority of
 535 the department.—

536 (1) If an authorized agent of the department has reasonable
 537 grounds to believe that any delinquent child committed to the
 538 department has escaped from a residential commitment facility or
 539 from being lawfully transported thereto or therefrom, or has
 540 absconded from a nonresidential commitment facility, the agent
 541 shall notify law enforcement and, if the offense would require
 542 notification under chapter 960, notify the victim. The agent
 543 shall make every reasonable effort as permitted within existing
 544 resources provided to the department to locate the delinquent
 545 child, and the child may be returned to the facility or, if it
 546 is closer, to a detention center for return to the facility.
 547 However, a child may not be held in detention longer than 24
 548 hours, excluding Saturdays, Sundays, and legal holidays, unless
 549 a special order so directing is made by the judge after a
 550 detention hearing resulting in a finding that detention is
 551 required based on the criteria in s. 985.255. The order shall

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552 state the reasons for such finding. The reasons shall be
 553 reviewable by appeal or in habeas corpus proceedings in the
 554 district court of appeal.

555 Section 16. For the purpose of incorporating the amendment
 556 made by this act to section 985.255, Florida Statutes, in a
 557 reference thereto, subsection (6) of section 985.319, Florida
 558 Statutes, is reenacted to read:

559 985.319 Process and service.—

560 (6) If the petition alleges that the child has committed a
 561 delinquent act or violation of law and the judge deems it
 562 advisable to do so, under the criteria of s. 985.255, the judge
 563 may, by endorsement upon the summons and after the entry of an
 564 order in which valid reasons are specified, order the child to
 565 be taken into custody immediately, and in such case the person
 566 serving the summons shall immediately take the child into
 567 custody.

568 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)

4/25/17

Meeting Date

Latvala
SB 416-70

Bill Number (if applicable)

Topic Juvenile

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address 169 Sinclair Rd

Phone (850) 284-2090

Street

Tallahassee FL 32312

Email normtallahassee@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing NORM Tallahassee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

4-25-17

Meeting Date

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

SB 1670

Bill Number (if applicable)

Topic SB 1670

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Director of Legislative Affairs

Address 2737 Centerview Dr.

Phone 717-2716

Street

Tallahassee

FL

32399

Email meredith.stanfield@

City

State

Zip

dj.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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

1670

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone _____

Street

Tall

City

FL

State

3239

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
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. <u>Price</u>	<u>Miller</u>	<u>TR</u>	<u>Fav/CS</u>
2. <u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3. <u>Pitts</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 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 state¹ 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 trolleys 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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1 A bill to be entitled
2 An act relating to the Tampa Bay Area Regional Transit
3 Authority; amending s. 339.175, F.S.; creating the
4 Tampa Bay Area Regional Transit Authority Metropolitan
5 Planning Organization Chairs Coordinating Committee to
6 replace the Tampa Bay Area Regional Transportation
7 Authority Metropolitan Planning Organization Chairs
8 Coordinating Committee; providing that the Tampa Bay
9 Area Regional Transit Authority Metropolitan Planning
10 Organization Chairs Coordinating Committee is created
11 within the Tampa Bay Area Regional Transit Authority;
12 amending s. 343.90, F.S.; revising the short title to
13 "Tampa Bay Area Regional Transit Authority Act";
14 amending s. 343.91, F.S.; revising the definition of
15 the term "authority" to mean the Tampa Bay Area
16 Regional Transit Authority and to include only
17 Hernando, Hillsborough, Manatee, Pasco, and Pinellas
18 Counties and any other contiguous county that is party
19 to an agreement of participation; revising the
20 definition of the term "commuter rail"; amending s.
21 343.92, F.S.; creating the Tampa Bay Area Regional
22 Transit Authority to replace the Tampa Bay Area
23 Regional Transportation Authority; decreasing voting
24 membership on the governing board of the authority;
25 requiring the members to be appointed within a
26 specified period; revising appointment and term
27 requirements of such membership; revising requirements
28 for filling vacancies on the board; requiring the
29 Governor to appoint an initial chair of the board from

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30 one of the four members appointed by the Governor;
31 providing that seven members of the board constitute a
32 quorum; providing that the vote of seven members is
33 necessary for any action to be taken by the authority;
34 requiring the board to evaluate the abolishment,
35 continuance, modification, or establishment of
36 specified committees, beginning on a specified date;
37 requiring the board to submit its recommendations for
38 abolishment, continuance, modification, or
39 establishment of the committees to the Legislature
40 before a specified time; deleting requirements related
41 to the establishment of a Transit Management
42 Committee, a Citizens Advisory Committee, and
43 technical advisory committees; conforming provisions
44 to changes made by the act; amending s. 343.922, F.S.;
45 revising the express purposes of the authority to
46 include planning, implementing, and operating mobility
47 improvements and expansions of certain multimodal
48 transportation options, producing a certain regional
49 transit development plan, and serving as the recipient
50 of certain federal funds under certain circumstances;
51 directing the authority to provide to the Legislature
52 a plan to produce the regional transit development
53 plan by a specified date; providing requirements for
54 the regional transit development plan; requiring the
55 authority to develop and adopt a regional transit
56 development plan, rather than a transportation master
57 plan; deleting obsolete provisions; conforming
58 provisions to changes made by the act; providing that

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59 an action by the authority regarding the funding of
 60 commuter rail, heavy rail transit, or light rail
 61 transit, or any combination thereof, requires approval
 62 by a majority vote of each M.P.O. serving the county
 63 or counties where such rail transit investment will be
 64 made, and the approval of the Legislature by an act of
 65 general law; prohibiting the authority from engaging
 66 in certain advocacy that seeks to approve the funding
 67 of commuter rail, heavy rail transit, or light rail
 68 transit, or any combination thereof; requiring the
 69 authority to conduct a feasibility study, through an
 70 independent third party, for any project of commuter
 71 rail, heavy rail transit, or light rail transit, or
 72 any combination thereof, before proceeding with the
 73 development of the project and before any related
 74 contracts are issued; requiring the feasibility study
 75 to be submitted to the Governor, the Legislature, and
 76 the board of county commissioners of specified
 77 counties; amending ss. 343.94, 343.947, 343.95,
 78 343.975, and 343.976, F.S.; conforming provisions to
 79 changes made by the act; providing an effective date.

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

82
 83 Section 1. Paragraph (i) of subsection (6) of section
 84 339.175, Florida Statutes, is amended to read:

85 339.175 Metropolitan planning organization.—

86 (6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers,
 87 privileges, and authority of an M.P.O. are those specified in

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88 this section or incorporated in an interlocal agreement
 89 authorized under s. 163.01. Each M.P.O. shall perform all acts
 90 required by federal or state laws or rules, now and subsequently
 91 applicable, which are necessary to qualify for federal aid. It
 92 is the intent of this section that each M.P.O. shall be involved
 93 in the planning and programming of transportation facilities,
 94 including, but not limited to, airports, intercity and high-
 95 speed rail lines, seaports, and intermodal facilities, to the
 96 extent permitted by state or federal law.

97 (i) The Tampa Bay Area Regional Transit Transportation
 98 Authority Metropolitan Planning Organization Chairs Coordinating
 99 Committee is created within the Tampa Bay Area Regional Transit
 100 ~~Transportation~~ Authority, composed of the M.P.O.'s serving
 101 Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk,
 102 and Sarasota Counties. The authority shall provide
 103 administrative support and direction to the committee. The
 104 committee must, at a minimum:

- 105 1. Coordinate transportation projects deemed to be
 106 regionally significant by the committee.
- 107 2. Review the impact of regionally significant land use
 108 decisions on the region.
- 109 3. Review all proposed regionally significant
 110 transportation projects in the respective transportation
 111 improvement programs which affect more than one of the M.P.O.'s
 112 represented on the committee.
- 113 4. Institute a conflict resolution process to address any
 114 conflict that may arise in the planning and programming of such
 115 regionally significant projects.

116 Section 2. Section 343.90, Florida Statutes, is amended to

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117 read:

118 343.90 Short title.—This part may be cited as the “Tampa
119 Bay Area Regional ~~Transit Transportation~~ Authority Act.”

120 Section 3. Paragraphs (a) and (e) of subsection (1) of
121 section 343.91, Florida Statutes, are amended to read:

122 343.91 Definitions.—

123 (1) As used in this part, the term:

124 (a) “Authority” means the Tampa Bay Area Regional Transit
125 ~~Transportation~~ Authority, the body politic and corporate and
126 agency of the state created by this part, covering ~~the seven-~~
127 ~~county area comprised of Citrus, Hernando, Hillsborough,~~
128 Manatee, Pasco, and Pinellas, Manatee, and Sarasota Counties and
129 any other contiguous county that is party to an agreement of
130 participation.

131 (e)1. “Commuter rail” means a complete system of tracks,
132 guideways, stations, and rolling stock necessary to effectuate
133 medium-distance to long-distance passenger rail service to,
134 from, or within the municipalities within the authority’s
135 designated ~~seven-county~~ region.

136 2. “Heavy rail transit” means a complete rail system
137 operating on an electric railway with the capacity for a heavy
138 volume of traffic, characterized by high-speed and rapid-
139 acceleration passenger rail cars operating singly or in multicar
140 trains on fixed rails in separate rights-of-way from which all
141 other vehicular and pedestrian traffic are excluded. “Heavy rail
142 transit” includes metro, subway, elevated, rapid transit, and
143 rapid rail systems.

144 3. “Light rail transit” means a complete system of tracks,
145 overhead catenaries, stations, and platforms with lightweight

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146 passenger rail cars operating singly or in short, multicar
147 trains on fixed rails in rights-of-way that are not separated
148 from other traffic for much of the way.

149 Section 4. Section 343.92, Florida Statutes, is amended to
150 read:

151 343.92 Tampa Bay Area Regional Transit Transportation
152 Authority.—

153 (1) There is created and established a body politic and
154 corporate, an agency of the state, to be known as the Tampa Bay
155 Area Regional Transit Transportation Authority.

156 (2) The governing board of the authority shall consist of
157 13 ~~15~~ voting members appointed no later than 45 days after the
158 creation of the authority.

159 (a) The secretary of the department shall appoint two
160 advisors to the board who must be the district secretary for
161 each of the department districts within the designated ~~seven-~~
162 ~~county~~ area of the authority.

163 (b) The 13 ~~15~~ voting members of the board shall be as
164 follows:

165 1. The county commissions of ~~Citrus,~~ Hernando,
166 Hillsborough, Manatee, Pasco, and Pinellas, ~~Manatee, and~~
167 ~~Sarasota~~ Counties shall each appoint one county commissioner
168 ~~elected official~~ to the board. Members appointed under this
169 subparagraph shall serve 2-year terms with not more than three
170 consecutive terms being served by any person. If a member under
171 this subparagraph leaves elected office, a vacancy exists on the
172 board to be filled as provided in this subparagraph within 90
173 days ~~subparagraph.~~

174 ~~2. The Tampa Bay Area Regional Transportation Authority~~

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175 ~~(TPARTA) Metropolitan Planning Organization Chairs Coordinating~~
 176 ~~Committee shall appoint one member to the board who must be a~~
 177 ~~chair of one of the six metropolitan planning organizations in~~
 178 ~~the region. The member appointed under this subparagraph shall~~
 179 ~~serve a 2-year term with not more than three consecutive terms~~
 180 ~~being served by any person.~~

181 2.3.a. Two members of the board shall be the mayor, ~~or the~~
 182 ~~mayor's designee,~~ of the largest municipality within the service
 183 area of each of the following independent transit agencies or
 184 their legislatively created successor agencies: Pinellas
 185 Suncoast Transit Authority and Hillsborough Area Regional
 186 Transit Authority. The largest municipality is that municipality
 187 with the largest population as determined by the most recent
 188 United States Decennial Census.

189 b. Should a mayor choose not to serve, his or her designee
 190 must be an elected official selected by the mayor from that
 191 largest municipality's city council or city commission. A mayor
 192 or his or her designee shall serve a 2-year term with not more
 193 than three consecutive terms being served by any person.

194 e. A designee's term ends if the mayor leaves office for
 195 any reason. If a designee leaves elected office on the city
 196 council or commission, a vacancy exists on the board to be
 197 filled by the mayor of that municipality as provided in sub-
 198 subparagraph a.

199 3. The following independent transit agencies or their
 200 legislatively created successor agencies shall each appoint from
 201 the membership of their governing bodies one member to the
 202 board: Pinellas Suncoast Transit Authority and Hillsborough Area
 203 Regional Transit Authority. Each member appointed under this

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204 subparagraph shall serve a 2-year term with not more than three
 205 consecutive terms being served by any person. If a member no
 206 longer meets the transit authority's criteria for appointment, a
 207 vacancy exists on the board, which must be filled as provided in
 208 this subparagraph within 90 days.

209 ~~d. A mayor who has served three consecutive terms on the~~
 210 ~~board must designate an elected official from that largest~~
 211 ~~municipality's city council or city commission to serve on the~~
 212 ~~board for at least one term.~~

213 4.a. One membership on the board shall rotate every 2 years
 214 between the mayor, or his or her designee, of the largest
 215 municipality within Manatee County and the mayor, or his or her
 216 designee, of the largest municipality within Sarasota County.
 217 The mayor, or his or her designee, from the largest municipality
 218 within Manatee County shall serve the first 2-year term. The
 219 largest municipality is that municipality with the largest
 220 population as determined by the most recent United States
 221 Decennial Census.

222 b. Should a mayor choose not to serve, his or her designee
 223 must be an elected official selected by the mayor from that
 224 municipality's city council or city commission.

225 4.5. The Governor shall appoint to the board four members
 226 from the regional four business community representatives, each
 227 of whom must reside in one of the ~~seven~~ counties governed by the
 228 authority ~~and, none of whom may not be an elected official~~
 229 ~~officials,~~ and at least one but not more than two of whom shall
 230 represent counties within the federally-designated Tampa Bay
 231 Transportation Management Area. Of the members initially
 232 appointed under this subparagraph, one shall serve a 1-year

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233 term, two shall serve 2-year terms, and one shall serve a term
 234 as the initial chair as provided in subsection (5). Thereafter,
 235 a member ~~Members~~ appointed under this subparagraph by the
 236 ~~Governor~~ shall serve a 2-year term ~~3-year terms~~ with not more
 237 than ~~three~~ two consecutive terms being served by any person.

238 ~~(e)~~ Appointments may be staggered to avoid mass turnover at
 239 the end of any 2-year or 4-year period. A vacancy during a term
 240 shall be filled ~~by the respective appointing authority~~ within 90
 241 days in the same manner as the original appointment ~~and only~~ for
 242 the remainder of the unexpired term.

243 (3) The members of the board shall serve without
 244 compensation but shall be entitled to receive from the authority
 245 reimbursement for travel expenses and per diem actually incurred
 246 in connection with the business of the authority as provided in
 247 s. 112.061.

248 (4) Members of the board shall comply with the applicable
 249 financial disclosure requirements of ss. 112.3145, 112.3148, and
 250 112.3149.

251 (5) The Governor shall appoint one of the four members
 252 appointed under subparagraph (2)(b)4. as the initial chair ~~from~~
 253 ~~among the full membership~~ of the board immediately upon their
 254 appointment. ~~In no case may these appointments be made any later~~
 255 ~~than 45 days following the creation of the authority.~~ The
 256 initial chair shall serve ~~will hold this position for~~ a minimum
 257 term of 2 years. The board shall elect a vice chair and
 258 secretary-treasurer from among its members who shall serve a
 259 minimum term of 1 year and shall establish the duties and powers
 260 of those positions during its inaugural meeting. During its
 261 inaugural meeting, the board shall ~~will~~ also establish its rules

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262 of conduct and meeting procedures.

263 (6) At the end of the initial chair's term, the board shall
 264 elect a chair from among the ~~its~~ members. The chair shall hold
 265 office at the will of the board. In that election, the board
 266 shall also elect a vice chair and secretary-treasurer.

267 (7) The first meeting of the authority shall be held no
 268 later than 60 days after the creation of the authority.

269 (8) ~~Seven~~ Eight members of the board shall constitute a
 270 quorum, and the vote of ~~seven~~ eight members is necessary for any
 271 action to be taken by the authority. The authority may meet upon
 272 the constitution of a quorum. A vacancy does not impair the
 273 right of a quorum of the board to exercise all rights and the
 274 ability to perform all duties of the authority.

275 (9) Beginning July 1, 2017, the board must evaluate the
 276 abolishment, continuance, modification, or establishment of ~~may~~
 277 ~~establish committees for~~ the following committees areas:

278 (a) Planning committee.

279 (b) Policy committee.

280 (c) Finance committee.

281 (d) Citizens advisory committee.

282 (e) Tampa Bay Area Regional Transit Authority Metropolitan
 283 Planning Organization Chairs Coordinating Committee.

284 (f) Transit management committee.

285 (g) Technical advisory committee.

286
 287 The board must submit its recommendations for abolishment,
 288 continuance, modification, or establishment of the committees to
 289 the President of the Senate and the Speaker of the House of
 290 Representatives before the beginning of the 2018 Regular

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291 Session.

292 (10) The authority may employ an executive director, an
 293 executive secretary, its own legal counsel and legal staff,
 294 technical experts, engineers, and such employees, permanent or
 295 temporary, as it may require. The authority shall determine the
 296 qualifications and fix the compensation of such persons, firms,
 297 or corporations and may employ a fiscal agent or agents;
 298 however, the authority shall solicit sealed proposals from at
 299 least three persons, firms, or corporations for the performance
 300 of any services as fiscal agents. The authority may, except for
 301 duties specified in chapter 120, delegate its power to one or
 302 more of its agents or employees to carry out the purposes of
 303 this part, subject always to the supervision and control of the
 304 authority.

305 ~~(11)(a) The authority shall establish a Transit Management~~
 306 ~~Committee comprised of the executive directors or general~~
 307 ~~managers, or their designees, of each of the existing transit~~
 308 ~~providers and bay area commuter services.~~

309 ~~(b) The authority shall establish a Citizens Advisory~~
 310 ~~Committee comprised of appointed citizen committee members from~~
 311 ~~each county and transit provider in the region, not to exceed 16~~
 312 ~~members.~~

313 ~~(c) The authority may establish technical advisory~~
 314 ~~committees to provide guidance and advice on regional~~
 315 ~~transportation issues. The authority shall establish the size,~~
 316 ~~composition, and focus of any technical advisory committee~~
 317 ~~created.~~

318 ~~(11)(d)~~ Persons appointed to a committee shall serve
 319 without compensation but may be entitled to per diem or travel

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320 expenses as provided in s. 112.061.

321 Section 5. Subsection (1), paragraph (a) of subsection (2),
 322 subsection (3), subsection (4), and paragraph (g) of subsection
 323 (5) of section 343.922, Florida Statutes, are amended, and
 324 subsections (9) and (10) are added to that section, to read:

325 343.922 Powers and duties.—

326 (1) The express purposes of the authority are to:

327 (a) Plan, implement, and operate ~~improve~~ mobility
 328 improvements and expansions of ~~expand~~ multimodal transportation
 329 options for passengers and freight throughout the designated
 330 ~~seven-county Tampa Bay~~ region.

331 (b) Produce a regional transit development plan,
 332 integrating the transit development plans of participant
 333 counties, to include a prioritization of regionally significant
 334 transit projects and facilities.

335 1. The authority shall provide to the President of the
 336 Senate and the Speaker of the House of Representatives, on or
 337 before the beginning of the 2018 Regular Session, a plan to
 338 produce the regional transit development plan.

339 2. The regional transit development plan prepared by the
 340 authority must adhere to guidance and regulations set forth by
 341 the department or any successor agency, including, but not
 342 limited to:

343 a. Public involvement;

344 b. Collection and analysis of socioeconomic data;

345 c. Performance evaluation of existing services;

346 d. Service design and ridership forecasting; and

347 e. Financial planning.

348 (c) Serve, with the consent of the Governor or his or her

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349 designee, as the recipient of federal funds supporting an
 350 intercounty project or a regionally significant transit project
 351 that exists in a single county within the designated region.

352 (2) (a) The authority has the right to plan, develop,
 353 finance, construct, own, purchase, operate, maintain, relocate,
 354 equip, repair, and manage those public transportation projects,
 355 such as express bus services; bus rapid transit services; light
 356 rail, commuter rail, heavy rail, or other transit services;
 357 ferry services; transit stations; park-and-ride lots; transit-
 358 oriented development nodes; or feeder roads, reliever roads,
 359 connector roads, bypasses, or appurtenant facilities, that are
 360 intended to address critical transportation needs or concerns in
 361 the ~~Tampa Bay~~ region as identified by the authority ~~by July 1,~~
 362 ~~2009~~. These projects may also include all necessary approaches,
 363 roads, bridges, and avenues of access that are desirable and
 364 proper with the concurrence of the department, as applicable, if
 365 the project is to be part of the State Highway System.

366 (3) (a) ~~No later than July 1, 2009,~~ The authority shall
 367 develop and adopt a regional transit development transportation
 368 ~~master~~ plan that provides a vision for a regionally integrated
 369 ~~multimodal~~ transportation system. The goals and objectives of
 370 the ~~master~~ plan are to identify areas of the ~~Tampa Bay~~ region
 371 where ~~multimodal~~ mobility, traffic safety, freight mobility, and
 372 efficient emergency evacuation alternatives need to be improved;
 373 identify areas of the region where multimodal transportation
 374 systems would be most beneficial to enhance mobility and
 375 economic development; develop methods of building partnerships
 376 with local governments, existing transit providers, expressway
 377 authorities, seaports, airports, and other local, state, and

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378 federal entities; develop methods of building partnerships with
 379 CSX Corporation and CSX Transportation, Inc., to craft mutually
 380 beneficial solutions to achieve the authority's objectives, and
 381 with other private sector business community entities that may
 382 further the authority's mission, and engage the public in
 383 support of regional multimodal transportation improvements. The
 384 ~~master~~ plan shall identify and may prioritize projects that will
 385 accomplish these goals and objectives, including, without
 386 limitation, the creation of express bus and bus rapid transit
 387 services, light rail, commuter rail, and heavy rail transit
 388 services, ferry services, freight services, and any other
 389 multimodal transportation system projects that address critical
 390 transportation needs or concerns, pursuant to subsection (2);
 391 and identify the costs of the proposed projects and revenue
 392 sources that could be used to pay those costs. In developing the
 393 ~~master~~ plan, the authority shall review and coordinate with the
 394 future land use, capital improvements, and traffic circulation
 395 elements of its member local governments' comprehensive plans
 396 and the plans, programs, and schedules of other units of
 397 government having transit or transportation authority within
 398 whose jurisdictions the projects or improvements will be located
 399 to define and resolve potential inconsistencies between such
 400 plans and the authority's developing ~~master~~ plan. ~~By July 1,~~
 401 ~~2008,~~ the authority, ~~working with its member local governments,~~
 402 ~~shall adopt a mandatory conflict resolution process that~~
 403 ~~addresses consistency conflicts between the authority's regional~~
 404 ~~transportation master plan and local government comprehensive~~
 405 ~~plans.~~

406 (b) The authority shall consult with the department to

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407 further the goals and objectives of the Strategic Regional
408 Transit Needs Assessment completed by the department.

409 (c) Before the adoption of the regional transit development
410 ~~master~~ plan, the authority shall hold at least one public
411 meeting in each of the ~~seven~~ counties within the designated
412 region. At least one public hearing must be held before the
413 authority's board.

414 (d) After its adoption, the regional transit development
415 ~~master~~ plan shall be updated every 5 years before July 1.

416 (e) The authority shall present the original regional
417 transit development ~~master~~ plan and updates to the governing
418 bodies of the counties within the designated ~~seven county~~
419 region, to the TBARTA Metropolitan Planning Organization Chairs
420 Coordinating Committee, and to the legislative delegation
421 members representing those counties within 90 days after
422 adoption.

423 (f) The authority shall coordinate plans and projects with
424 the TBARTA Metropolitan Planning Organization Chairs
425 Coordinating Committee, to the extent practicable, and
426 participate in the regional M.P.O. planning process to ensure
427 regional comprehension of the authority's mission, goals, and
428 objectives.

429 (g) The authority shall provide administrative support and
430 direction to the TBARTA Metropolitan Planning Organization
431 Chairs Coordinating Committee as provided in s. 339.175(6)(i).

432 (4) The authority may undertake projects or other
433 improvements in the regional transit development ~~master~~ plan in
434 phases as particular projects or segments become feasible, as
435 determined by the authority. The authority shall coordinate

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436 project planning, development, and implementation with the
437 applicable local governments. The authority's projects that are
438 transportation oriented must be consistent to the maximum extent
439 feasible with the adopted local government comprehensive plans
440 at the time such projects are funded for construction. Authority
441 projects that are not transportation oriented and meet the
442 definition of development pursuant to s. 380.04 must be
443 consistent with the local comprehensive plans. In carrying out
444 its purposes and powers, the authority may request funding and
445 technical assistance from the department and appropriate federal
446 and local agencies, including, but not limited to, state
447 infrastructure bank loans.

448 (5) The authority is granted and may exercise all powers
449 necessary, appurtenant, convenient, or incidental to the
450 carrying out of the aforesaid purposes, including, but not
451 limited to, the following rights and powers:

452 (g) To borrow money and to make and issue negotiable notes,
453 bonds, refunding bonds, and other evidences of indebtedness or
454 obligations, either in temporary or definitive form, hereinafter
455 in this chapter sometimes called "revenue bonds" of the
456 authority, for the purpose of financing all or part of the
457 mobility improvements within the ~~Tampa Bay~~ region, as well as
458 the appurtenant facilities, including all approaches, streets,
459 roads, bridges, and avenues of access authorized by this part,
460 the bonds to mature not exceeding 40 years after the date of the
461 issuance thereof, and to secure the payment of such bonds or any
462 part thereof by a pledge of any or all of its revenues, rates,
463 fees, rentals, or other charges.

464 (9) (a) An action by the authority regarding the funding of

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465 commuter rail, heavy rail transit, or light rail transit, as
 466 defined in s. 343.91, or any combination thereof, requires
 467 approval by a majority vote of each M.P.O. serving the county or
 468 counties where such rail transit investment will be made, and
 469 the approval of the Legislature by an act of general law.

470 (b) The authority may not engage in any advocacy regarding
 471 a referendum, ordinance, legislation, or proposal under
 472 consideration by any governmental entity or the Legislature
 473 which seeks to approve the funding of commuter rail, heavy rail
 474 transit, or light rail transit, as defined in s. 343.91, or any
 475 combination thereof.

476 (10) The authority must conduct a feasibility study,
 477 through an independent third party, for any project of commuter
 478 rail, heavy rail transit, or light rail transit, as defined in
 479 s. 343.91, or any combination thereof, before proceeding with
 480 the development of the project and before any related contract
 481 is issued. The feasibility study shall be submitted, upon
 482 completion, to the Governor, the President of the Senate, the
 483 Speaker of the House of Representatives, and the board of county
 484 commissioners of Hernando, Hillsborough, Manatee, Pasco, and
 485 Pinellas Counties.

486 Section 6. Subsection (1) of section 343.94, Florida
 487 Statutes, is amended to read:

488 343.94 Bond financing authority.-

489 (1) Pursuant to s. 11(f), Art. VII of the State
 490 Constitution, the Legislature approves bond financing by the
 491 Tampa Bay Area Regional ~~Transit Transportation~~ Authority for
 492 construction of or improvements to commuter rail systems,
 493 transit systems, ferry systems, highways, bridges, toll

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494 collection facilities, interchanges to the system, and any other
 495 transportation facility appurtenant, necessary, or incidental to
 496 the system. Subject to terms and conditions of applicable
 497 revenue bond resolutions and covenants, such costs may be
 498 financed in whole or in part by revenue bonds issued pursuant to
 499 paragraph (2) (a) or paragraph (2) (b), whether currently issued
 500 or issued in the future or by a combination of such bonds.

501 Section 7. Section 343.947, Florida Statutes, is amended to
 502 read:

503 343.947 Department may be appointed agent of authority for
 504 construction.-The department may be appointed by the authority
 505 as its agent for the purpose of constructing and completing
 506 transportation projects, and improvements and extensions
 507 thereto, in the authority's regional transit development master
 508 plan. In such event, the authority shall provide the department
 509 with complete copies of all documents, agreements, resolutions,
 510 contracts, and instruments relating thereto; shall request the
 511 department to do such construction work, including the planning,
 512 surveying, and actual construction of the completion,
 513 extensions, and improvements to the system; and shall transfer
 514 to the credit of an account of the department in the treasury of
 515 the state the necessary funds therefor. The department shall
 516 proceed with such construction and use the funds for such
 517 purpose in the same manner that it is now authorized to use the
 518 funds otherwise provided by law for its use in construction of
 519 commuter rail systems, transit systems, ferry systems, roads,
 520 bridges, and related transportation facilities.

521 Section 8. Subsections (1) and (3) of section 343.95,
 522 Florida Statutes, are amended to read:

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523 343.95 Acquisition of lands and property.-

524 (1) For the purposes of this part, the authority may
 525 acquire private or public property and property rights,
 526 including rights of access, air, view, and light, by gift,
 527 devise, purchase, or condemnation by eminent domain proceedings,
 528 as the authority may deem necessary for any purpose of this
 529 part, including, but not limited to, any lands reasonably
 530 necessary for securing applicable permits, areas necessary for
 531 management of access, borrow pits, drainage ditches, water
 532 retention areas, rest areas, replacement access for landowners
 533 whose access is impaired due to the construction of a facility,
 534 and replacement rights-of-way for relocated rail and utility
 535 facilities; for existing, proposed, or anticipated
 536 transportation facilities within the ~~seven-county Tampa Bay~~
 537 region designated ~~identified~~ by the authority; or for the
 538 purposes of screening, relocation, removal, or disposal of
 539 junkyards and scrap metal processing facilities. The authority
 540 may condemn any material and property necessary for such
 541 purposes.

542 (3) When the authority acquires property for a
 543 transportation facility within the designated ~~seven-county Tampa~~
 544 ~~Bay~~ region, the authority is not subject to any liability
 545 imposed by chapter 376 or chapter 403 for preexisting soil or
 546 groundwater contamination due solely to its ownership. This
 547 subsection does not affect the rights or liabilities of any past
 548 or future owners of the acquired property, nor does it affect
 549 the liability of any governmental entity for the results of its
 550 actions which create or exacerbate a pollution source. The
 551 authority and the Department of Environmental Protection may

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552 enter into interagency agreements for the performance, funding,
 553 and reimbursement of the investigative and remedial acts
 554 necessary for property acquired by the authority.

555 Section 9. Subsections (1) and (3) of section 343.975,
 556 Florida Statutes, are amended to read:

557 343.975 Complete and additional statutory authority.-

558 (1) The powers conferred by this part are supplemental to
 559 the existing powers of the board and the department. This part
 560 does not repeal any of the provisions of any other law, general,
 561 special, or local, but supplements such other laws in the
 562 exercise of the powers provided in this part and provides a
 563 complete method for the exercise of the powers granted in this
 564 part. The projects planned and constructed by the Tampa Bay Area
 565 Regional Transit ~~Transportation~~ Authority shall comply with all
 566 applicable federal, state, and local laws. The extension and
 567 improvement of the system, and the issuance of bonds hereunder
 568 to finance all or part of the cost thereof, may be accomplished
 569 upon compliance with the provisions of this part without regard
 570 to or necessity for compliance with the provisions, limitations,
 571 or restrictions contained in any other general, special, or
 572 local law, including, but not limited to, s. 215.821. An
 573 approval of any bonds issued under this part by the qualified
 574 electors or qualified electors who are freeholders in the state
 575 or in any other political subdivision of the state is not
 576 required for the issuance of such bonds pursuant to this part.

577 (3) This part does not preclude the department from
 578 acquiring, holding, constructing, improving, maintaining,
 579 operating, or owning tolled or nontolled facilities funded and
 580 constructed from nonauthority sources that are part of the State

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581 Highway System within the geographical boundaries of the Tampa
582 Bay Area Regional Transit ~~Transportation~~ Authority.

583 Section 10. Section 343.976, Florida Statutes, is amended
584 to read:

585 343.976 Effect on local government action.—This act does
586 not prohibit any local government that is a member of the Tampa
587 Bay Area Regional Transit ~~Transportation~~ Authority from
588 participating in or creating any other transit authority,
589 regional transportation authority, or expressway authority.

590 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

Phone _____

Street

TAMPA

City

FL

State

33607

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.

The Florida Senate
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 Information⁴

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.

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.

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.

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 *interstate* and *intrastate*, 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

- Intrastate voters: 717,000 voters who have moved within Florida but haven't updated their voter records;
- Interstate voters: 233,000 interstate 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

1 A bill to be entitled
 2 An act relating to voter registration list
 3 maintenance; amending s. 98.075, F.S.; authorizing the
 4 Department of State to enter into certain interstate
 5 agreements or become a member of a nongovernmental
 6 entity to verify voter registration information;
 7 requiring the department to share certain information
 8 with supervisors of elections; establishing
 9 requirements for participation in such agreements or
 10 memberships; establishing reporting requirements;
 11 providing an effective date.

12

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

14

15 Section 1. Subsection (2) of section 98.075, Florida
 16 Statutes, is amended to read:

17 98.075 Registration records maintenance activities;
 18 ineligibility determinations.—

19 (2) DUPLICATE REGISTRATION.—

20 (a) The department shall identify those voters who are
 21 registered more than once within the state or those applicants
 22 whose registration applications within the state would result in
 23 duplicate registrations. The most recent application shall be
 24 deemed an update to the voter registration record.

25 (b)1. The department may enter into interstate agreements
 26 or become a member of a nongovernmental entity whose membership
 27 is composed solely of state government election officials if the
 28 sole purpose of the agreement or membership is to share and
 29 exchange information in order to verify voter registration

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

582-03402-17

20171070c1

30 information. If the department intends to become a member of
 31 such a nongovernmental entity, the agreement to join the entity
 32 must require that the Secretary of State, or his or her
 33 designee, serve as a full member with voting rights on the
 34 nongovernmental entity's board of directors. The department
 35 shall provide information it receives as a result of the
 36 agreements or memberships to the supervisors to conduct
 37 registration list maintenance activities.

38 2. If the department enters into an interstate agreement or
 39 becomes a member of a nongovernmental entity pursuant to
 40 subparagraph 1., each state that is a participant in the
 41 agreement or a member of the nongovernmental entity must agree
 42 to maintain the confidentiality of personal information as
 43 required by the laws of the state supplying the information to
 44 the entity or participating states. The bylaws of a
 45 nongovernmental entity must also contain a provision requiring
 46 member states and the entity to maintain the confidentiality of
 47 personal information as required by the laws of the state
 48 supplying the information to the entity.

49 3. The department may only participate in an interstate
 50 agreement or become a member of a nongovernmental entity as
 51 provided in subparagraph 1. if the agreement or entity is
 52 controlled and operated by the participating states. The
 53 interstate agreement or entity may not be operated or controlled
 54 by the Federal Government or any other entity acting on behalf
 55 of the Federal Government. The department must be able to
 56 withdraw at any time from any interstate agreement or membership
 57 entered into.

58 4. If the department enters into an interstate agreement or

Page 2 of 3

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

582-03402-17

20171070c1

59 becomes a member of a nongovernmental entity as provided in
60 subparagraph 1., the department must submit a report to the
61 Governor, the President of the Senate, and the Speaker of the
62 House of Representatives by December 1 of each year. The report
63 must describe the agreement or membership and provide
64 information on the total number of voters removed from the voter
65 registration system as a result of the agreement or membership
66 and the reasons for their removal.

67 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.

A handwritten signature in blue ink that reads "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25/2014

Meeting Date

1070

Bill Number (if applicable)

Topic Election Registration

Amendment Barcode (if applicable)

Name MARILYN WILLS

Job Title _____

Address 2326 KILKENNY DR WEST

Phone 850 893-4104

Street

TALLAHASSEE FL 32309

City

State

Zip

Email marilyn.wills@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.

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 RON LABASKY

Job Title _____

Address 225 S. ADAMS ST
Street

Phone 850-222-7708

TALL FL 32902
City State Zip

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.

The Florida Senate
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

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	Budget¹⁰	Enrollment¹¹ (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/does/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

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	<i>Escambia, Okaloosa, Santa Rosa, Walton</i>	2	0	A	<i>Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, Washington</i>	3	4
2	<i>Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, Washington</i>	2	0	B	<i>Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, Volusia</i>	3	6
3	<i>Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee, Union</i>	3	5	C	<i>Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, Polk</i>	5	10
4	<i>Baker, Clay, Duval, Flagler, Nassau, St. Johns, Volusia</i>	3	5	D	<i>Brevard, Orange, Osceola, Seminole</i>	3	6
5	<i>Pasco, Pinellas</i>	2	4	E	<i>Charlotte, Collier, Desoto, Glades, Hendry, Lee, Sarasota</i>	3	4
6	<i>Hardee, Highlands, Hillsborough, Manatee, Polk</i>	4	7	F	<i>Indian River, Martin, Okeechobee, Palm Beach, St. Lucie</i>	3	5
7	<i>Brevard, Orange, Osceola, Seminole</i>	3	6	G	<i>Broward</i>	3	6
8	<i>Charlotte, Collier, Desoto, Glades, Hendry, Lee, Sarasota</i>	2	4	H	<i>Miami-Dade and Monroe</i>	5	10
9	<i>Indian River, Martin, Okeechobee, Palm Beach, St. Lucie</i>	2	4				
10	<i>Broward</i>	2	4				
11	<i>Miami-Dade, Monroe</i>	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.

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



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

11 amendment application. The agency shall hold one public meeting
12 in each of the regions described in s. 409.966(2), and the ~~time~~
13 period for public comment for each region shall end no sooner
14 than 30 days after the completion of the public meeting in that
15 region. The agency shall obtain the approval of the Legislature
16 before submitting or implementing ~~submit~~ any state plan
17 amendments, new waiver requests, or requests for extensions or
18 expansions for existing waivers, ~~needed to implement the managed~~
19 ~~care program by August 1, 2011.~~

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:
23 Delete lines 6 - 17
24 and insert:
25 409.964, F.S.; requiring the Agency for Health Care
26 Administration to provide public notice and an
27 opportunity for public comment before seeking new
28 waivers or amendments to existing waivers; requiring
29 the agency to obtain legislative approval before
30 submitting or implementing state plan amendments or
31 requesting certain waivers or extensions or expansions
32 for existing waivers; deleting obsolete language;
33 amending s. 409.966, F.S.; requiring that a required
34 databook consist of data that is consistent with
35 actuarial rate-setting practices and standards;
36 requiring that the source of such data include the 24
37 most recent months of validated data from the Medicaid
38 Encounter Data System; deleting provisions relating to
39 a report and report requirements; revising the



565904

40 designation and county makeup of regions of the state
41 for purposes of procuring health plans that may
42 participate in the Medicaid program; adding a factor
43 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

11 ~~managed care limit, or eliminate mandatory or optional services;~~
12 ~~impose premiums or additional copayments; or institute block~~
13 ~~grants or per capita caps in the Medicaid program by August 1,~~
14 ~~2011.~~

15

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

17 And the title is amended as follows:

18 Delete line 6

19 and insert:

20 409.964, F.S.; requiring the Agency for Health Care
21 Administration to obtain legislative approval before
22 submitting or implementing state plan amendments or
23 waivers or requests for extensions or expansions of
24 existing waivers in certain circumstances; deleting an
25 obsolete provision;



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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 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



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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



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57 continuum of care. The agency shall also require providers to
58 minimize the exposure of recipients to the need for acute
59 inpatient, custodial, and other institutional care and the
60 inappropriate or unnecessary use of high-cost services. The
61 agency shall contract with a vendor to monitor and evaluate the
62 clinical practice patterns of providers in order to identify
63 trends that are outside the normal practice patterns of a
64 provider's professional peers or the national guidelines of a
65 provider's professional association. The vendor must be able to
66 provide information and counseling to a provider whose practice
67 patterns are outside the norms, in consultation with the agency,
68 to improve patient care and reduce inappropriate utilization.
69 The agency may mandate prior authorization, drug therapy
70 management, or disease management participation for certain
71 populations of Medicaid beneficiaries, certain drug classes, or
72 particular drugs to prevent fraud, abuse, overuse, and possible
73 dangerous drug interactions. The Pharmaceutical and Therapeutics
74 Committee shall make recommendations to the agency on drugs for
75 which prior authorization is required. The agency shall inform
76 the Pharmaceutical and Therapeutics Committee of its decisions
77 regarding drugs subject to prior authorization. The agency is
78 authorized to limit the entities it contracts with or enrolls as
79 Medicaid providers by developing a provider network through
80 provider credentialing. The agency may competitively bid single-
81 source-provider contracts if procurement of goods or services
82 results in demonstrated cost savings to the state without
83 limiting access to care. The agency may limit its network based
84 on the assessment of beneficiary access to care, provider
85 availability, provider quality standards, time and distance



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86 standards for access to care, the cultural competence of the
87 provider network, demographic characteristics of Medicaid
88 beneficiaries, practice and provider-to-beneficiary standards,
89 appointment wait times, beneficiary use of services, provider
90 turnover, provider profiling, provider licensure history,
91 previous program integrity investigations and findings, peer
92 review, provider Medicaid policy and billing compliance records,
93 clinical and medical record audits, and other factors. Providers
94 are not entitled to enrollment in the Medicaid provider network.
95 The agency shall determine instances in which allowing Medicaid
96 beneficiaries to purchase durable medical equipment and other
97 goods is less expensive to the Medicaid program than long-term
98 rental of the equipment or goods. The agency may establish rules
99 to facilitate purchases in lieu of long-term rentals in order to
100 protect against fraud and abuse in the Medicaid program as
101 defined in s. 409.913. The agency may seek federal waivers
102 necessary to administer these policies.

103 (2) The agency may contract with a provider service
104 network, ~~which may be reimbursed on a fee-for-service or prepaid~~
105 ~~basis.~~ Prepaid provider service networks shall receive per-
106 member, per-month payments. ~~A provider service network that does~~
107 ~~not choose to be a prepaid plan shall receive fee-for-service~~
108 ~~rates with a shared savings settlement. The fee-for-service~~
109 ~~option shall be available to a provider service network only for~~
110 ~~the first 2 years of the plan's operation or until the contract~~
111 ~~year beginning September 1, 2014, whichever is later. The agency~~
112 ~~shall annually conduct cost reconciliations to determine the~~
113 ~~amount of cost savings achieved by fee-for-service provider~~
114 ~~service networks for the dates of service in the period being~~



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115 ~~reconciled. Only payments for covered services for dates of~~
116 ~~service within the reconciliation period and paid within 6~~
117 ~~months after the last date of service in the reconciliation~~
118 ~~period shall be included. The agency shall perform the necessary~~
119 ~~adjustments for the inclusion of claims incurred but not~~
120 ~~reported within the reconciliation for claims that could be~~
121 ~~received and paid by the agency after the 6-month claims~~
122 ~~processing time lag. The agency shall provide the results of the~~
123 ~~reconciliations to the fee-for-service provider service networks~~
124 ~~within 45 days after the end of the reconciliation period. The~~
125 ~~fee for service provider service networks shall review and~~
126 ~~provide written comments or a letter of concurrence to the~~
127 ~~agency within 45 days after receipt of the reconciliation~~
128 ~~results. This reconciliation shall be considered final.~~

129 (a) A provider service network ~~that which~~ is reimbursed by
130 the agency on a prepaid basis shall be exempt from parts I and
131 III of chapter 641, but must comply with the solvency
132 requirements in s. 641.2261(2) and meet appropriate financial
133 reserve, quality assurance, and patient rights requirements as
134 established by the agency.

135 (b) A provider service network is a network established or
136 organized and operated by a health care provider, or group of
137 affiliated health care providers, which provides a substantial
138 proportion of the health care items and services under a
139 contract directly through the provider or affiliated group of
140 providers and may make arrangements with physicians or other
141 health care professionals, health care institutions, or any
142 combination of such individuals or institutions to assume all or
143 part of the financial risk on a prospective basis for the



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144 provision of basic health services by the physicians, by other
145 health professionals, or through the institutions. The health
146 care providers must have a controlling interest in the governing
147 body of the provider service network organization.

148 Section 2. Section 409.964, Florida Statutes, is amended to
149 read:

150 409.964 Managed care program; state plan; waivers.—The
151 Medicaid program is established as a statewide, integrated
152 managed care program for all covered services, including long-
153 term care services. The agency shall apply for and implement
154 state plan amendments or waivers of applicable federal laws and
155 regulations necessary to implement the program. Before seeking a
156 waiver, the agency shall provide public notice and the
157 opportunity for public comment and include public feedback in
158 the waiver application. The agency shall hold one public meeting
159 in each of the regions described in s. 409.966(2), and the time
160 period for public comment for each region shall end no sooner
161 than 30 days after the completion of the public meeting in that
162 region. ~~The agency shall submit any state plan amendments, new~~
163 ~~waiver requests, or requests for extensions or expansions for~~
164 ~~existing waivers, needed to implement the managed care program~~
165 ~~by August 1, 2011.~~

166 Section 3. Subsection (2) and paragraphs (a), (d), and (e)
167 of subsection (3) of section 409.966, Florida Statutes, are
168 amended to read:

169 409.966 Eligible plans; selection.—

170 (2) ELIGIBLE PLAN SELECTION.—The agency shall select a
171 limited number of eligible plans to participate in the Medicaid
172 program using invitations to negotiate in accordance with s.



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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,



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~~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



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231 Assurance, the Joint Commission, or another nationally
232 recognized accrediting body.

233 2. Experience serving similar populations, including the
234 organization's record in achieving specific quality standards
235 with similar populations.

236 3. Availability and accessibility of primary care and
237 specialty physicians in the provider network.

238 4. Establishment of community partnerships with providers
239 that create opportunities for reinvestment in community-based
240 services.

241 5. Organization commitment to quality improvement and
242 documentation of achievements in specific quality improvement
243 projects, including active involvement by organization
244 leadership.

245 6. Provision of additional benefits, particularly dental
246 care and disease management, and other initiatives that improve
247 health outcomes.

248 7. Evidence that an eligible plan has written agreements or
249 signed contracts or has made substantial progress in
250 establishing relationships with providers before the plan
251 submitting a response.

252 8. Comments submitted in writing by any enrolled Medicaid
253 provider relating to a specifically identified plan
254 participating in the procurement in the same region as the
255 submitting provider.

256 9. Documentation of policies and procedures for preventing
257 fraud and abuse.

258 10. The business relationship an eligible plan has with any
259 other eligible plan that responds to the invitation to



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260 negotiate.

261 11. Whether a plan is proposing to establish a
262 comprehensive long-term care plan.

263 (d) For the first year of the first contract term, the
264 agency shall negotiate capitation rates or fee for service
265 payments with each plan in order to guarantee aggregate savings
266 of at least 5 percent.

267 ~~1.~~ For prepaid plans, determination of the amount of
268 savings shall be calculated by comparison to the Medicaid rates
269 that the agency paid managed care plans for similar populations
270 in the same areas in the prior year. In regions containing no
271 prepaid plans in the prior year, determination of the amount of
272 savings shall be calculated by comparison to the Medicaid rates
273 established and certified for those regions in the prior year.

274 ~~2. For provider service networks operating on a fee-for-~~
275 ~~service basis, determination of the amount of savings shall be~~
276 ~~calculated by comparison to the Medicaid rates that the agency~~
277 ~~paid on a fee for service basis for the same services in the~~
278 ~~prior year.~~

279 (e) To ensure managed care plan participation in Regions A
280 and E ~~Regions 1 and 2~~, the agency shall award an additional
281 contract to each plan with a contract award in Region A ~~Region 1~~
282 or Region E ~~Region 2~~. Such contract shall be in any other region
283 in which the plan submitted a responsive bid and negotiates a
284 rate acceptable to the agency. If a plan that is awarded an
285 additional contract pursuant to this paragraph is subject to
286 penalties pursuant to s. 409.967(2)(i) for activities in Region
287 A ~~Region 1~~ or Region E ~~Region 2~~, the additional contract is
288 automatically terminated 180 days after the imposition of the



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289 penalties. The plan must reimburse the agency for the cost of
290 enrollment changes and other transition activities.

291 Section 4. Subsection (2) of section 409.968, Florida
292 Statutes, is amended to read:

293 409.968 Managed care plan payments.—

294 (2) Provider service networks shall ~~may~~ be prepaid plans
295 and receive per-member, per-month payments negotiated pursuant
296 to the procurement process described in s. 409.966. ~~Provider~~
297 ~~service networks that choose not to be prepaid plans shall~~
298 ~~receive fee-for-service rates with a shared savings settlement.~~
299 ~~The fee for service option shall be available to a provider~~
300 ~~service network only for the first 2 years of its operation. The~~
301 ~~agency shall annually conduct cost reconciliations to determine~~
302 ~~the amount of cost savings achieved by fee-for-service provider~~
303 ~~service networks for the dates of service within the period~~
304 ~~being reconciled. Only payments for covered services for dates~~
305 ~~of service within the reconciliation period and paid within 6~~
306 ~~months after the last date of service in the reconciliation~~
307 ~~period must be included. The agency shall perform the necessary~~
308 ~~adjustments for the inclusion of claims incurred but not~~
309 ~~reported within the reconciliation period for claims that could~~
310 ~~be received and paid by the agency after the 6-month claims~~
311 ~~processing time lag. The agency shall provide the results of the~~
312 ~~reconciliations to the fee-for-service provider service networks~~
313 ~~within 45 days after the end of the reconciliation period. The~~
314 ~~fee for service provider service networks shall review and~~
315 ~~provide written comments or a letter of concurrence to the~~
316 ~~agency within 45 days after receipt of the reconciliation~~
317 ~~results. This reconciliation is considered final.~~



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318 Section 5. Section 409.971, Florida Statutes, is amended to
319 read:

320 409.971 Managed medical assistance program.—The agency
321 shall make payments for primary and acute medical assistance and
322 related services using a managed care model. ~~By January 1, 2013,~~
323 ~~the agency shall begin implementation of the statewide managed~~
324 ~~medical assistance program, with full implementation in all~~
325 ~~regions by October 1, 2014.~~

326 Section 6. Subsections (1) and (2) of section 409.974,
327 Florida Statutes, are amended to read:

328 409.974 Eligible plans.—

329 (1) ELIGIBLE PLAN SELECTION.—The agency shall select
330 eligible plans for the managed medical assistance program
331 through the procurement process described in s. 409.966. ~~The~~
332 ~~agency shall notice invitations to negotiate no later than~~
333 ~~January 1, 2013.~~

334 (a) The agency shall procure at least three ~~two~~ plans and
335 up to four plans for Region A ~~Region 1~~. At least one plan shall
336 be a provider service network if any provider service networks
337 submit a responsive bid.

338 (b) The agency shall procure at least three plans and up to
339 six ~~two~~ plans for Region B ~~Region 2~~. At least one plan shall be
340 a provider service network if any provider service networks
341 submit a responsive bid.

342 (c) The agency shall procure at least five ~~three~~ plans and
343 up to 10 ~~five~~ plans for Region C ~~Region 3~~. At least one plan
344 must be a provider service network if any provider service
345 networks submit a responsive bid.

346 (d) The agency shall procure at least three plans and up to



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347 ~~six five~~ plans for Region D ~~Region 4~~. At least one plan must be
348 a provider service network if any provider service networks
349 submit a responsive bid.

350 (e) The agency shall procure at least ~~three two~~ plans and
351 up to four plans for Region E ~~Region 5~~. At least one plan must
352 be a provider service network if any provider service networks
353 submit a responsive bid.

354 (f) The agency shall procure at least ~~three four~~ plans and
355 up to ~~five seven~~ plans for Region F ~~Region 6~~. At least one plan
356 must be a provider service network if any provider service
357 networks submit a responsive bid.

358 (g) The agency shall procure at least three plans and up to
359 ~~five six~~ plans for Region G ~~Region 7~~. At least one plan must be
360 a provider service network if any provider service networks
361 submit a responsive bid.

362 (h) The agency shall procure at least ~~five two~~ plans and up
363 to ~~10 four~~ plans for Region H ~~Region 8~~. At least one plan must
364 be a provider service network if any provider service networks
365 submit a responsive bid.

366 ~~(i) The agency shall procure at least two plans and up to
367 four plans for Region 9. At least one plan must be a provider
368 service network if any provider service networks submit a
369 responsive bid.~~

370 ~~(j) The agency shall procure at least two plans and up to
371 four plans for Region 10. At least one plan must be a provider
372 service network if any provider service networks submit a
373 responsive bid.~~

374 ~~(k) The agency shall procure at least five plans and up to
375 10 plans for Region 11. At least one plan must be a provider~~



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376 ~~service network if any provider service networks submit a
377 responsive bid.~~

378
379 ~~If no provider service network submits a responsive bid, the
380 agency shall procure no more than one less than the maximum
381 number of eligible plans permitted in that region. Within 12
382 months after the initial invitation to negotiate, the agency
383 shall attempt to procure a provider service network. The agency
384 shall notice another invitation to negotiate only with provider
385 service networks in those regions where no provider service
386 network has been selected.~~

387 (2) QUALITY SELECTION CRITERIA.-In addition to the criteria
388 established in s. 409.966, the agency shall consider evidence
389 that an eligible plan has written agreements or signed contracts
390 or has made substantial progress in establishing relationships
391 with providers before the plan ~~submits~~ submitting a response.
392 The agency shall evaluate and give special weight to evidence of
393 signed contracts with essential providers as defined by the
394 agency pursuant to s. 409.975(1). The agency shall exercise a
395 preference for plans with a provider network in which more than
396 ~~over~~ 10 percent of the providers use electronic health records,
397 as defined in s. 408.051. ~~When all other factors are equal, the
398 agency shall consider whether the organization has a contract to
399 provide managed long-term care services in the same region and
400 shall exercise a preference for such plans.~~

401 Section 7. Subsection (1) of section 409.978, Florida
402 Statutes, is amended to read:

403 409.978 Long-term care managed care program.-

404 (1) Pursuant to s. 409.963, the agency shall administer the



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405 long-term care managed care program described in ss. 409.978-
406 409.985, but may delegate specific duties and responsibilities
407 for the program to the Department of Elderly Affairs and other
408 state agencies. ~~By July 1, 2012, the agency shall begin~~
409 ~~implementation of the statewide long-term care managed care~~
410 ~~program, with full implementation in all regions by October 1,~~
411 ~~2013.~~

412 Section 8. Subsection (2) and paragraphs (c), (d), and (e)
413 of subsection (3) of section 409.981, Florida Statutes, are
414 amended to read:

415 409.981 Eligible long-term care plans.—

416 (2) ELIGIBLE PLAN SELECTION.—The agency shall select
417 eligible plans for the long-term care managed care program
418 through the procurement process described in s. 409.966. The
419 agency shall procure:

420 (a) At least three ~~two~~ plans and up to four plans for
421 Region A ~~Region 1~~. At least one plan must be a provider service
422 network if any provider service networks submit a responsive
423 bid.

424 (b) At least three ~~two~~ plans and up to six plans for Region
425 B ~~Region 2~~. At least one plan must be a provider service network
426 if any provider service networks submit a responsive bid.

427 (c) At least five ~~three~~ plans and up to eight ~~five~~ plans
428 for Region C ~~Region 3~~. At least one plan must be a provider
429 service network if any provider service networks submit a
430 responsive bid.

431 (d) At least three plans and up to six ~~five~~ plans for
432 Region D ~~Region 4~~. At least one plan must be a provider service
433 network if any provider service network submits a responsive



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434 bid.

435 (e) At least three ~~two~~ plans and up to four plans for
436 Region E ~~Region 5~~. At least one plan must be a provider service
437 network if any provider service networks submit a responsive
438 bid.

439 (f) At least three ~~four~~ plans and up to five ~~seven~~ plans
440 for Region F ~~Region 6~~. At least one plan must be a provider
441 service network if any provider service networks submit a
442 responsive bid.

443 (g) At least three plans and up to four ~~six~~ plans for
444 Region G ~~Region 7~~. At least one plan must be a provider service
445 network if any provider service networks submit a responsive
446 bid.

447 (h) At least five ~~two~~ plans and up to 10 ~~four~~ plans for
448 Region H ~~Region 8~~. At least one plan must be a provider service
449 network if any provider service networks submit a responsive
450 bid.

451 ~~(i) At least two plans and up to four plans for Region 9.~~
452 ~~At least one plan must be a provider service network if any~~
453 ~~provider service networks submit a responsive bid.~~

454 ~~(j) At least two plans and up to four plans for Region 10.~~
455 ~~At least one plan must be a provider service network if any~~
456 ~~provider service networks submit a responsive bid.~~

457 ~~(k) At least five plans and up to 10 plans for Region 11.~~
458 ~~At least one plan must be a provider service network if any~~
459 ~~provider service networks submit a responsive bid.~~

460
461 ~~If no provider service network submits a responsive bid in a~~
462 ~~region other than Region 1 or Region 2, the agency shall procure~~



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463 ~~no more than one less than the maximum number of eligible plans~~
464 ~~permitted in that region. Within 12 months after the initial~~
465 ~~invitation to negotiate, the agency shall attempt to procure a~~
466 ~~provider service network. The agency shall notice another~~
467 ~~invitation to negotiate only with provider service networks in~~
468 ~~regions where no provider service network has been selected.~~

469 (3) QUALITY SELECTION CRITERIA.—In addition to the criteria
470 established in s. 409.966, the agency shall consider the
471 following factors in the selection of eligible plans:

472 ~~(e) Whether a plan is proposing to establish a~~
473 ~~comprehensive long term care plan and whether the eligible plan~~
474 ~~has a contract to provide managed medical assistance services in~~
475 ~~the same region.~~

476 ~~(c)~~ (d) Whether a plan offers consumer-directed care
477 services to enrollees pursuant to s. 409.221.

478 ~~(d)~~ (e) Whether a plan is proposing to provide home and
479 community-based services in addition to the minimum benefits
480 required by s. 409.98.

481 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.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Forbes</u>	<u>Williams</u>	<u>AHS</u>	Recommend: Fav/CS
3.	<u>Forbes</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS
4.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

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

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	Budget¹⁰	Enrollment¹¹ (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/does/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									
Current Region	Counties	SMMC		New Region	Counties	MMA		LTC	
		Plan Min.	Plan Max.			Plan Min.	Plan Max.	Plan Min.	Plan Max.
1	<i>Escambia, Okaloosa, Santa Rosa, Walton</i>	2	0	A	<i>Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, Washington</i>	3	4	3	4
2	<i>Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, Washington</i>	2	0	B	<i>Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, Volusia</i>	3	6	3	6
3	<i>Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee, Union</i>	3	5	C	<i>Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, Polk</i>	5	10	5	8
4	<i>Baker, Clay, Duval, Flagler, Nassau, St. Johns, Volusia</i>	3	5	D	<i>Brevard, Orange, Osceola, Seminole</i>	3	6	3	6
5	<i>Pasco, Pinellas</i>	2	4	E	<i>Charlotte, Collier, Desoto, Glades, Hendry, Lee, Sarasota</i>	3	4	3	4
6	<i>Hardee, Highlands, Hillsborough, Manatee, Polk</i>	4	7	F	<i>Indian River, Martin, Okeechobee, Palm Beach, St. Lucie</i>	3	5	3	5
7	<i>Brevard, Orange, Osceola, Seminole</i>	3	6	G	<i>Broward</i>	3	5	3	4
8	<i>Charlotte, Collier, Desoto, Glades, Hendry, Lee, Sarasota</i>	2	4	H	<i>Miami-Dade and Monroe</i>	5	10	5	10
9	<i>Indian River, Martin, Okeechobee, Palm Beach, St. Lucie</i>	2	4						
10	<i>Broward</i>	2	4						
11	<i>Miami-Dade, Monroe</i>	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

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1 A bill to be entitled
 2 An act relating to the statewide Medicaid managed care
 3 program; amending s. 409.912, F.S.; deleting the fee-
 4 for-service option as a basis for the reimbursement of
 5 Medicaid provider service networks; amending s.
 6 409.964, F.S.; deleting an obsolete provision;
 7 amending s. 409.966, F.S.; requiring that a required
 8 databook consist of data that is consistent with
 9 actuarial rate-setting practices and standards;
 10 revising the designation and county makeup of regions
 11 of the state for purposes of procuring health plans
 12 that may participate in the Medicaid program; adding a
 13 factor that the Agency for Health Care Administration
 14 must consider in the selection of eligible plans;
 15 deleting a requirement related to fee-for-service
 16 provider service networks; amending s. 409.968, F.S.;
 17 requiring provider service networks to be prepaid
 18 plans; deleting a fee-for-service option for Medicaid
 19 reimbursement for provider service networks; amending
 20 s. 409.971, F.S.; deleting an obsolete provision;
 21 amending s. 409.974, F.S.; revising the number of
 22 eligible Medicaid health care plans the agency must
 23 procure for certain regions in the state; deleting an
 24 obsolete provision; amending s. 409.978, F.S.;
 25 deleting an obsolete provision; amending s. 409.981,
 26 F.S.; revising the number of eligible Medicaid health
 27 care plans the agency must procure for certain regions
 28 in the state; deleting a requirement that the agency
 29 consider a specific factor relating to the selection

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30 of managed medical assistance plans; providing an
 31 effective date.
 32

33 Be It Enacted by the Legislature of the State of Florida:
 34

35 Section 1. Subsection (2) of section 409.912, Florida
 36 Statutes, is amended to read:

37 409.912 Cost-effective purchasing of health care.—The
 38 agency shall purchase goods and services for Medicaid recipients
 39 in the most cost-effective manner consistent with the delivery
 40 of quality medical care. To ensure that medical services are
 41 effectively utilized, the agency may, in any case, require a
 42 confirmation or second physician's opinion of the correct
 43 diagnosis for purposes of authorizing future services under the
 44 Medicaid program. This section does not restrict access to
 45 emergency services or poststabilization care services as defined
 46 in 42 C.F.R. s. 438.114. Such confirmation or second opinion
 47 shall be rendered in a manner approved by the agency. The agency
 48 shall maximize the use of prepaid per capita and prepaid
 49 aggregate fixed-sum basis services when appropriate and other
 50 alternative service delivery and reimbursement methodologies,
 51 including competitive bidding pursuant to s. 287.057, designed
 52 to facilitate the cost-effective purchase of a case-managed
 53 continuum of care. The agency shall also require providers to
 54 minimize the exposure of recipients to the need for acute
 55 inpatient, custodial, and other institutional care and the
 56 inappropriate or unnecessary use of high-cost services. The
 57 agency shall contract with a vendor to monitor and evaluate the
 58 clinical practice patterns of providers in order to identify

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59 trends that are outside the normal practice patterns of a
 60 provider's professional peers or the national guidelines of a
 61 provider's professional association. The vendor must be able to
 62 provide information and counseling to a provider whose practice
 63 patterns are outside the norms, in consultation with the agency,
 64 to improve patient care and reduce inappropriate utilization.
 65 The agency may mandate prior authorization, drug therapy
 66 management, or disease management participation for certain
 67 populations of Medicaid beneficiaries, certain drug classes, or
 68 particular drugs to prevent fraud, abuse, overuse, and possible
 69 dangerous drug interactions. The Pharmaceutical and Therapeutics
 70 Committee shall make recommendations to the agency on drugs for
 71 which prior authorization is required. The agency shall inform
 72 the Pharmaceutical and Therapeutics Committee of its decisions
 73 regarding drugs subject to prior authorization. The agency is
 74 authorized to limit the entities it contracts with or enrolls as
 75 Medicaid providers by developing a provider network through
 76 provider credentialing. The agency may competitively bid single-
 77 source-provider contracts if procurement of goods or services
 78 results in demonstrated cost savings to the state without
 79 limiting access to care. The agency may limit its network based
 80 on the assessment of beneficiary access to care, provider
 81 availability, provider quality standards, time and distance
 82 standards for access to care, the cultural competence of the
 83 provider network, demographic characteristics of Medicaid
 84 beneficiaries, practice and provider-to-beneficiary standards,
 85 appointment wait times, beneficiary use of services, provider
 86 turnover, provider profiling, provider licensure history,
 87 previous program integrity investigations and findings, peer

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88 review, provider Medicaid policy and billing compliance records,
 89 clinical and medical record audits, and other factors. Providers
 90 are not entitled to enrollment in the Medicaid provider network.
 91 The agency shall determine instances in which allowing Medicaid
 92 beneficiaries to purchase durable medical equipment and other
 93 goods is less expensive to the Medicaid program than long-term
 94 rental of the equipment or goods. The agency may establish rules
 95 to facilitate purchases in lieu of long-term rentals in order to
 96 protect against fraud and abuse in the Medicaid program as
 97 defined in s. 409.913. The agency may seek federal waivers
 98 necessary to administer these policies.

99 (2) The agency may contract with a provider service
 100 network, ~~which may be reimbursed on a fee for service or prepaid~~
 101 ~~basis. Prepaid provider service networks shall receive per-~~
 102 ~~member, per-month payments. A provider service network that does~~
 103 ~~not choose to be a prepaid plan shall receive fee-for-service~~
 104 ~~rates with a shared savings settlement. The fee-for-service~~
 105 ~~option shall be available to a provider service network only for~~
 106 ~~the first 2 years of the plan's operation or until the contract~~
 107 ~~year beginning September 1, 2014, whichever is later. The agency~~
 108 ~~shall annually conduct cost reconciliations to determine the~~
 109 ~~amount of cost savings achieved by fee-for-service provider~~
 110 ~~service networks for the dates of service in the period being~~
 111 ~~reconciled. Only payments for covered services for dates of~~
 112 ~~service within the reconciliation period and paid within 6~~
 113 ~~months after the last date of service in the reconciliation~~
 114 ~~period shall be included. The agency shall perform the necessary~~
 115 ~~adjustments for the inclusion of claims incurred but not~~
 116 ~~reported within the reconciliation for claims that could be~~

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117 ~~received and paid by the agency after the 6-month claims~~
 118 ~~processing time lag. The agency shall provide the results of the~~
 119 ~~reconciliations to the fee-for-service provider service networks~~
 120 ~~within 45 days after the end of the reconciliation period. The~~
 121 ~~fee for service provider service networks shall review and~~
 122 ~~provide written comments or a letter of concurrence to the~~
 123 ~~agency within 45 days after receipt of the reconciliation~~
 124 ~~results. This reconciliation shall be considered final.~~

125 (a) A provider service network that ~~which~~ is reimbursed by
 126 the agency on a prepaid basis shall be exempt from parts I and
 127 III of chapter 641, but must comply with the solvency
 128 requirements in s. 641.2261(2) and meet appropriate financial
 129 reserve, quality assurance, and patient rights requirements as
 130 established by the agency.

131 (b) A provider service network is a network established or
 132 organized and operated by a health care provider, or group of
 133 affiliated health care providers, which provides a substantial
 134 proportion of the health care items and services under a
 135 contract directly through the provider or affiliated group of
 136 providers and may make arrangements with physicians or other
 137 health care professionals, health care institutions, or any
 138 combination of such individuals or institutions to assume all or
 139 part of the financial risk on a prospective basis for the
 140 provision of basic health services by the physicians, by other
 141 health professionals, or through the institutions. The health
 142 care providers must have a controlling interest in the governing
 143 body of the provider service network organization.

144 Section 2. Section 409.964, Florida Statutes, is amended to
 145 read:

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146 409.964 Managed care program; state plan; waivers.—The
 147 Medicaid program is established as a statewide, integrated
 148 managed care program for all covered services, including long-
 149 term care services. The agency shall apply for and implement
 150 state plan amendments or waivers of applicable federal laws and
 151 regulations necessary to implement the program. Before seeking a
 152 waiver, the agency shall provide public notice and the
 153 opportunity for public comment and include public feedback in
 154 the waiver application. The agency shall hold one public meeting
 155 in each of the regions described in s. 409.966(2), and the ~~time~~
 156 ~~period for public comment for each region shall end no sooner~~
 157 ~~than 30 days after the completion of the public meeting in that~~
 158 ~~region. The agency shall submit any state plan amendments, new~~
 159 ~~waiver requests, or requests for extensions or expansions for~~
 160 ~~existing waivers, needed to implement the managed care program~~
 161 ~~by August 17, 2011.~~

162 Section 3. Subsection (2) and paragraphs (a), (d), and (e)
 163 of subsection (3) of section 409.966, Florida Statutes, are
 164 amended to read:

165 409.966 Eligible plans; selection.—

166 (2) ELIGIBLE PLAN SELECTION.—The agency shall select a
 167 limited number of eligible plans to participate in the Medicaid
 168 program using invitations to negotiate in accordance with s.
 169 287.057(1)(c). At least 90 days before issuing an invitation to
 170 negotiate, the agency shall compile and publish a databook
 171 consisting of a comprehensive set of utilization and spending
 172 data consistent with actuarial rate-setting practices and
 173 standards for the 3 most recent contract years consistent with
 174 the rate-setting periods for all Medicaid recipients by region

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175 or county. The source of the data in the report must include
 176 both historic fee-for-service claims and validated data from the
 177 Medicaid Encounter Data System. The report must be available in
 178 electronic form and delineate utilization use by age, gender,
 179 eligibility group, geographic area, and aggregate clinical risk
 180 score. Separate and simultaneous procurements shall be conducted
 181 in each of the following regions:

182 (a) Region A ~~Region 1~~, which consists of Bay, Calhoun,
 183 Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson,
 184 Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla,
 185 and Walton, and Washington Counties.

186 (b) Region B ~~Region 2~~, which consists of Alachua, Baker,
 187 Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler,
 188 Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion,
 189 Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, and Volusia
 190 Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson,
 191 Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, and
 192 Washington Counties.

193 (c) Region C ~~Region 3~~, which consists of Hardee, Highlands,
 194 Hillsborough, Manatee, Pasco, Pinellas, and Polk ~~Alachua,~~
 195 ~~Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton,~~
 196 ~~Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter,~~
 197 ~~Suwannee, and Union~~ Counties.

198 (d) Region D ~~Region 4~~, which consists of Brevard, Orange,
 199 Osceola, and Seminole ~~Baker, Clay, Duval, Flagler, Nassau, St.~~
 200 ~~Johns, and Volusia~~ Counties.

201 (e) Region E ~~Region 5~~, which consists of Charlotte,
 202 Collier, DeSoto, Glades, Hendry, Lee, and Sarasota ~~Pasco and~~
 203 ~~Pinellas~~ Counties.

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204 (f) Region F ~~Region 6~~, which consists of Indian River,
 205 Martin, Okeechobee, Palm Beach, and St. Lucie ~~Hardee, Highlands,~~
 206 ~~Hillsborough, Manatee, and Polk~~ Counties.

207 (g) Region G ~~Region 7~~, which consists of Broward County
 208 ~~Brevard, Orange, Osceola, and Seminole~~ Counties.

209 (h) Region H ~~Region 8~~, which consists of Miami-Dade and
 210 Monroe ~~Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and~~
 211 ~~Sarasota~~ Counties.

212 (i) ~~Region 9, which consists of Indian River, Martin,~~
 213 ~~Okeechobee, Palm Beach, and St. Lucie~~ Counties.

214 (j) ~~Region 10, which consists of Broward County.~~

215 (k) ~~Region 11, which consists of Miami Dade and Monroe~~
 216 ~~Counties.~~

217 (3) QUALITY SELECTION CRITERIA.—

218 (a) The invitation to negotiate must specify the criteria
 219 and the relative weight of the criteria that will be used for
 220 determining the acceptability of the reply and guiding the
 221 selection of the organizations with which the agency negotiates.
 222 In addition to criteria established by the agency, the agency
 223 shall consider the following factors in the selection of
 224 eligible plans:

225 1. Accreditation by the National Committee for Quality
 226 Assurance, the Joint Commission, or another nationally
 227 recognized accrediting body.

228 2. Experience serving similar populations, including the
 229 organization's record in achieving specific quality standards
 230 with similar populations.

231 3. Availability and accessibility of primary care and
 232 specialty physicians in the provider network.

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- 233 4. Establishment of community partnerships with providers
234 that create opportunities for reinvestment in community-based
235 services.
- 236 5. Organization commitment to quality improvement and
237 documentation of achievements in specific quality improvement
238 projects, including active involvement by organization
239 leadership.
- 240 6. Provision of additional benefits, particularly dental
241 care and disease management, and other initiatives that improve
242 health outcomes.
- 243 7. Evidence that an eligible plan has written agreements or
244 signed contracts or has made substantial progress in
245 establishing relationships with providers before the plan
246 submitting a response.
- 247 8. Comments submitted in writing by any enrolled Medicaid
248 provider relating to a specifically identified plan
249 participating in the procurement in the same region as the
250 submitting provider.
- 251 9. Documentation of policies and procedures for preventing
252 fraud and abuse.
- 253 10. The business relationship an eligible plan has with any
254 other eligible plan that responds to the invitation to
255 negotiate.
- 256 11. Whether a plan is proposing to establish a
257 comprehensive long-term care plan.
- 258 (d) For the first year of the first contract term, the
259 agency shall negotiate capitation rates or fee for service
260 payments with each plan in order to guarantee aggregate savings
261 of at least 5 percent.

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- 262 ~~1.~~ For prepaid plans, determination of the amount of
263 savings shall be calculated by comparison to the Medicaid rates
264 that the agency paid managed care plans for similar populations
265 in the same areas in the prior year. In regions containing no
266 prepaid plans in the prior year, determination of the amount of
267 savings shall be calculated by comparison to the Medicaid rates
268 established and certified for those regions in the prior year.
- 269 ~~2. For provider service networks operating on a fee-for-~~
270 ~~service basis, determination of the amount of savings shall be~~
271 ~~calculated by comparison to the Medicaid rates that the agency~~
272 ~~paid on a fee-for-service basis for the same services in the~~
273 ~~prior year.~~
- 274 (e) To ensure managed care plan participation in Regions A
275 and E ~~Regions 1 and 2~~, the agency shall award an additional
276 contract to each plan with a contract award in Region A ~~Region 1~~
277 or Region E ~~Region 2~~. Such contract shall be in any other region
278 in which the plan submitted a responsive bid and negotiates a
279 rate acceptable to the agency. If a plan that is awarded an
280 additional contract pursuant to this paragraph is subject to
281 penalties pursuant to s. 409.967(2)(i) for activities in Region
282 A ~~Region 1~~ or Region E ~~Region 2~~, the additional contract is
283 automatically terminated 180 days after the imposition of the
284 penalties. The plan must reimburse the agency for the cost of
285 enrollment changes and other transition activities.
- 286 Section 4. Subsection (2) of section 409.968, Florida
287 Statutes, is amended to read:
288 409.968 Managed care plan payments.—
289 (2) Provider service networks shall ~~may~~ be prepaid plans
290 and receive per-member, per-month payments negotiated pursuant

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291 to the procurement process described in s. 409.966. ~~Provider~~
 292 ~~service networks that choose not to be prepaid plans shall~~
 293 ~~receive fee-for-service rates with a shared savings settlement.~~
 294 ~~The fee-for-service option shall be available to a provider~~
 295 ~~service network only for the first 2 years of its operation. The~~
 296 ~~agency shall annually conduct cost reconciliations to determine~~
 297 ~~the amount of cost savings achieved by fee-for-service provider~~
 298 ~~service networks for the dates of service within the period~~
 299 ~~being reconciled. Only payments for covered services for dates~~
 300 ~~of service within the reconciliation period and paid within 6~~
 301 ~~months after the last date of service in the reconciliation~~
 302 ~~period must be included. The agency shall perform the necessary~~
 303 ~~adjustments for the inclusion of claims incurred but not~~
 304 ~~reported within the reconciliation period for claims that could~~
 305 ~~be received and paid by the agency after the 6-month claims~~
 306 ~~processing time lag. The agency shall provide the results of the~~
 307 ~~reconciliations to the fee-for-service provider service networks~~
 308 ~~within 45 days after the end of the reconciliation period. The~~
 309 ~~fee-for-service provider service networks shall review and~~
 310 ~~provide written comments or a letter of concurrence to the~~
 311 ~~agency within 45 days after receipt of the reconciliation~~
 312 ~~results. This reconciliation is considered final.~~

313 Section 5. Section 409.971, Florida Statutes, is amended to
 314 read:

315 409.971 Managed medical assistance program.—The agency
 316 shall make payments for primary and acute medical assistance and
 317 related services using a managed care model. ~~By January 1, 2013,~~
 318 ~~the agency shall begin implementation of the statewide managed~~
 319 ~~medical assistance program, with full implementation in all~~

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320 ~~regions by October 1, 2014.~~

321 Section 6. Subsections (1) and (2) of section 409.974,
 322 Florida Statutes, are amended to read:

323 409.974 Eligible plans.—

324 (1) ELIGIBLE PLAN SELECTION.—The agency shall select
 325 eligible plans through the procurement process described in s.
 326 409.966. ~~The agency shall notice invitations to negotiate no~~
 327 ~~later than January 1, 2013.~~

328 (a) The agency shall procure at least two plans and up to
 329 four plans for Region A ~~Region 1~~. At least one plan shall be a
 330 provider service network if any provider service networks submit
 331 a responsive bid.

332 (b) The agency shall procure at least three plans and up to
 333 five ~~two~~ plans for Region B ~~Region 2~~. At least one plan shall be
 334 a provider service network if any provider service networks
 335 submit a responsive bid.

336 (c) The agency shall procure at least four ~~three~~ plans and
 337 up to seven ~~five~~ plans for Region C ~~Region 3~~. At least one plan
 338 must be a provider service network if any provider service
 339 networks submit a responsive bid.

340 (d) The agency shall procure at least three plans and up to
 341 six ~~five~~ plans for Region D ~~Region 4~~. At least one plan must be
 342 a provider service network if any provider service networks
 343 submit a responsive bid.

344 (e) The agency shall procure at least two plans and up to
 345 four plans for Region E ~~Region 5~~. At least one plan must be a
 346 provider service network if any provider service networks submit
 347 a responsive bid.

348 (f) The agency shall procure at least two ~~four~~ plans and up

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349 to ~~four~~ seven plans for Region F ~~Region 6~~. At least one plan
 350 must be a provider service network if any provider service
 351 networks submit a responsive bid.

352 (g) The agency shall procure at least ~~two~~ three plans and
 353 up to ~~four~~ six plans for Region G ~~Region 7~~. At least one plan
 354 must be a provider service network if any provider service
 355 networks submit a responsive bid.

356 (h) The agency shall procure at least ~~five~~ two plans and up
 357 to ~~10~~ four plans for Region H ~~Region 8~~. At least one plan must
 358 be a provider service network if any provider service networks
 359 submit a responsive bid.

360 ~~(i) The agency shall procure at least two plans and up to~~
 361 ~~four plans for Region 9. At least one plan must be a provider~~
 362 ~~service network if any provider service networks submit a~~
 363 ~~responsive bid.~~

364 ~~(j) The agency shall procure at least two plans and up to~~
 365 ~~four plans for Region 10. At least one plan must be a provider~~
 366 ~~service network if any provider service networks submit a~~
 367 ~~responsive bid.~~

368 ~~(k) The agency shall procure at least five plans and up to~~
 369 ~~10 plans for Region 11. At least one plan must be a provider~~
 370 ~~service network if any provider service networks submit a~~
 371 ~~responsive bid.~~

372 ~~If no provider service network submits a responsive bid, the~~
 373 ~~agency shall procure no more than one less than the maximum~~
 374 ~~number of eligible plans permitted in that region. Within 12~~
 375 ~~months after the initial invitation to negotiate, the agency~~
 376 ~~shall attempt to procure a provider service network. The agency~~
 377

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378 ~~shall notice another invitation to negotiate only with provider~~
 379 ~~service networks in those regions where no provider service~~
 380 ~~network has been selected.~~

381 (2) QUALITY SELECTION CRITERIA.—In addition to the criteria
 382 established in s. 409.966, the agency shall consider evidence
 383 that an eligible plan has written agreements or signed contracts
 384 or has made substantial progress in establishing relationships
 385 with providers before the plan submits ~~submitting~~ a response.
 386 The agency shall evaluate and give special weight to evidence of
 387 signed contracts with essential providers as defined by the
 388 agency pursuant to s. 409.975(1). The agency shall exercise a
 389 preference for plans with a provider network in which more than
 390 over 10 percent of the providers use electronic health records,
 391 as defined in s. 408.051. ~~When all other factors are equal, the~~
 392 ~~agency shall consider whether the organization has a contract to~~
 393 ~~provide managed long-term care services in the same region and~~
 394 ~~shall exercise a preference for such plans.~~

395 Section 7. Subsection (1) of section 409.978, Florida
 396 Statutes, is amended to read:

397 409.978 Long-term care managed care program.—

398 (1) Pursuant to s. 409.963, the agency shall administer the
 399 long-term care managed care program described in ss. 409.978-
 400 409.985, but may delegate specific duties and responsibilities
 401 for the program to the Department of Elderly Affairs and other
 402 state agencies. ~~By July 1, 2012, the agency shall begin~~
 403 ~~implementation of the statewide long-term care managed care~~
 404 ~~program, with full implementation in all regions by October 1,~~
 405 ~~2013.~~

406 Section 8. Subsection (2) and paragraphs (c), (d), and (e)

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407 of subsection (3) of section 409.981, Florida Statutes, are
408 amended to read:

409 409.981 Eligible long-term care plans.—

410 (2) ELIGIBLE PLAN SELECTION.—The agency shall select
411 eligible plans through the procurement process described in s.
412 409.966. The agency shall procure:

413 (a) At least two plans and up to four plans for Region A
414 Region 1. At least one plan must be a provider service network
415 if any provider service networks submit a responsive bid.

416 (b) At least three ~~Two~~ plans and up to five plans for
417 Region B ~~Region 2~~. At least one plan must be a provider service
418 network if any provider service networks submit a responsive
419 bid.

420 (c) At least four ~~three~~ plans and up to seven ~~five~~ plans
421 for Region C ~~Region 3~~. At least one plan must be a provider
422 service network if any provider service networks submit a
423 responsive bid.

424 (d) At least three plans and up to six ~~five~~ plans for
425 Region D ~~Region 4~~. At least one plan must be a provider service
426 network if any provider service network submits a responsive
427 bid.

428 (e) At least two plans and up to four plans for Region E
429 Region 5. At least one plan must be a provider service network
430 if any provider service networks submit a responsive bid.

431 (f) At least two ~~four~~ plans and up to four ~~seven~~ plans for
432 Region F ~~Region 6~~. At least one plan must be a provider service
433 network if any provider service networks submit a responsive
434 bid.

435 (g) At least two ~~three~~ plans and up to four ~~six~~ plans for

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436 Region G ~~Region 7~~. At least one plan must be a provider service
437 network if any provider service networks submit a responsive
438 bid.

439 (h) At least five ~~two~~ plans and up to 10 ~~four~~ plans for
440 Region H ~~Region 8~~. At least one plan must be a provider service
441 network if any provider service networks submit a responsive
442 bid.

443 ~~(i) At least two plans and up to four plans for Region 9.~~
444 ~~At least one plan must be a provider service network if any~~
445 ~~provider service networks submit a responsive bid.~~

446 ~~(j) At least two plans and up to four plans for Region 10.~~
447 ~~At least one plan must be a provider service network if any~~
448 ~~provider service networks submit a responsive bid.~~

449 ~~(k) At least five plans and up to 10 plans for Region 11.~~
450 ~~At least one plan must be a provider service network if any~~
451 ~~provider service networks submit a responsive bid.~~

452
453 ~~If no provider service network submits a responsive bid in a~~
454 ~~region other than Region 1 or Region 2, the agency shall procure~~
455 ~~no more than one less than the maximum number of eligible plans~~
456 ~~permitted in that region. Within 12 months after the initial~~
457 ~~invitation to negotiate, the agency shall attempt to procure a~~
458 ~~provider service network. The agency shall notice another~~
459 ~~invitation to negotiate only with provider service networks in~~
460 ~~regions where no provider service network has been selected.~~

461 (3) QUALITY SELECTION CRITERIA.—In addition to the criteria
462 established in s. 409.966, the agency shall consider the
463 following factors in the selection of eligible plans:

464 ~~(e) Whether a plan is proposing to establish a~~

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465 ~~comprehensive long-term care plan and whether the eligible plan~~
466 ~~has a contract to provide managed medical assistance services in~~
467 ~~the same region.~~

468 (c) ~~(d)~~ Whether a plan offers consumer-directed care
469 services to enrollees pursuant to s. 409.221.

470 (d) ~~(e)~~ Whether a plan is proposing to provide home and
471 community-based services in addition to the minimum benefits
472 required by s. 409.98.

473 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.

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 26

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)

565904
Amendment Barcode (if applicable)

Topic Statewide Medicaid Managed Care

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.

Phone 850-321-9386

Tallahassee FL 32301
City State 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.

The Florida Senate
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. <u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2. <u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	<u>Recommend: Fav/CS</u>
3. <u>Reagan</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - 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 site¹⁰ 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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.

<p>Petroleum Cleanup Participation Program (PCPP) (s. 376.3071(13), F.S.)</p>	<p>Remains open</p>	<ul style="list-style-type: none"> • 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 costs¹⁵ • Originally had a \$300,000 cap on the amount of coverage, which was raised to \$400,000 beginning July 1, 2008
<p>Consent Order (aka “Hardship” or “Indigent”) (s. 376.3071(7)(c), F.S.)</p>	<p>The program began in 1986 and remains open</p>	<ul style="list-style-type: none"> • 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 savings³¹ 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).

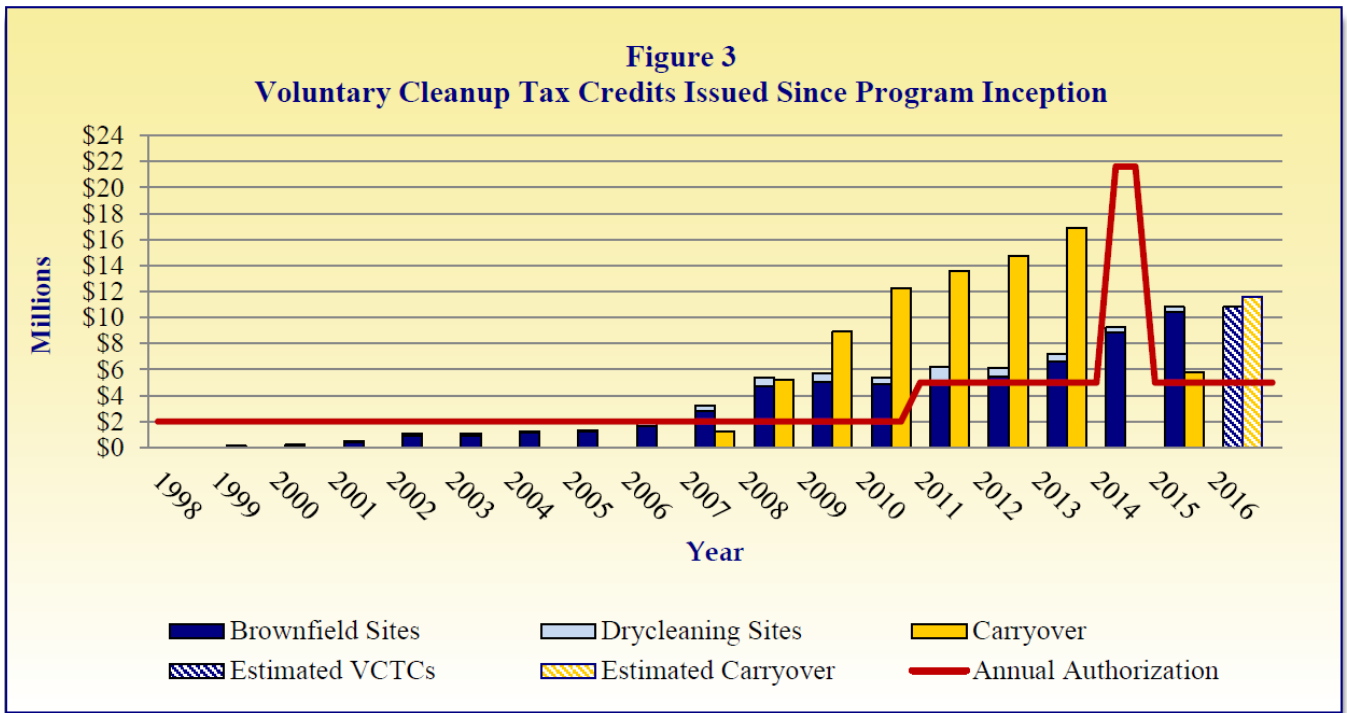
⁵² Section 376.82, F.S.

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.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

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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11 403.077 Public notice of pollution; goals and findings.-

12 (1) It is a goal of the state that the public be timely
13 notified of a discovered, reportable pollution release that may
14 pose an immediate danger to the public health, safety, or
15 welfare.

16 (2) The department has the authority and the duty to
17 control and prohibit pollution of the air, land, and water of
18 this state and has the primary responsibility to ensure that the
19 public is aware of reportable pollution releases. Alerting the
20 department about reportable pollution releases, within the
21 timeframes and in the manner provided by this act, will better
22 inform the department and the public regarding such releases and
23 the need, if any, to take action to protect the public health,
24 safety, and welfare.

25 (3) This act does not alter or affect the emergency
26 management responsibilities of the Governor, the Division of
27 Emergency Management, or the governing body of any political
28 subdivision of the state pursuant to chapter 252.

29 Section 3. Section 403.078, Florida Statutes, is created to
30 read:

31 403.078 Public notification of pollution.-

32 (1) DEFINITION.-As used in this section, the term
33 "reportable pollution release" means the release or discharge of
34 a substance from an installation to the air, land, or waters of
35 the state which is discovered by the owner or operator of the
36 installation, which is not authorized by law, and which is:

37 (a) Reportable to the State Watch Office within the
38 Division of Emergency Management pursuant to department rules,
39 permit, order, or variance;



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40 (b) Reportable to the department or a contracted county
41 pursuant to department rules governing storage tank systems
42 under ss. 376.303, 376.321, and 376.322;

43 (c) Reportable to the department pursuant to department
44 rules requiring notice for noncompliance from underground
45 injection control systems where such noncompliance may endanger
46 public health or the environment and has the potential to
47 contaminate potable water wells outside the property boundaries
48 of the installation;

49 (d) A hazardous substance at or above the quantity
50 established in Table 302.4 of 40 C.F.R. s. 302.4, revised as of
51 July 1, 2016, for such substance, for which notification is
52 required by 40 C.F.R. s. 302.6; or

53 (e) An extremely hazardous substance pursuant to 40 C.F.R.
54 s. 355.61, at or above the quantity established in Appendices A
55 and B of 40 C.F.R. part 355, revised as of July 1, 2016, for
56 such substance, for which notice is required by 40 C.F.R. s.
57 355.33.

58 (2) OWNER AND OPERATOR RESPONSIBILITIES.—

59 (a) In the event of a reportable pollution release, any
60 person who is an owner or operator of the installation at which
61 the reportable pollution release occurred must provide a notice
62 containing the following information, to the extent known at the
63 time of such notice, to the department within 24 hours after its
64 discovery:

65 1. The name and address of the installation where the
66 reportable pollution release occurred.

67 2. The name and title of the reporting person and the
68 nature of his or her relationship to the installation.



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69 3. The identification numbers for any active department
70 permits, variances, registrations, or orders that are relevant
71 to the reportable pollution release.

72 4. The name and telephone number of a contact person for
73 further information.

74 5. The substance released.

75 6. The estimated quantity of the substance released and, if
76 applicable, the estimated quantity that has since been
77 recovered.

78 7. The cause of the release.

79 8. The source of the release.

80 9. The location of the release.

81 10. The date, time, and duration of the release.

82 11. The medium into which the substance was released,
83 including, but not limited to, the outdoor air, land,
84 groundwater, aquifer, or specified waters or wetlands.

85 12. Whether the released substance has migrated to land or
86 waters of the state outside the property boundaries of the
87 installation and the location of such migration.

88 13. To the extent available, toxicological information
89 associated with the substance released as specified on a safety
90 data sheet or comparable source published by the Occupational
91 Safety and Health Administration or the Centers for Disease
92 Control and Prevention, or their successor agencies.

93
94 The owner or operator may also include in the notice any other
95 information he or she wishes in order to assist in the
96 protection of the public health, safety, and welfare.

97 (b) If multiple parties are subject to the notification



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98 requirements based on a single reportable pollution release, a
99 single notification made by one party in accordance with this
100 section constitutes compliance on behalf of all parties subject
101 to the requirement. However, if the notification is not made in
102 accordance with this section, the department may pursue
103 enforcement against all parties subject to the requirement.

104 (c) If, after providing notice pursuant to paragraph (a),
105 the installation owner or operator determines that a reportable
106 pollution release did not occur or that an amendment to the
107 notice is warranted, the installation owner or operator may
108 submit a letter to the department documenting such
109 determination.

110 (d) If, after providing notice under paragraph (a), the
111 installation owner or operator determines that a release subject
112 to the noticing requirements of this act has migrated outside
113 the property boundaries of the installation, the owner or
114 operator, within 24 hours after such discovery, must provide an
115 additional notice to the department. Such notice must comply
116 with the requirements of paragraph (a) and specify the extent of
117 the migration outside the property boundaries.

118 (3) DEPARTMENTAL RESPONSIBILITIES.—

119 (a) The department shall publish on a website accessible to
120 the public all notices submitted by an owner or operator
121 pursuant to subsection (2) within 24 hours of receipt.

122 (b) The department shall create an electronic mailing list
123 for such notices and allow the public, including local
124 governments, health departments, news media, and other
125 interested persons, to subscribe to and receive periodic direct
126 announcement of any notices submitted pursuant to subsection



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127 (2). The department shall establish regional electronic mailing
128 lists, such as by county or district boundaries, to allow
129 subscribers to determine the notices they wish to receive by
130 geographic area.

131 (c) The department shall establish an e-mail address and an
132 online form as options for owners and operators to provide the
133 notice specified in paragraphs (2)(a) and (b).

134 (4) ADMISSION OF LIABILITY OR HARM.—Providing notice under
135 subsection (2) does not constitute an admission of liability or
136 harm.

137 (5) VIOLATIONS.—For failure to provide the notification
138 required by paragraph (2)(a) or paragraph (2)(d), the owner or
139 operator shall be subject to the civil penalties specified in s.
140 403.121.

141 (6) ADOPTION OF RULES.—The department shall adopt rules
142 necessary to administer the provisions of this section.

143 Section 4. Present paragraph (f) of subsection (4) of
144 section 403.121, Florida Statutes, is redesignated as paragraph
145 (g), and a new paragraph (f) is added to that subsection, to
146 read:

147 403.121 Enforcement; procedure; remedies.—The department
148 shall have the following judicial and administrative remedies
149 available to it for violations of this chapter, as specified in
150 s. 403.161(1).

151 (4) In an administrative proceeding, in addition to the
152 penalties that may be assessed under subsection (3), the
153 department shall assess administrative penalties according to
154 the following schedule:

155 (f) For failure to provide required notice pursuant to s.



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156 403.078, up to \$10,000 per day for each day an installation
157 owner or operator is in violation of the section.

158
159 ===== T I T L E A M E N D M E N T =====

160 And the title is amended as follows:

161 Delete line 2

162 and insert:

163 An act relating to pollution; creating s. 403.076,
164 F.S.; providing a short title; creating s. 403.077,
165 F.S.; providing goals and legislative findings;
166 specifying authority of the Department of
167 Environmental Protection; specifying that the act does
168 not alter or affect the emergency management
169 responsibilities of certain other governmental
170 entities; creating s. 403.078, F.S.; defining the term
171 "reportable pollution release"; requiring an owner or
172 operator of an installation at which a reportable
173 pollution release occurred to provide certain
174 information to the department within 24 hours after
175 the discovery of the release; authorizing the owner or
176 operator to amend such notice; specifying compliance
177 and enforcement requirements; requiring owners or
178 operators to provide notice when a reportable
179 pollution release migrates outside the property
180 boundaries of the installation; requiring the
181 department to publish such information in a specified
182 manner; requiring the department to establish an
183 electronic mailing list; requiring the department to
184 provide a reporting form and e-mail address for such



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185 notice; specifying that providing a notice does not
186 constitute an admission of liability or harm;
187 specifying penalties for violations; requiring the
188 department to adopt rules; amending s. 403.121, F.S.;
189 specifying penalties for failure to provide required
190 notice; amending



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.



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56 376.3071, the Legislature finds and declares:

57 (a) That the inability to conduct site rehabilitation in
58 advance of a site's priority ranking pursuant to s.
59 376.3071(5)(a) may substantially impede or prohibit property
60 redevelopment, property transactions, or the proper completion
61 of public works projects.

62 (c) It is in the public interest and of substantial
63 economic benefit to the state to provide an opportunity for site
64 rehabilitation to be conducted on a limited basis at
65 contaminated sites, in advance of the site's priority ranking,
66 to encourage redevelopment and facilitate property transactions
67 or public works projects.

68 (2) The department may approve an application for advanced
69 cleanup at eligible sites, including applications submitted
70 pursuant to paragraph (c), notwithstanding the site's priority
71 ranking established pursuant to s. 376.3071(5)(a), pursuant to
72 this section. Only the facility owner or operator or the person
73 otherwise responsible for site rehabilitation qualifies as an
74 applicant under this section.

75 (a) Advanced cleanup applications may be submitted between
76 May 1 and June 30 and between November 1 and December 31 of each
77 fiscal year. Applications submitted between May 1 and June 30
78 shall be for the fiscal year beginning July 1. An application
79 must consist of:

80 1. A commitment to pay 25 percent or more of the total
81 cleanup cost deemed recoverable under this section along with
82 proof of the ability to pay the cost share. The department shall
83 determine whether the cost savings demonstration is acceptable.
84 Such determination is not subject to chapter 120.



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85 a. Applications for the aggregate cleanup of five or more
86 sites may be submitted in one of two formats to meet the cost-
87 share requirement:

88 (I) For an aggregate application proposing that the
89 department enter into a performance-based contract, the
90 applicant may use a commitment to pay, a demonstrated cost
91 savings to the department, or both to meet the requirement.

92 (II) For an aggregate application relying on a demonstrated
93 cost savings to the department, the applicant shall, in
94 conjunction with the proposed agency term contractor, establish
95 and provide in the application the percentage of cost savings in
96 the aggregate that is being provided to the department for
97 cleanup of the sites under the application compared to the cost
98 of cleanup of those same sites using the current rates provided
99 to the department by the proposed agency term contractor.

100 b. Applications for the cleanup of individual sites may be
101 submitted in one of two formats to meet the cost-share
102 requirement:

103 (I) For an individual application proposing that the
104 department enter into a performance-based contract, the
105 applicant may use a commitment to pay, a demonstrated cost
106 savings to the department, or both to meet the requirement.

107 (II) For an individual application relying on a
108 demonstrated cost savings to the department, the applicant
109 shall, in conjunction with the proposed agency term contractor,
110 establish and provide in the application a 25-percent cost
111 savings to the department for cleanup of the site under the
112 application compared to the cost of cleanup of the same site
113 using the current rates provided to the department by the



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114 proposed agency term contractor.

115 2. A nonrefundable review fee of \$250 to cover the
116 administrative costs associated with the department's review of
117 the application.

118 3. A limited contamination assessment report.

119 4. A proposed course of action.

120 5. A department site access agreement, or similar
121 agreements approved by the department that do not violate state
122 law, entered into with the property owner or owners, as
123 applicable, and evidence of authorization from such owner or
124 owners for petroleum site rehabilitation program tasks
125 consistent with the proposed course of action where the
126 applicant is not the property owner for any of the sites
127 contained in the application.

128
129 The limited contamination assessment report must be sufficient
130 to support the proposed course of action and to estimate the
131 cost of the proposed course of action. Costs incurred related to
132 conducting the limited contamination assessment report are not
133 refundable from the Inland Protection Trust Fund. Site
134 eligibility under this subsection or any other provision of this
135 section is not an entitlement to advanced cleanup or continued
136 restoration funding. The applicant shall certify to the
137 department that the applicant has the prerequisite authority to
138 enter into an advanced cleanup contract with the department. The
139 certification must be submitted with the application.

140 (b) The department shall rank the applications based on the
141 percentage of cost-sharing commitment proposed by the applicant,
142 with the highest ranking given to the applicant who proposes the



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143 highest percentage of cost sharing. If the department receives
144 applications that propose identical cost-sharing commitments and
145 that exceed the funds available to commit to all such proposals
146 during the advanced cleanup application period, the department
147 shall proceed to rerank those applicants. Those applicants
148 submitting identical cost-sharing proposals that exceed funding
149 availability must be so notified by the department and offered
150 the opportunity to raise their individual cost-share
151 commitments, in a period specified in the notice. At the close
152 of the period, the department shall proceed to rerank the
153 applications pursuant to this paragraph.

154 (c) Applications for the advanced cleanup of individual
155 sites scheduled for redevelopment are not subject to the
156 application period limitations or the requirement to pay 25
157 percent of the total cleanup cost specified in paragraph (a) or
158 to the cost-sharing commitment specified in paragraph (1)(d).
159 Applications must be accepted on a first-come, first-served
160 basis and are not subject to the ranking provisions of paragraph
161 (b). Applications for the advanced cleanup of individual sites
162 scheduled for redevelopment must include:

163 1. A nonrefundable review fee of \$250 to cover the
164 administrative costs associated with the department's review of
165 the application.

166 2. A limited contamination assessment report. The report
167 must be sufficient to support the proposed course of action and
168 to estimate the cost of the proposed course of action. Costs
169 incurred related to conducting and preparing the report are not
170 refundable from the Inland Protection Trust Fund.

171 3. A proposed course of action for cleanup of the site.



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172 4. If the applicant is not the property owner for any of
173 the sites contained in the application, a department site access
174 agreement, or a similar agreement approved by the department and
175 not in violation of state law, entered into with the property
176 owner or owners, as applicable, and evidence of authorization
177 from such owner or owners for petroleum site rehabilitation
178 program tasks consistent with the proposed course of action.

179 5. A certification to the department stating that the
180 applicant has the prerequisite authority to enter into an
181 advanced cleanup contract with the department. The advanced
182 cleanup contract must include redevelopment and site
183 rehabilitation milestones.

184 6. Documentation, in the form of a letter from the local
185 government having jurisdiction over the area where the site is
186 located, which states that the local government is in agreement
187 with or approves the proposed redevelopment and that the
188 proposed redevelopment complies with applicable law and
189 requirements for such redevelopment.

190 7. A demonstrated reasonable assurance that the applicant
191 has sufficient financial resources to implement and complete the
192 redevelopment project.

193 Site eligibility under this section is not an entitlement to
194 advanced cleanup funding or continued restoration funding.

195 (4) The department may enter into contracts for a total of
196 up to ~~\$30~~ \$25 million of advanced cleanup work in each fiscal
197 year. Up to \$5 million of these funds may be designated by the
198 department for advanced cleanup of individual sites scheduled
199 for redevelopment under paragraph (2)(c).
200



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201 (a) ~~However,~~ A facility or an applicant who bundles
202 multiple sites as specified in subparagraph (2)(a)1. may not be
203 approved for more than \$5 million of cleanup activity in each
204 fiscal year.

205 (b) A facility or an applicant applying for advanced
206 cleanup of individual sites scheduled for redevelopment pursuant
207 to paragraph (2)(c) may not be approved for more than \$1 million
208 of cleanup activity in any one fiscal year.

209 (c) A property owner or responsible party may enter into a
210 voluntary cost-share agreement in which the property owner or
211 responsible party commits to bundle multiple sites and lists the
212 facilities that will be included in those future bundles. The
213 facilities listed are not subject to agency term contractor
214 assignment pursuant to department rule. The department ~~must~~
215 reserve ~~reserves~~ the right to terminate or amend the voluntary
216 cost-share agreement for any identified site under the voluntary
217 cost-share agreement if the property owner or responsible party
218 fails to submit an application to bundle any site, not already
219 covered by an advance cleanup contract, under such voluntary
220 cost-share agreement within ~~three~~ a subsequent open application
221 periods or 18 months, whichever period is shorter, ~~period~~ during
222 which it is eligible to participate. ~~The property owner or~~
223 responsible party must agree to conduct limited site assessments
224 on the identified sites within 12 months after the execution of
225 the voluntary cost-share agreement. For the purposes of this
226 section, the term "facility" includes, but is not limited to,
227 multiple site facilities such as airports, port facilities, and
228 terminal facilities even though such enterprises may be treated
229 as separate facilities for other purposes under this chapter.



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230 Section 3. Subsection (14) is added to section 376.3078,
231 Florida Statutes, to read:

232 376.3078 Drycleaning facility restoration; funds; uses;
233 liability; recovery of expenditures.—

234 (14) ADVANCED SITE ASSESSMENT.—It is in the public
235 interest, and of substantial environmental and economic benefit
236 to the state, to provide an opportunity to conduct site
237 assessment on a limited basis at contaminated sites in advance
238 of the ranking of the sites on the priority list as specified in
239 subsection (8).

240 (a) A real property owner who is eligible for site
241 rehabilitation at a facility that has been determined eligible
242 for the drycleaning solvent cleanup program under this section
243 may request an advanced site assessment, and the department may
244 authorize the performance of a site assessment in advance of the
245 ranking of the site on the priority list as specified in
246 subsection (8), if the following criteria are met:

247 1. The site assessment information would provide new
248 information that would be sufficient for the department to
249 better evaluate the actual risk of the contamination, thereby
250 reducing the risk to public health and the environment;

251 2. The property owner agrees:

252 a. To implement the appropriate institutional controls
253 allowed by department rules adopted pursuant to subsection (4)
254 at the time the property owner requests the advanced site
255 assessment; and

256 b. To implement and maintain, upon completion of the
257 cleanup, the required institutional controls, or a combination
258 of institutional and engineering controls, when the site meets



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259 the site rehabilitation criteria for closure with controls in
260 accordance with department rules adopted pursuant to subsection
261 (4);

262 3. Current conditions at the site allow the site assessment
263 to be conducted in a manner that will result in cost savings to
264 the Water Quality Assurance Trust Fund;

265 4. There is sufficient money in the annual Water Quality
266 Assurance Trust Fund appropriation for the drycleaning solvent
267 cleanup program to pay for the site assessment; and

268 5. In accordance with subsection (3), access to the site is
269 provided and the deductible is paid.

270 (b) A site may be assessed out of priority ranking order
271 when, at the department's discretion, the site assessment will
272 provide a cost savings to the program.

273 (c) An advanced site assessment must incorporate risk-based
274 corrective action principles to achieve protection of human
275 health and safety and the environment in a cost-effective
276 manner, in accordance with subsection (4). The site assessment
277 must also be sufficient to estimate the cost and determine the
278 proposed course of action toward site cleanup. Advanced site
279 assessment activities performed under this subsection shall be
280 designed to affirmatively demonstrate that the site meets one of
281 the following findings based on the following specified
282 criteria:

283 1. Recommend remedial action to mitigate risks that, in the
284 judgment of the department, are a threat to human health or
285 where failure to prevent migration of drycleaning solvents would
286 cause irreversible damage to the environment;

287 2. Recommend additional groundwater monitoring to support



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288 natural attenuation monitoring or long-term groundwater
289 monitoring; or

290 3. Recommend "no further action," with or without
291 institutional controls or institutional and engineering
292 controls, for those sites that meet the "no further action"
293 criteria department rules adopted pursuant to subsection (4).

294
295 If the site does not meet one of the findings specified in
296 subparagraphs 1.-3., the department shall notify the property
297 owner in writing of this decision, and the site shall be
298 returned to its priority ranking order in accordance with its
299 score.

300 (d) Advanced site assessment program tasks shall be
301 assigned by the drycleaning solvent cleanup program. In addition
302 to the provisions in paragraph (a), the assignment of site
303 assessment tasks shall be based on the department's
304 determination of contractor logistics, geographical
305 considerations, and other criteria that the department
306 determines are necessary to achieve the most cost-effective
307 approach.

308 (e) Available funding for advanced site assessments may not
309 exceed 10 percent of the annual Water Quality Assurance Trust
310 Fund appropriation for the drycleaning solvent cleanup program.

311 (f) The total funds committed to any one site may not
312 exceed \$70,000.

313 (g) The department shall prioritize the requests for
314 advanced site assessment, based on the date of receipt and the
315 environmental and economic value to the state, until 10 percent
316 of the annual Water Quality Assurance Trust Fund appropriation,



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317 as provided in paragraph (e), has been obligated.

318 Section 4. Paragraph (f) of subsection (2) of section
319 220.1845, Florida Statutes, is amended to read:

320 220.1845 Contaminated site rehabilitation tax credit.—

321 (2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

322 (f) The total amount of the tax credits which may be
323 granted under this section is \$21.6 million in the 2015-2016
324 fiscal year, ~~and~~ \$5 million in the 2016-2017 fiscal year, and
325 \$10 million annually thereafter.

326 Section 5. Subsection 4 of section 376.30781, Florida
327 Statutes, is amended to read:

328 376.30781 Tax credits for rehabilitation of drycleaning-
329 solvent-contaminated sites and brownfield sites in designated
330 brownfield areas; application process; rulemaking authority;
331 revocation authority.—

332 (4) The Department of Environmental Protection is
333 responsible for allocating the tax credits provided for in s.
334 220.1845, which may not exceed a total of \$21.6 million in tax
335 credits in the 2015-2016 fiscal year, ~~and~~ \$5 million in tax
336 credits in the 2016-2017 fiscal year, and \$10 million in tax
337 credits annually thereafter.

338 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.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	<u>Recommend: Fav/CS</u>
3.	<u>Reagan</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

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 installations¹² 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 LCRA's 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

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 site³⁵ 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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 costs⁴⁰ • 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	<ul style="list-style-type: none"> • 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 savings⁵⁶ 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).

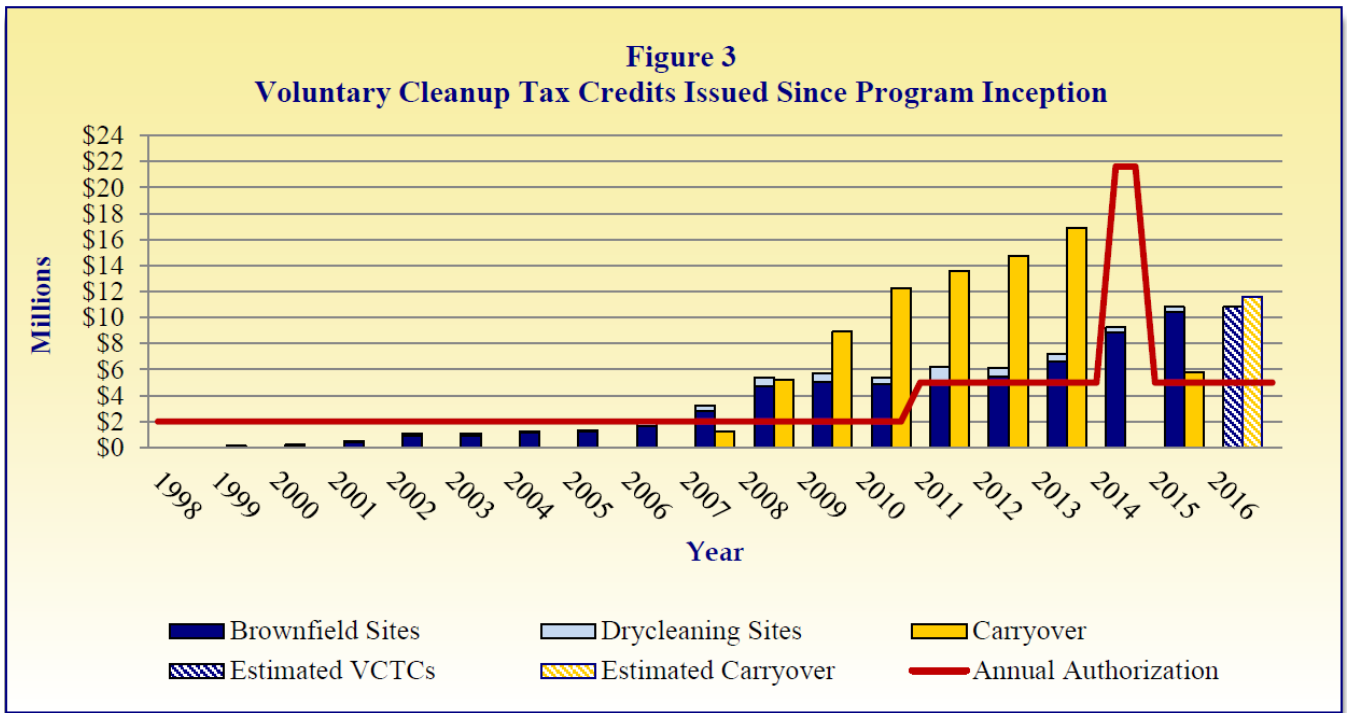
⁷⁷ Section 376.82, F.S.

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

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1 A bill to be entitled
2 An act relating to contaminated site cleanup; amending
3 s. 376.30713, F.S.; revising legislative findings;
4 providing an exception to a requirement that an
5 applicant for advanced cleanup demonstrate an ability
6 to pay cost share; requiring that the Department of
7 Environmental Protection determine whether specified
8 requirements are acceptable under certain
9 circumstances; providing that the application for the
10 cleanup of individual redevelopment sites is not
11 subject to certain application period limitations and
12 cost-share provisions; specifying the application
13 requirements for such sites; conforming provisions to
14 changes made by the act; increasing the amount per
15 year the department may use for advanced cleanup work;
16 specifying expenditure limitations; amending s.
17 376.3078, F.S.; providing a statement of public
18 interest; authorizing site assessments in advance of
19 site priority ranking under certain circumstances;
20 specifying criteria for sites to be eligible for such
21 assessments; specifying what must be demonstrated
22 through such assessments; specifying criteria for the
23 assignment of assessment tasks; specifying funding
24 limitations; specifying the prioritization of
25 requests; amending s. 220.1845, F.S.; increasing the
26 total amount of an authorization for tax credits;
27 amending s. 376.30781, F.S.; increasing the total
28 amount of tax credits the department is responsible
29 for allocating; providing an effective date.

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30
31 Be It Enacted by the Legislature of the State of Florida:
32
33 Section 1. Paragraphs (a) and (c) of subsection (1) and
34 subsections (2) and (4) of section 376.30713, Florida Statutes,
35 are amended to read:
36 376.30713 Advanced cleanup.—
37 (1) In addition to the legislative findings provided in s.
38 376.3071, the Legislature finds and declares:
39 (a) That the inability to conduct site rehabilitation in
40 advance of a site's priority ranking pursuant to s.
41 376.3071(5) (a) may substantially impede or prohibit property
42 redevelopment, property transactions, or the proper completion
43 of public works projects.
44 (c) It is in the public interest and of substantial
45 economic benefit to the state to provide an opportunity for site
46 rehabilitation to be conducted on a limited basis at
47 contaminated sites, in advance of the site's priority ranking,
48 to encourage redevelopment and facilitate property transactions
49 or public works projects.
50 (2) The department may approve an application for advanced
51 cleanup at eligible sites, notwithstanding the site's priority
52 ranking established pursuant to s. 376.3071(5) (a), pursuant to
53 this section. Only the facility owner or operator or the person
54 otherwise responsible for site rehabilitation qualifies as an
55 applicant under this section.
56 (a) Advanced cleanup applications may be submitted between
57 May 1 and June 30 and between November 1 and December 31 of each
58 fiscal year. Applications submitted between May 1 and June 30

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59 shall be for the fiscal year beginning July 1. An application
60 must consist of:

61 1. A commitment to pay 25 percent or more of the total
62 cleanup cost deemed recoverable under this section along with
63 proof of the ability to pay the cost share or a demonstration
64 that the applicant is in compliance with sub-sub-subparagraphs
65 c.(I) and (II). The department shall determine whether the cost
66 savings or compliance demonstration is acceptable. Such
67 determination is not subject to chapter 120.

68 a. Applications for the aggregate cleanup of five or more
69 sites may be submitted in one of two formats to meet the cost-
70 share requirement:

71 (I) For an aggregate application proposing that the
72 department enter into a performance-based contract, the
73 applicant may use a commitment to pay, a demonstrated cost
74 savings to the department, or both to meet the requirement.

75 (II) For an aggregate application relying on a demonstrated
76 cost savings to the department, the applicant shall, in
77 conjunction with the proposed agency term contractor, establish
78 and provide in the application the percentage of cost savings in
79 the aggregate that is being provided to the department for
80 cleanup of the sites under the application compared to the cost
81 of cleanup of those same sites using the current rates provided
82 to the department by the proposed agency term contractor.

83 b. Applications for the cleanup of individual sites may be
84 submitted in one of two formats to meet the cost-share
85 requirement:

86 (I) For an individual application proposing that the
87 department enter into a performance-based contract, the

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88 applicant may use a commitment to pay, a demonstrated cost
89 savings to the department, or both to meet the requirement.

90 (II) For an individual application relying on a
91 demonstrated cost savings to the department, the applicant
92 shall, in conjunction with the proposed agency term contractor,
93 establish and provide in the application a 25-percent cost
94 savings to the department for cleanup of the site under the
95 application compared to the cost of cleanup of the same site
96 using the current rates provided to the department by the
97 proposed agency term contractor.

98 c. Applications for the cleanup of individual redevelopment
99 sites are not subject to the application period limitations
100 specified in paragraph (a) or to the cost-share provisions in
101 paragraph (1) (d) and are accepted on a first-come, first-served
102 basis. Applications for the cleanup of individual redevelopment
103 sites must include:

104 (I) Certification that the applicant has consulted with the
105 local government having jurisdiction over the area about the
106 proposed redevelopment of the site, that the local government is
107 in agreement with or approves the proposed redevelopment, and
108 that the proposed redevelopment complies with applicable laws
109 and requirements for such redevelopment. The certification shall
110 be accomplished by referencing or providing a legally recorded
111 or officially approved land use or site plan, a development
112 order or approval, a building permit, or a similar official
113 document issued by the local government which reflects the local
114 government's approval of the proposed redevelopment of the site
115 or by providing a letter from the local government which
116 describes the proposed redevelopment of the site and expresses

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117 the local government's agreement with or approval of the
 118 proposed redevelopment.

119 (II) A demonstrated reasonable assurance that the applicant
 120 has sufficient financial resources to implement and complete the
 121 redevelopment project.

122 2. A nonrefundable review fee of \$250 to cover the
 123 administrative costs associated with the department's review of
 124 the application.

125 3. A limited contamination assessment report.

126 4. A proposed course of action.

127 5. A department site access agreement, or similar
 128 agreements approved by the department that do not violate state
 129 law, entered into with the property owner or owners, as
 130 applicable, and evidence of authorization from such owner or
 131 owners for petroleum site rehabilitation program tasks
 132 consistent with the proposed course of action where the
 133 applicant is not the property owner for any of the sites
 134 contained in the application.

135
 136 The limited contamination assessment report must be sufficient
 137 to support the proposed course of action and to estimate the
 138 cost of the proposed course of action. Costs incurred related to
 139 conducting the limited contamination assessment report are not
 140 refundable from the Inland Protection Trust Fund. Site
 141 eligibility under this subsection or any other provision of this
 142 section is not an entitlement to advanced cleanup or continued
 143 restoration funding. The applicant shall certify to the
 144 department that the applicant has the prerequisite authority to
 145 enter into an advanced cleanup contract with the department. The

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146 certification must be submitted with the application.

147 (b) The department shall rank the applications specified in
 148 sub-subparagraphs (a)1.a. and b. based on the percentage of
 149 cost-sharing commitment proposed by the applicant, with the
 150 highest ranking given to the applicant who proposes the highest
 151 percentage of cost sharing. If the department receives
 152 applications that propose identical cost-sharing commitments and
 153 that exceed the funds available to commit to all such proposals
 154 during the advanced cleanup application period, the department
 155 shall proceed to rerank those applicants. Those applicants
 156 submitting identical cost-sharing proposals that exceed funding
 157 availability must be so notified by the department and offered
 158 the opportunity to raise their individual cost-share
 159 commitments, in a period specified in the notice. At the close
 160 of the period, the department shall proceed to rerank the
 161 applications pursuant to this paragraph.

162 (4) The department may enter into contracts for a total of
 163 up to \$30 ~~\$25~~ million of advanced cleanup work in each fiscal
 164 year. Up to \$5 million of these funds may be designated for
 165 cleanup of individual redevelopment sites as referenced in sub-
 166 paragraph (2) (a)1.c.

167 (a) However, A facility or an applicant who bundles
 168 multiple sites as specified in subparagraph (2) (a)1. may not be
 169 approved for more than \$5 million of cleanup activity in each
 170 fiscal year.

171 (b) A facility or an applicant applying for cleanup of
 172 individual redevelopment sites as referenced in sub-subparagraph
 173 (2) (a)1.c. may not be approved for more than \$1 million of
 174 cleanup activity in each fiscal year.

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175 (c) A property owner or responsible party may enter into a
 176 voluntary cost-share agreement in which the property owner or
 177 responsible party commits to bundle multiple sites and lists the
 178 facilities that will be included in those future bundles. The
 179 facilities listed are not subject to agency term contractor
 180 assignment pursuant to department rule. The department reserves
 181 the right to terminate or amend the voluntary cost-share
 182 agreement for any identified site under the voluntary cost-share
 183 agreement if the property owner or responsible party fails to
 184 submit an application to bundle any site, not already covered by
 185 an advance cleanup contract, under such voluntary cost-share
 186 agreement within a subsequent open application period during
 187 which it is eligible to participate. For the purposes of this
 188 section, the term "facility" includes, but is not limited to,
 189 multiple site facilities such as airports, port facilities, and
 190 terminal facilities even though such enterprises may be treated
 191 as separate facilities for other purposes under this chapter.

192 Section 2. Subsection (14) is added to section 376.3078,
 193 Florida Statutes, to read:

194 376.3078 Drycleaning facility restoration; funds; uses;
 195 liability; recovery of expenditures.—

196 (14) ADVANCED SITE ASSESSMENT.—It is in the public
 197 interest, and of substantial environmental and economic benefit
 198 to the state, to provide an opportunity to conduct site
 199 assessment on a limited basis at contaminated sites in advance
 200 of the ranking of the sites on the priority list as specified in
 201 subsection (8).

202 (a) A real property owner who is eligible for site
 203 rehabilitation at a facility that has been determined eligible

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204 for the drycleaning solvent cleanup program under this section
 205 may request an advanced site assessment, and the department may
 206 authorize the performance of a site assessment in advance of the
 207 ranking of the site on the priority list as specified in
 208 subsection (8), if the following criteria are met:

209 1. The site assessment information would provide new
 210 information that would be sufficient for the department to
 211 better evaluate the actual risk of the contamination, thereby
 212 reducing the risk to public health and the environment;

213 2. The property owner agrees:

214 a. To implement the appropriate institutional controls
 215 allowed by department rules adopted pursuant to subsection (4)
 216 at the time the property owner requests the advanced site
 217 assessment; and

218 b. To implement and maintain, upon completion of the
 219 cleanup, the required institutional controls, or a combination
 220 of institutional and engineering controls, when the site meets
 221 the site rehabilitation criteria for closure with controls in
 222 accordance with department rules adopted pursuant to subsection
 223 (4);

224 3. Current conditions at the site allow the site assessment
 225 to be conducted in a manner that will result in cost savings to
 226 the Water Quality Assurance Trust Fund;

227 4. There is sufficient money in the annual Water Quality
 228 Assurance Trust Fund appropriation for the drycleaning solvent
 229 cleanup program to pay for the site assessment; and

230 5. In accordance with subsection (3), access to the site is
 231 provided and the deductible is paid.

232 (b) A site may be assessed out of priority ranking order

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233 when, at the department's discretion, the site assessment will
 234 provide a cost savings to the program.

235 (c) An advanced site assessment must incorporate risk-based
 236 corrective action principles to achieve protection of human
 237 health and safety and the environment in a cost-effective
 238 manner, in accordance with subsection (4). The site assessment
 239 must also be sufficient to estimate the cost and determine the
 240 proposed course of action toward site cleanup. Advanced site
 241 assessment activities performed under this subsection shall be
 242 designed to affirmatively demonstrate that the site meets one of
 243 the following findings based on the following specified
 244 criteria:

245 1. Recommend remedial action to mitigate risks that, in the
 246 judgment of the department, are a threat to human health or
 247 where failure to prevent migration of drycleaning solvents would
 248 cause irreversible damage to the environment;

249 2. Recommend additional groundwater monitoring to support
 250 natural attenuation monitoring or long-term groundwater
 251 monitoring; or

252 3. Recommend "no further action," with or without
 253 institutional controls or institutional and engineering
 254 controls, for those sites that meet the "no further action"
 255 criteria department rules adopted pursuant to subsection (4).

256
 257 If the site does not meet one of the findings specified in
 258 subparagraphs 1.-3., the department shall notify the property
 259 owner in writing of this decision, and the site shall be
 260 returned to its priority ranking order in accordance with its
 261 score.

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262 (d) Advanced site assessment program tasks shall be
 263 assigned by the drycleaning solvent cleanup program. In addition
 264 to the provisions in paragraph (a), the assignment of site
 265 assessment tasks shall be based on the department's
 266 determination of contractor logistics, geographical
 267 considerations, and other criteria that the department
 268 determines are necessary to achieve the most cost-effective
 269 approach.

270 (e) Available funding for advanced site assessments may not
 271 exceed 10 percent of the annual Water Quality Assurance Trust
 272 Fund appropriation for the drycleaning solvent cleanup program.

273 (f) The total funds committed to any one site may not
 274 exceed \$70,000.

275 (g) The department shall prioritize the requests for
 276 advanced site assessment, based on the date of receipt and the
 277 environmental and economic value to the state, until 10 percent
 278 of the annual Water Quality Assurance Trust Fund appropriation,
 279 as provided in paragraph (e), has been obligated.

280 Section 3. Paragraph (f) of subsection (2) of section
 281 220.1845, Florida Statutes, is amended to read:

282 220.1845 Contaminated site rehabilitation tax credit.—

283 (2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

284 (f) The total amount of the tax credits which may be
 285 granted under this section is \$21.6 million in the 2015-2016
 286 fiscal year, ~~and~~ \$5 million in the 2016-2017 fiscal year, and
 287 \$10 million annually thereafter.

288 Section 4. Subsection 4 of section 376.30781, Florida
 289 Statutes, is amended to read:

290 376.30781 Tax credits for rehabilitation of drycleaning-

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291 solvent-contaminated sites and brownfield sites in designated
292 brownfield areas; application process; rulemaking authority;
293 revocation authority.-

294 (4) The Department of Environmental Protection is
295 responsible for allocating the tax credits provided for in s.
296 220.1845, which may not exceed a total of \$21.6 million in tax
297 credits in the 2015-2016 fiscal year, ~~and~~ \$5 million in tax
298 credits in the 2016-2017 fiscal year, and \$10 million in tax
299 credits annually thereafter.

300 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.

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 26

cc: Mike Hansen, Staff Director
Alicia Weiss, Committee Administrative Assistant

The Florida Senate
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.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Loe</u>	<u>Williams</u>	<u>AHS</u>	Recommend: Fav/CS
3.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	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.

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.

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



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576-04077A-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



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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.

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.

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

By Senator Garcia

36-01178-17

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1 A bill to be entitled
 2 An act relating to comprehensive transitional
 3 education programs; amending s. 393.0678, F.S.;
 4 authorizing the Agency for Persons with Disabilities
 5 to petition a court for the appointment of a receiver
 6 for a comprehensive transitional education program
 7 under certain circumstances; amending s. 393.18, F.S.;
 8 providing that no new comprehensive transitional
 9 education programs may be licensed after a specified
 10 date; providing that no licenses may be renewed for
 11 comprehensive transitional education programs after a
 12 certain specified date; providing an effective date.

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

16 Section 1. Subsection (1) of section 393.0678, Florida
 17 Statutes, is amended to read:

18 393.0678 Receivership proceedings.—

19 (1) The agency may petition a court of competent
 20 jurisdiction for the appointment of a receiver for a
 21 comprehensive transitional education program, a residential
 22 habilitation center, or a group home facility owned and operated
 23 by a corporation or partnership when any of the following
 24 conditions exist:

25 (a) Any person is operating a facility or program without a
 26 license and refuses to make application for a license as
 27 required by s. 393.067.

28 (b) The licensee is closing the facility or has informed
 29 the department that it intends to close the facility; and
 30 adequate arrangements have not been made for relocation of the
 31 residents within 7 days, exclusive of weekends and holidays, of
 32 the closing of the facility.

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

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33 (c) The agency determines that conditions exist in the
 34 facility which present an imminent danger to the health, safety,
 35 or welfare of the residents of the facility or which present a
 36 substantial probability that death or serious physical harm
 37 would result therefrom. Whenever possible, the agency shall
 38 facilitate the continued operation of the program.

39 (d) The licensee cannot meet its financial obligations to
 40 provide food, shelter, care, and utilities. Evidence such as the
 41 issuance of bad checks or the accumulation of delinquent bills
 42 for such items as personnel salaries, food, drugs, or utilities
 43 constitutes prima facie evidence that the ownership of the
 44 facility lacks the financial ability to operate the home in
 45 accordance with the requirements of this chapter and all rules
 46 promulgated thereunder.

47 Section 2. Subsection (7) is added to section 393.18,
 48 Florida Statutes, to read:

49 393.18 Comprehensive transitional education program.—A
 50 comprehensive transitional education program serves individuals
 51 who have developmental disabilities, severe maladaptive
 52 behaviors, severe maladaptive behaviors and co-occurring complex
 53 medical conditions, or a dual diagnosis of developmental
 54 disability and mental illness. Services provided by the program
 55 must be temporary in nature and delivered in a manner designed
 56 to achieve the primary goal of incorporating the principles of
 57 self-determination and person-centered planning to transition
 58 individuals to the most appropriate, least restrictive community
 59 living option of their choice which is not operated as a
 60 comprehensive transitional education program. The supervisor of
 61 the clinical director of the program licensee must hold a

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62 doctorate degree with a primary focus in behavior analysis from
63 an accredited university, be a certified behavior analyst
64 pursuant to s. 393.17, and have at least 1 year of experience in
65 providing behavior analysis services for individuals in
66 developmental disabilities. The staff must include behavior
67 analysts and teachers, as appropriate, who must be available to
68 provide services in each component center or unit of the
69 program. A behavior analyst must be certified pursuant to s.
70 393.17.

71 (7) After July 1, 2017, a license may not be granted under
72 this section to a new comprehensive transitional education
73 program. After December 31, 2019, a license may not be renewed
74 for an existing comprehensive transitional education program.

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

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 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

APPEARANCE RECORD

4/25/17

Meeting Date

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

714

Bill Number (if applicable)

Topic CTEP

Amendment Barcode (if applicable)

Name Robert Brown

Job Title Legislative Affairs Director

Address 4030 Esplanade Way

Phone 850 414 5853

Street

Tallahassee FL 32399

City

State

Zip

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.

The Florida Senate
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.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders/Billmeier</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 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

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 business¹⁹ 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 adjuster²¹ 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 bond²² 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.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
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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11 Section 2. Present subsections (7) through (19) of section
12 626.854, Florida Statutes, are renumbered as subsections (6)
13 through (18), respectively, subsection (1) and present
14 subsections (6), (7), (11), (18), and (19) are amended, and a
15 new subsection (19) is added to that section, to read:

16 626.854 "Public adjuster" defined; prohibitions.—The
17 Legislature finds that it is necessary for the protection of the
18 public to regulate public insurance adjusters and to prevent the
19 unauthorized practice of law.

20 (1) A "public adjuster" is any person, except a duly
21 licensed attorney at law as exempted under s. 626.860, who, for
22 money, commission, or any other thing of value, directly or
23 indirectly prepares, completes, or files an insurance claim ~~form~~
24 for an insured or third-party claimant or who, for money,
25 commission, or any other thing of value, acts on behalf of, or
26 aids an insured or third-party claimant in negotiating for or
27 effecting the settlement of a claim or claims for loss or damage
28 covered by an insurance contract or who advertises for
29 employment as an adjuster of such claims. The term also includes
30 any person who, for money, commission, or any other thing of
31 value, directly or indirectly solicits, investigates, or adjusts
32 such claims on behalf of a public adjuster, an insured, or a
33 third-party claimant. The term does not include a person who
34 photographs or inventories damaged personal property or business
35 personal property or a person performing duties under another
36 professional license, if such person does not otherwise solicit,
37 adjust, investigate, or negotiate for or attempt to effect the
38 settlement of a claim.

39 ~~(6) A public adjuster may not directly or indirectly~~



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40 ~~through any other person or entity initiate contact or engage in~~
41 ~~face-to-face or telephonic solicitation or enter into a contract~~
42 ~~with any insured or claimant under an insurance policy until at~~
43 ~~least 48 hours after the occurrence of an event that may be the~~
44 ~~subject of a claim under the insurance policy unless contact is~~
45 ~~initiated by the insured or claimant.~~

46 (6)~~(7)~~ An insured or claimant may cancel a public
47 adjuster's contract to adjust a claim without penalty or
48 obligation within 3 business days after the date on which the
49 contract is executed or within 3 business days after the date on
50 which the insured or claimant has notified the insurer of the
51 claim, ~~by phone or in writing~~, whichever is later. The public
52 adjuster's contract must disclose to the insured or claimant his
53 or her right to cancel the contract and advise the insured or
54 claimant that notice of cancellation must be submitted in
55 writing and sent by certified mail, return receipt requested, or
56 other form of mailing that provides proof thereof, to the public
57 adjuster at the address specified in the contract; provided,
58 during any state of emergency as declared by the Governor and
59 for 1 year after the date of loss, the insured or claimant has 5
60 business days after the date on which the contract is executed
61 to cancel a public adjuster's contract.

62 (10) (a)~~(11) (a)~~ If a public adjuster enters into a contract
63 with an insured or claimant to reopen a claim or file a
64 supplemental claim that seeks additional payments for a claim
65 that has been previously paid in part or in full or settled by
66 the insurer, the public adjuster may not charge, agree to, or
67 accept from any source compensation, payment, commission, fee,
68 or any other thing of value based on a previous settlement or



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69 previous claim payments by the insurer for the same cause of
70 loss. The charge, compensation, payment, commission, fee, or any
71 other thing of value must be based only on the claim payments or
72 settlement obtained through the work of the public adjuster
73 after entering into the contract with the insured or claimant.
74 Compensation for the reopened or supplemental claim may not
75 exceed 20 percent of the reopened or supplemental claim payment.
76 In no event shall the contracts described in this paragraph
77 exceed the limitations in paragraph (b).

78 (b) A public adjuster may not charge, agree to, or accept
79 from any source compensation, payment, commission, fee, or any
80 other thing of value in excess of:

81 1. Ten percent of the amount of insurance claim payments
82 made by the insurer for claims based on events that are the
83 subject of a declaration of a state of emergency by the
84 Governor. This provision applies to claims made during the year
85 after the declaration of emergency. After that year, the
86 limitations in subparagraph 2. apply.

87 2. Twenty percent of the amount of insurance claim payments
88 made by the insurer for claims that are not based on events that
89 are the subject of a declaration of a state of emergency by the
90 Governor.

91 (c) Insurance claim payments made by the insurer do not
92 include policy deductibles, and public adjuster compensation may
93 not be based on the deductible portion of a claim.

94 (d) ~~(e)~~ Any maneuver, shift, or device through which the
95 limits on compensation set forth in this subsection are exceeded
96 is a violation of this chapter punishable as provided under s.
97 626.8698.



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98 ~~(17)-(18)~~ A public adjuster, a public adjuster apprentice,
99 or a person acting on behalf of an adjuster or apprentice may
100 not enter into a contract or accept a power of attorney that
101 vests in the public adjuster, the public adjuster apprentice, or
102 the person acting on behalf of the adjuster or apprentice the
103 effective authority to choose the persons or entities that will
104 perform repair work in a property insurance claim or provide
105 goods or services that will require the insured or third-party
106 claimant to expend funds in excess of those payable to the
107 public adjuster under the terms of the contract for adjusting
108 services.

109 ~~(18)-(19)~~ Subsections ~~(5)-(17)~~ ~~(5)-(18)~~ apply only to
110 residential property insurance policies and condominium unit
111 owner policies as described in s. 718.111(11).

112 (19) Except as otherwise provided in this chapter, no
113 person, except an attorney at law or a public adjuster, may for
114 money, commission, or any other thing of value, directly or
115 indirectly:

116 (a) Prepare, complete, or file an insurance claim for an
117 insured or a third-party claimant;

118 (b) Act on behalf of or aid an insured or a third-party
119 claimant in negotiating for or effecting the settlement of a
120 claim for loss or damage covered by an insurance contract;

121 (c) Advertise for employment as a public adjuster; or

122 (d) Solicit, investigate, or adjust a claim on behalf of a
123 public adjuster, an insured, or a third-party claimant.

124 Section 3. Section 626.8541, Florida Statutes, is repealed.

125 Section 4. Section 626.8548, Florida Statutes, is amended
126 to read:



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127 626.8548 "All-lines adjuster" defined.—An "all-lines
128 adjuster" is a person who, for money, commission, or any other
129 thing of value, directly or indirectly is self-employed or
130 employed by an insurer, a wholly owned subsidiary of an insurer,
131 or an independent adjusting firm or other independent adjuster,
132 and who undertakes on behalf of a public adjuster or an insurer
133 or other insurers under common control or ownership to ascertain
134 and determine the amount of any claim, loss, or damage payable
135 under an insurance contract or undertakes to effect settlement
136 of such claim, loss, or damage. The term also includes any
137 person who, for money, commission, or any other thing of value,
138 directly or indirectly solicits claims on behalf of a public
139 adjuster, but does not include a paid spokesperson used as part
140 of a written or an electronic advertisement or a person who
141 photographs or inventories damaged personal property or business
142 personal property if such person does not otherwise adjust,
143 investigate, or negotiate for or attempt to effect the
144 settlement of a claim. The term does not apply to life insurance
145 or annuity contracts.

146 Section 5. Section 626.8561, Florida Statutes, is created
147 to read:

148 626.8561 "Public adjuster apprentice" defined.—The term
149 "public adjuster apprentice" means a person licensed as an all-
150 lines adjuster who:

151 (1) Is appointed and employed or contracted by a public
152 adjuster or a public adjusting firm;

153 (2) Assists the public adjuster or public adjusting firm in
154 ascertaining and determining the amount of any claim, loss, or
155 damage payable under an insurance contract, or who undertakes to



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156 effect settlement of such claim, loss, or damage; and

157 (3) Satisfies the requirements of s. 626.8651.

158 Section 6. Subsection (3) of section 626.8584, Florida
159 Statutes, is amended to read:

160 626.8584 "Nonresident all-lines adjuster" defined.—A

161 "nonresident all-lines adjuster" means a person who:

162 (3) Is licensed as an all-lines adjuster and self-appointed
163 or appointed and employed or contracted by an independent
164 adjusting firm or other independent adjuster, by an insurer
165 admitted to do business in this state or a wholly owned
166 subsidiary of an insurer admitted to do business in this state,
167 or by a public adjuster or a public adjusting firm ~~other~~
168 ~~insurers under the common control or ownership of such insurer.~~

169 Section 7. Subsection (1) of section 626.861, Florida
170 Statutes, is amended to read:

171 626.861 Insurer's officers, insurer's employees, reciprocal
172 insurer's representatives; adjustments by.—

173 (1) ~~Nothing in~~ This part may not shall be construed to
174 prevent an executive officer of any insurer, an ~~or a regularly~~
175 ~~salari~~ed employee of an insurer handling claims with respect to
176 health insurance, an employee of an insurer handling claims with
177 respect to residential property insurance in which the amount of
178 coverage for the applicable type of loss is contractually
179 limited to \$500 or less, or the duly designated attorney or
180 agent authorized and acting for subscribers to reciprocal
181 insurers, ~~7~~ from adjusting any claim loss or damage under any
182 insurance contract of such insurer.

183 Section 8. Subsection (3) of section 626.864, Florida
184 Statutes, is amended to read:



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185 626.864 Adjuster license types.-

186 (3) An all-lines adjuster may be appointed as an
187 independent adjuster, public adjuster apprentice, or company
188 employee adjuster, but not more than one of these ~~both~~
189 concurrently.

190 Section 9. Paragraphs (d) and (e) of subsection (1) of
191 section 626.865, Florida Statutes, are amended to read:

192 626.865 Public adjuster's qualifications, bond.-

193 (1) The department shall issue a license to an applicant
194 for a public adjuster's license upon determining that the
195 applicant has paid the applicable fees specified in s. 624.501
196 and possesses the following qualifications:

197 (d) Has had sufficient experience, training, or instruction
198 concerning the adjusting of damages or losses under insurance
199 contracts, other than life and annuity contracts, is
200 sufficiently informed as to the terms and effects of the
201 provisions of those types of insurance contracts, and possesses
202 adequate knowledge of the laws of this state relating to such
203 contracts as to enable and qualify him or her to engage in the
204 business of insurance adjuster fairly and without injury to the
205 public or any member thereof with whom the applicant may have
206 business as a public adjuster, ~~or has been licensed and employed~~
207 ~~as a resident insurance company adjuster or independent adjuster~~
208 ~~in this state on a continual basis for the past year.~~

209 (e) Has been licensed in this state as an all-lines
210 adjuster, and has been appointed on a continual basis for the
211 previous 6 months ~~is licensed~~ as a public adjuster apprentice
212 under s. 626.8561, as an independent adjuster under s. 626.855,
213 or as a company employee adjuster under s. 626.856 ~~under s.~~



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214 ~~626.8651 and complies with the requirements of that license~~
215 ~~throughout the licensure period.~~

216 Section 10. Section 626.8651, Florida Statutes, is amended
217 to read:

218 626.8651 Public adjuster apprentice appointment license;
219 qualifications.—

220 (1) (a) The department shall issue an appointment a license
221 as a public adjuster apprentice to a licensee an applicant who
222 is:

223 1. Is licensed as an all-lines adjuster under s. 626.866;

224 2. Has filed with the department a bond executed and issued
225 by a surety insurer that is authorized to transact such business
226 in this state in the amount of \$50,000, which is conditioned
227 upon the faithful performance of his or her duties as a public
228 adjuster apprentice; and

229 3. Maintains such bond unimpaired throughout the existence
230 of the appointment and for at least 1 year after termination of
231 the appointment.

232 (b) The bond must be in favor of the department and must
233 specifically authorize recovery by the department of the damages
234 sustained in case the licensee commits fraud or unfair practices
235 in connection with his or her business as a public adjuster
236 apprentice. The aggregate liability of the surety for all such
237 damages may not exceed the amount of the bond, and the bond may
238 not be terminated by the issuing insurer unless written notice
239 of at least 30 days is given to the licensee and filed with the
240 department.

241 ~~(a) A natural person at least 18 years of age.~~

242 ~~(b) A United States citizen or legal alien who possesses~~



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243 ~~work authorization from the United States Bureau of Citizenship~~
244 ~~and Immigration Services.~~

245 ~~(c) Trustworthy and has such business reputation as would~~
246 ~~reasonably ensure that the applicant will conduct business as a~~
247 ~~public adjuster apprentice fairly and in good faith and without~~
248 ~~detriment to the public.~~

249 ~~(2) All applicable license fees, as prescribed in s.~~
250 ~~624.501, must be paid in full before issuance of the license.~~

251 ~~(3) An applicant must pass the required written examination~~
252 ~~before a license may be issued.~~

253 ~~(4) An applicant must have received designation as an~~
254 ~~Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA),~~
255 ~~or as a Certified Claims Adjuster (CCA) after completion of~~
256 ~~training that qualifies the applicant to engage in the business~~
257 ~~of a public adjuster apprentice fairly and without injury to the~~
258 ~~public. Such training and instruction must address adjusting~~
259 ~~damages and losses under insurance contracts, the terms and~~
260 ~~effects of insurance contracts, and knowledge of the laws of~~
261 ~~this state relating to insurance contracts.~~

262 ~~(5) At the time of application for license as a public~~
263 ~~adjuster apprentice, the applicant shall file with the~~
264 ~~department a bond executed and issued by a surety insurer~~
265 ~~authorized to transact such business in this state in the amount~~
266 ~~of \$50,000, conditioned upon the faithful performance of his or~~
267 ~~her duties as a public adjuster apprentice under the license for~~
268 ~~which the applicant has applied, and thereafter maintain the~~
269 ~~bond unimpaired throughout the existence of the license and for~~
270 ~~at least 1 year after termination of the license. The bond shall~~
271 ~~be in favor of the department and shall specifically authorize~~



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272 ~~recovery by the department of the damages sustained in case the~~
273 ~~licensee commits fraud or unfair practices in connection with~~
274 ~~his or her business as a public adjuster apprentice. The~~
275 ~~aggregate liability of the surety for all such damages may not~~
276 ~~exceed the amount of the bond, and the bond may not be~~
277 ~~terminated by the issuing insurer unless written notice of at~~
278 ~~least 30 days is given to the licensee and filed with the~~
279 ~~department.~~

280 ~~(6) A public adjuster apprentice shall complete at a~~
281 ~~minimum 100 hours of employment per month for 12 months of~~
282 ~~employment under the supervision of a licensed and appointed~~
283 ~~all-lines public adjuster in order to qualify for licensure as a~~
284 ~~public adjuster. The department may adopt rules that establish~~
285 ~~standards for such employment requirements.~~

286 ~~(2)~~(7) An appointing public adjusting firm may not maintain
287 more than four ~~12~~ public adjuster apprentices simultaneously.
288 However, a supervising public adjuster may not be responsible
289 for more than one ~~three~~ public adjuster apprentice ~~apprentices~~
290 simultaneously and shall be accountable for the acts of the ~~all~~
291 public adjuster apprentice ~~apprentices~~ which are related to
292 transacting business as a public adjuster apprentice. This
293 subsection does not apply to a public adjusting firm that
294 adjusts claims primarily for commercial entities with operations
295 in more than one state and that does not directly or indirectly
296 perform adjusting services for insurers or individual
297 homeowners.

298 ~~(8) An apprentice license is effective for 18 months unless~~
299 ~~the license expires due to lack of maintaining an appointment;~~
300 ~~is surrendered by the licensee; is terminated, suspended, or~~



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301 ~~revoked by the department; or is canceled by the department upon~~
302 ~~issuance of a public adjuster license. The department may not~~
303 ~~issue a public adjuster apprentice license to any individual who~~
304 ~~has held such a license in this state within 2 years after~~
305 ~~expiration, surrender, termination, revocation, or cancellation~~
306 ~~of the license.~~

307 ~~(9) After completing the requirements for employment as a~~
308 ~~public adjuster apprentice, the licensee may file an application~~
309 ~~for a public adjuster license. The applicant and supervising~~
310 ~~public adjuster or public adjusting firm must each file a sworn~~
311 ~~affidavit, on a form prescribed by the department, verifying~~
312 ~~that the employment of the public adjuster apprentice meets the~~
313 ~~requirements of this section.~~

314 ~~(10) In no event shall A public adjuster apprentice~~
315 ~~licensed under this section perform any of the functions for~~
316 ~~which a public adjuster's license is required after expiration~~
317 ~~of the public adjuster apprentice license without having~~
318 ~~obtained a public adjuster license.~~

319 ~~(3)~~ (11) A public adjuster apprentice has the same authority
320 as the licensed public adjuster or public adjusting firm that
321 employs the apprentice except that an apprentice may not execute
322 contracts for the services of a public adjuster or public
323 adjusting firm and ~~may not solicit contracts for the services~~
324 ~~except under the direct supervision and guidance of the~~
325 ~~supervisory public adjuster.~~ An individual may not be, act as,
326 or hold himself or herself out to be a public adjuster
327 apprentice unless the individual is licensed as an all-lines
328 adjuster and holds a current appointment by a licensed public
329 all-lines adjuster or a public adjusting firm that employs a



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330 licensed ~~all-lines~~ public adjuster.

331 Section 11. Section 626.8695, Florida Statutes, is amended
332 to read:

333 626.8695 Primary adjuster.—

334 (1) Each business location established by an adjuster,
335 ~~person operating an adjusting firm, a corporation, or an~~
336 association and each location of a multiple location adjusting
337 ~~firm~~ must designate with the department a primary adjuster who
338 is licensed and appointed to adjust the insurance claims
339 adjusted by the business location.

340 (2) An adjusting firm and each of its branch firms shall
341 designate a primary adjuster for each such firm or location and
342 ~~must~~ file with the department, at the department's designated
343 website, the name and license number of such primary adjuster
344 and the physical address of the adjusting firm or branch firm
345 location where he or she is the primary adjuster, ~~on a form~~
346 ~~approved by the department.~~ The designation of the primary
347 adjuster may be changed at the option of the adjusting firm. Any
348 such change is effective upon notification to the department.
349 Notice of change must be provided ~~sent~~ to the department within
350 30 days after such change.

351 (3) ~~(2)(a)~~ For purposes of this section, a "primary
352 adjuster" is the licensed adjuster who is responsible for the
353 ~~hiring and~~ supervision of all individuals within an adjusting
354 firm location who act ~~deal with the public and who acts~~ in the
355 capacity of a ~~public adjuster as defined in s. 626.854, or an~~
356 ~~independent~~ adjuster as defined in this chapter ~~s. 626.855~~. An
357 adjuster may be designated as a primary adjuster for more than
358 ~~only~~ one adjusting firm location provided no person engages in



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359 activity requiring licensure as an adjuster at any location when
360 an adjuster is not physically present.

361 (4)~~(b)~~ For purposes of this section, an "adjusting firm" is
362 a location where an independent or public adjuster is engaged in
363 the business of insurance.

364 (5)~~(3)~~ The department may suspend or revoke the license of
365 the primary adjuster if the adjusting firm employs or contracts
366 any person who has had a license denied or any person whose
367 license is currently suspended or revoked. However, if a person
368 has been denied a license for failure to pass a required
369 examination, he or she may be employed or contracted to perform
370 clerical or administrative functions for which licensure is not
371 required.

372 (6)~~(4)~~ The primary adjuster in an ~~unincorporated~~ adjusting
373 firm, ~~or the primary adjuster in an incorporated adjusting firm~~
374 ~~in which no officer, director, or stockholder is an adjuster,~~ is
375 ~~responsible and~~ accountable for misconduct or violations of this
376 code committed by the primary adjuster or by any other person
377 ~~the acts of salaried employees~~ under his or her direct
378 supervision ~~and control~~ while acting on behalf of the adjusting
379 firm. This section does not render a primary adjuster ~~Nothing in~~
380 ~~this section renders any person~~ criminally liable for an ~~or~~
381 ~~subject to any disciplinary proceedings for any act unless the~~
382 primary adjuster ~~person~~ personally committed the act or knew or
383 should have known of the act and of the facts constituting a
384 violation of this code.

385 (7)~~(5)~~ The department may suspend or revoke the license of
386 any adjuster who is employed or contracted by a person whose
387 license is currently suspended or revoked.



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388 (8)~~(6)~~ An adjusting firm location may not conduct the
389 business of insurance unless a primary adjuster is designated
390 and provides services to the firm at all times. If the Failure
391 of the person operating the adjusting firm to designate a
392 primary adjuster designated with the department ends his or her
393 affiliation with the firm for any reason and if the firm fails
394 to designate another primary adjuster, as required in subsection
395 (2), within 90 days, the firm license automatically expires on
396 the 91st day after the date the designated primary adjuster
397 ended his or her affiliation with for the firm, or for each
398 location, as applicable, on a form prescribed by the department
399 within 30 days after inception of the firm or change of primary
400 adjuster designation, constitutes grounds for requiring the
401 adjusting firm to obtain an adjusting firm license pursuant to
402 s. 626.8696.

403 (9)~~(7)~~ Any adjusting firm may determine a request, on a
404 form prescribed by the department, verification from the
405 department of any person's current licensure status by
406 submitting an appointment request. If a request is mailed to the
407 office within 5 working days after the date an adjuster is
408 hired. If, and the department subsequently notifies the
409 adjusting firm that its appointee's an employee's license is
410 currently suspended, revoked, or has been denied, the license of
411 the primary adjuster may shall not be revoked or suspended if
412 the unlicensed person is immediately dismissed from employment
413 as an adjuster with the firm.

414 Section 12. Section 626.872, Florida Statutes, is repealed.

415 Section 13. Subsection (1) of section 626.874, Florida
416 Statutes, is amended to read:



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417 626.874 Catastrophe or emergency adjusters.—

418 (1) In the event of a catastrophe or emergency, the
419 department may issue a license, for the purposes and under the
420 conditions and for the period of emergency as it shall
421 determine, to persons who are residents or nonresidents of this
422 state, who are at least 18 years of age, who are United States
423 citizens or legal aliens who possess work authorization from the
424 United States Bureau of Citizenship and Immigration Services,
425 and who are not licensed adjusters under this part but who have
426 been designated and certified to it as qualified to act as
427 adjusters ~~by all-lines resident adjusters,~~ by an authorized
428 insurer, ~~or by a licensed general-lines agent~~ to adjust claims,
429 losses, or damages under policies or contracts of insurance
430 issued by such insurers, or by the primary adjuster of an
431 independent adjusting firm contracted with an authorized insurer
432 to adjust claims on behalf of the insurer. The fee for the
433 license is as provided in s. 624.501(12)(c).

434 Section 14. Subsection (2) of section 626.875, Florida
435 Statutes, is amended to read:

436 626.875 Office and records.—

437 (2) The records of the adjuster relating to a particular
438 claim or loss shall be so retained in the adjuster's place of
439 business for a period of not less than 5 ~~3~~ years after
440 completion of the adjustment. This provision shall not be deemed
441 to prohibit return or delivery to the insurer or insured of
442 documents furnished to or prepared by the adjuster and required
443 by the insurer or insured to be returned or delivered thereto.

444 Section 15. Section 626.876, Florida Statutes, is amended
445 to read:



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446 626.876 Exclusive employment; public adjusters, all-lines
447 ~~independent~~ adjusters.-

448 (1) An individual licensed ~~and appointed~~ as a public
449 adjuster may not be simultaneously licensed as an all-lines
450 adjuster employed during the same period by more than one public
451 ~~adjuster or public adjuster firm or corporation.~~

452 (2) An individual licensed as an all-lines adjuster and
453 appointed as an independent adjuster, a company employee
454 adjuster, or a public adjuster apprentice may not be
455 simultaneously appointed, contracted, or employed as an adjuster
456 that requires a different appointment type ~~during the same~~
457 ~~period by more than one independent adjuster or independent~~
458 ~~adjuster firm or corporation.~~

459 Section 16. Section 626.879, Florida Statutes, is repealed.

460 Section 17. This act shall take effect January 1, 2018.

461
462 ===== T I T L E A M E N D M E N T =====

463 And the title is amended as follows:

464 Delete everything before the enacting clause
465 and insert:

466 A bill to be entitled

467 An act relating to insurance adjusters; amending s.
468 626.015, F.S.; conforming a cross-reference; amending
469 s. 626.854, F.S.; redefining the term "public
470 adjuster"; deleting a certain prohibited act of a
471 public adjuster; deleting a provision specifying the
472 methods for an insured or claimant to provide certain
473 notice to an insurer; providing construction relating
474 to certain limitations on insurance claim payments and



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475 public adjuster compensation; revising a prohibition
476 against certain entities relating to a contract or
477 power of attorney that vests certain authority in a
478 property insurance claim; conforming a cross-
479 reference; prohibiting persons from conducting certain
480 activities relating to insurance claims; providing an
481 exception for attorneys and public adjusters;
482 repealing s. 626.8541, F.S., relating to public
483 adjuster apprentices; amending s. 626.8548, F.S.;
484 redefining the term "all-lines adjuster"; creating s.
485 626.8561, F.S.; defining the term "public adjuster
486 apprentice"; amending s. 626.8584, F.S.; redefining
487 the term "nonresident all-lines adjuster"; amending s.
488 626.861, F.S.; revising construction relating to
489 employees of an insurer; amending s. 626.864, F.S.;
490 revising the permissible appointments of all-lines
491 adjusters; amending s. 626.865, F.S.; revising the
492 qualifications for licensure for public adjusters;
493 amending s. 626.8651, F.S.; requiring public adjuster
494 apprentices to be appointed, rather than licensed, by
495 the Department of Financial Services; specifying
496 qualifications for such appointments; revising
497 requirements and limitations for public adjusting
498 firms and public adjusters who supervise public
499 adjuster apprentices; revising certain prohibited acts
500 and exceptions to such acts of public adjuster
501 apprentices; conforming provisions to changes made by
502 the act; amending s. 626.8695, F.S.; revising
503 requirements for designating primary adjusters;



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504 redefining the term "primary adjuster"; revising the
505 accountability of a primary adjuster for persons under
506 his or her supervision; revising a prohibition against
507 an adjusting firm location conducting insurance
508 business under certain circumstances; revising
509 procedures for an adjusting firm to determine a
510 person's current licensure status; repealing s.
511 626.872, F.S., relating to all-lines adjuster
512 temporary licenses; amending s. 626.874, F.S.;
513 revising conditions for the department to issue
514 adjuster licenses in the event of catastrophes or
515 emergencies; amending s. 626.875, F.S.; revising the
516 minimum time period for a records retention
517 requirement for adjusters; amending s. 626.876, F.S.;
518 revising certain prohibitions relating to exclusive
519 employment of public adjusters and specified all-lines
520 adjusters; repealing s. 626.879, F.S., relating to
521 pools of insurance adjusters; providing an effective
522 date.



662786

LEGISLATIVE ACTION

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

The Committee on Appropriations (Garcia) recommended the following:

1 **Senate Amendment to Amendment (603728) (with title**
2 **amendment)**

3
4 Delete lines 340 - 397
5 and insert:

6 (2) An adjusting firm and each of its business locations
7 shall designate a primary adjuster for each such firm or
8 location and must file with the department, at the department's
9 designated website, the name and license number of such primary
10 adjuster and the physical address of the adjusting firm or



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11 business location where he or she is the primary adjuster, ~~on a~~
12 ~~form approved by the department~~. The designation of the primary
13 adjuster may be changed at the option of the adjusting firm. Any
14 such change is effective upon notification to the department.
15 Notice of change must be provided ~~sent~~ to the department within
16 30 days after such change.

17 (3) ~~(2)(a)~~ For purposes of this section, a "primary
18 adjuster" is the licensed adjuster who is responsible for the
19 ~~hiring and~~ supervision of all individuals within an adjusting
20 firm location who act ~~deal with the public and who acts~~ in the
21 capacity of a ~~public adjuster as defined in s. 626.854, or an~~
22 ~~independent~~ adjuster as defined in this chapter s. 626.855. An
23 adjuster may be designated as a primary adjuster for more than
24 ~~only~~ one adjusting firm location provided no person engages in
25 activity requiring licensure as an adjuster at any location when
26 an adjuster is not physically present.

27 (4) ~~(b)~~ For purposes of this section, an "adjusting firm" is
28 a location where an independent or public adjuster is engaged in
29 the business of insurance.

30 (5) ~~(3)~~ The department may suspend or revoke the license of
31 the primary adjuster if the adjusting firm employs or contracts
32 any person who has had a license denied or any person whose
33 license is currently suspended or revoked. However, if a person
34 has been denied a license for failure to pass a required
35 examination, he or she may be employed or contracted to perform
36 clerical or administrative functions for which licensure is not
37 required.

38 (6) ~~(4)~~ The primary adjuster in an ~~unincorporated~~ adjusting
39 firm, ~~or the primary adjuster in an incorporated adjusting firm~~



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40 ~~in which no officer, director, or stockholder is an adjuster, is~~
41 ~~responsible and~~ accountable for misconduct or violations of this
42 code committed by the primary adjuster or by any other person
43 ~~the acts of salaried employees~~ under his or her direct
44 supervision ~~and control~~ while acting on behalf of the adjusting
45 firm. This section does not render a primary adjuster ~~Nothing in~~
46 ~~this section renders any person~~ criminally liable for an ~~or~~
47 ~~subject to any disciplinary proceedings for any act unless the~~
48 primary adjuster ~~person~~ personally committed the act or knew or
49 should have known of the act and of the facts constituting a
50 violation of this code.

51 ~~(7)(5)~~ The department may suspend or revoke the license of
52 any adjuster who is employed or contracted by a person whose
53 license is currently suspended or revoked.

54 ~~(8)(6)~~ An adjusting firm ~~location~~ may not conduct the
55 business of insurance unless a primary adjuster is designated
56 and provides services to the firm at all times. If the Failure
57 ~~of the person operating the adjusting firm to designate a~~
58 primary adjuster designated with the department ends his or her
59 affiliation with the firm for any reason and if the firm fails
60 to designate another primary adjuster for a business location as
61 required in subsection (2), the firm must cease operations at
62 the location until a primary adjuster is appointed ~~for the firm,~~
63 ~~or for each~~

64
65 ===== T I T L E A M E N D M E N T =====

66 And the title is amended as follows:

67 Delete lines 507 - 508

68 and insert:



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69 an adjusting firm conducting insurance business under
70 certain circumstances; revising a requirement if the
71 firm fails to designate a primary adjuster under
72 certain circumstances; revising



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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 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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57 person's current licensure status; amending s.
58 626.8696, F.S.; revising conditions for the issuance
59 of an adjusting firm license; revising application
60 requirements for such license; providing rulemaking
61 authority of the department; prohibiting the
62 department from requiring certain information on an
63 application; providing for expiration of such license;
64 repealing s. 626.872, F.S., relating to all-lines
65 adjuster temporary licenses; amending s. 626.874,
66 F.S.; revising conditions for the department to issue
67 adjuster licenses in the event of catastrophes or
68 emergencies; amending s. 626.875, F.S.; revising the
69 minimum time period in a records retention requirement
70 for adjusters; amending s. 626.876, F.S.; revising
71 certain prohibitions relating to exclusive employment
72 of public adjusters and all-lines adjusters and
73 appointed independent adjusters; repealing s. 626.879,
74 F.S., relating to pools of insurance adjusters;
75 amending s. 626.9953, F.S.; conforming a cross-
76 reference; providing an effective date.
77
78 Be It Enacted by the Legislature of the State of Florida:
79
80 Section 1. Subsection (20) of section 624.501, Florida
81 Statutes, is amended to read:
82 624.501 Filing, license, appointment, and miscellaneous
83 fees.—The department, commission, or office, as appropriate,
84 shall collect in advance, and persons so served shall pay to it
85 in advance, fees, licenses, and miscellaneous charges as



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86 follows:
87 ~~(20) Adjusting firm, original or renewal 3-year license~~
88 ~~—\$60.00~~
89 Section 2. Subsection (1) of section 626.015, Florida
90 Statutes, is amended to read:
91 626.015 Definitions.—As used in this part:
92 (1) "Adjuster" means a public adjuster as defined in s.
93 626.854, ~~a public adjuster apprentice as defined in s. 626.8541,~~
94 or an all-lines adjuster as defined in s. 626.8548.
95 Section 3. Subsection (1) of section 626.022, Florida
96 Statutes, is amended to read:
97 626.022 Scope of part.—
98 (1) This part applies as to insurance agents, service
99 representatives, adjusters, adjusting firms, and insurance
100 agencies; as to any and all kinds of insurance; and as to stock
101 insurers, mutual insurers, reciprocal insurers, and all other
102 types of insurers, except that:
103 (a) It does not apply as to reinsurance, except that ss.
104 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss.
105 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-
106 626.591, and ss. 626.601-626.711 shall apply as to reinsurance
107 intermediaries as defined in s. 626.7492.
108 (b) The applicability of this chapter as to fraternal
109 benefit societies shall be as provided in chapter 632.
110 (c) It does not apply to a bail bond agent, as defined in
111 s. 648.25, except as provided in chapter 648 or chapter 903.
112 (d) This part does not apply to a certified public
113 accountant licensed under chapter 473 who is acting within the
114 scope of the practice of public accounting, as defined in s.



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115 473.302, provided that the activities of the certified public
116 accountant are limited to advising a client of the necessity of
117 obtaining insurance, the amount of insurance needed, or the line
118 of coverage needed, and provided that the certified public
119 accountant does not directly or indirectly receive or share in
120 any commission or referral fee.

121 Section 4. Subsection (7) of section 626.112, Florida
122 Statutes, is amended to read:

123 626.112 License and appointment required; agents, customer
124 representatives, adjusters, insurance agencies, adjusting firms,
125 service representatives, managing general agents.-

126 (7) (a) An individual, firm, partnership, corporation,
127 association, or other entity may ~~shall~~ not act in its own name
128 or under a trade name, directly or indirectly, as an insurance
129 agency unless it complies with s. 626.172 with respect to
130 possessing an insurance agency license for each place of
131 business at which it engages in an activity that may be
132 performed only by a licensed insurance agent. However, an
133 insurance agency that is owned and operated by a single licensed
134 agent conducting business in his or her individual name and not
135 employing or otherwise using the services of or appointing other
136 licensees is ~~shall be~~ exempt from the agency licensing
137 requirements of this subsection.

138 (b) A branch place of business that is established by a
139 licensed agency is considered a branch agency and is not
140 required to be licensed so long as it transacts business under
141 the same name and federal tax identification number as the
142 licensed agency and has designated with the department a
143 licensed agent in charge of the branch location as required by



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144 s. 626.0428 and the address and telephone number of the branch
145 location have been submitted to the department for inclusion in
146 the licensing record of the licensed agency within 30 days after
147 insurance transactions begin at the branch location.

148 (c) An individual, a firm, a partnership, a corporation, an
149 association, or any other entity may not act in its own name or
150 under a trade name, directly or indirectly, as an adjusting firm
151 unless it possesses an adjusting firm license under s. 626.8696
152 for each place of business at which it engages in an activity
153 that may be performed only by a licensed adjuster. However, an
154 insurance company authorized to transact insurance in this state
155 which directly appoints adjusters, or an adjusting firm that is
156 owned and operated by a single licensed adjuster who is
157 conducting business in his or her individual name and who is not
158 employing or otherwise using the services of or appointing other
159 licensees, is exempt from the adjusting firm licensing
160 requirements of this subsection.

161 (d) A branch place of business that is established by a
162 licensed adjusting firm is considered a branch firm and is not
163 required to be licensed so long as:

164 1. It transacts business under the same name and federal
165 tax identification number as the licensed adjusting firm;

166 2. It has designated with the department a licensed primary
167 adjuster in charge of the branch firm as required by s.
168 626.8695; and

169 3. Within 30 days after insurance transactions begin at the
170 branch firm, the address and telephone number of the branch firm
171 are submitted to the department for inclusion in the licensing
172 record of the licensed adjusting firm.



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173 ~~(e)~~ If an agency or firm is required to be licensed but
174 fails to file an application for licensure in accordance with
175 this section, the department ~~must~~ shall impose on the agency or
176 firm an administrative penalty of up to \$2,500 for a first
177 violation and up to \$10,000 for any subsequent violation.

178 ~~(d) Effective October 1, 2015, the department must~~
179 ~~automatically convert the registration of an approved registered~~
180 ~~insurance agency to an insurance agency license.~~

181 Section 5. Present subsections (7) through (19) of section
182 626.854, Florida Statutes, are renumbered as subsections (6)
183 through (18), respectively, subsection (1) and present
184 subsections (6), (7), (11), (18), and (19) are amended, and a
185 new subsection (19) is added to that section, to read:

186 626.854 "Public adjuster" defined; prohibitions.—The
187 Legislature finds that it is necessary for the protection of the
188 public to regulate public insurance adjusters and to prevent the
189 unauthorized practice of law.

190 (1) A "public adjuster" is any person, except a duly
191 licensed attorney at law as exempted under s. 626.860, who, for
192 money, commission, or any other thing of value, directly or
193 indirectly prepares, completes, or files an insurance claim ~~form~~
194 for an insured or third-party claimant or who, for money,
195 commission, or any other thing of value, acts on behalf of, or
196 aids an insured or third-party claimant in negotiating for or
197 effecting the settlement of a claim or claims for loss or damage
198 covered by an insurance contract or who advertises for
199 employment as an adjuster of such claims. The term also includes
200 any person who, for money, commission, or any other thing of
201 value, directly or indirectly solicits, investigates, or adjusts



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202 such claims on behalf of a public adjuster, an insured, or a
203 third-party claimant. The term does not include a person who
204 photographs or inventories damaged personal property or business
205 personal property or a person performing duties under another
206 professional license, if such person does not otherwise solicit,
207 adjust, investigate, or negotiate for or attempt to effect the
208 settlement of a claim.

209 ~~(6) A public adjuster may not directly or indirectly~~
210 ~~through any other person or entity initiate contact or engage in~~
211 ~~face-to-face or telephonic solicitation or enter into a contract~~
212 ~~with any insured or claimant under an insurance policy until at~~
213 ~~least 48 hours after the occurrence of an event that may be the~~
214 ~~subject of a claim under the insurance policy unless contact is~~
215 ~~initiated by the insured or claimant.~~

216 ~~(6)~~(7) An insured or claimant may cancel a public
217 adjuster's contract to adjust a claim without penalty or
218 obligation within 3 business days after the date on which the
219 contract is executed or within 3 business days after the date on
220 which the insured or claimant has notified the insurer of the
221 claim, ~~by phone or in writing~~, whichever is later. The public
222 adjuster's contract must disclose to the insured or claimant his
223 or her right to cancel the contract and advise the insured or
224 claimant that notice of cancellation must be submitted in
225 writing and sent by certified mail, return receipt requested, or
226 other form of mailing that provides proof thereof, to the public
227 adjuster at the address specified in the contract; provided,
228 during any state of emergency as declared by the Governor and
229 for 1 year after the date of loss, the insured or claimant has 5
230 business days after the date on which the contract is executed



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231 to cancel a public adjuster's contract.

232 ~~(10) (a) (11) (a)~~ If a public adjuster enters into a contract
233 with an insured or claimant to reopen a claim or file a
234 supplemental claim that seeks additional payments for a claim
235 that has been previously paid in part or in full or settled by
236 the insurer, the public adjuster may not charge, agree to, or
237 accept from any source compensation, payment, commission, fee,
238 or any other thing of value based on a previous settlement or
239 previous claim payments by the insurer for the same cause of
240 loss. The charge, compensation, payment, commission, fee, or any
241 other thing of value must be based only on the claim payments or
242 settlement obtained through the work of the public adjuster
243 after entering into the contract with the insured or claimant.
244 Compensation for the reopened or supplemental claim may not
245 exceed 20 percent of the reopened or supplemental claim payment.
246 In no event shall the contracts described in this paragraph
247 exceed the limitations in paragraph (b).

248 (b) A public adjuster may not charge, agree to, or accept
249 from any source compensation, payment, commission, fee, or any
250 other thing of value in excess of:

251 1. Ten percent of the amount of insurance claim payments
252 made by the insurer for claims based on events that are the
253 subject of a declaration of a state of emergency by the
254 Governor. This provision applies to claims made during the year
255 after the declaration of emergency. After that year, the
256 limitations in subparagraph 2. apply.

257 2. Twenty percent of the amount of insurance claim payments
258 made by the insurer for claims that are not based on events that
259 are the subject of a declaration of a state of emergency by the



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260 Governor.

261 (c) Insurance claim payments made by the insurer do not
262 include policy deductibles, and public adjuster compensation may
263 not be based on the deductible portion of a claim.

264 ~~(d) (e)~~ Any maneuver, shift, or device through which the
265 limits on compensation set forth in this subsection are exceeded
266 is a violation of this chapter punishable as provided under s.
267 626.8698.

268 ~~(17) (18)~~ A public adjuster, a public adjuster apprentice,
269 or a person acting on behalf of an adjuster or apprentice may
270 not enter into a contract or accept a power of attorney that
271 vests in the public adjuster, the public adjuster apprentice, or
272 the person acting on behalf of the adjuster or apprentice the
273 effective authority to choose the persons or entities that will
274 perform repair work in a property insurance claim or provide
275 goods or services that will require the insured or third-party
276 claimant to expend funds in excess of those payable to the
277 public adjuster under the terms of the contract for adjusting
278 services.

279 ~~(18) (19)~~ Subsections ~~(5) - (17)~~ ~~(5) - (18)~~ apply only to
280 residential property insurance policies and condominium unit
281 owner policies as described in s. 718.111(11).

282 (19) Except as otherwise provided in this chapter, no
283 person, except an attorney at law or a public adjuster, may for
284 money, commission, or any other thing of value, directly or
285 indirectly:

286 (a) Prepare, complete, or file an insurance claim for an
287 insured or a third-party claimant;

288 (b) Act on behalf of or aid an insured or a third-party



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289 claimant in negotiating for or effecting the settlement of a
290 claim for loss or damage covered by an insurance contract;
291 (c) Advertise for employment as a public adjuster; or
292 (d) Solicit, investigate, or adjust a claim on behalf of a
293 public adjuster, an insured, or a third-party claimant.
294 Section 6. Section 626.8541, Florida Statutes, is repealed.
295 Section 7. Section 626.8548, Florida Statutes, is amended
296 to read:
297 626.8548 "All-lines adjuster" defined.—An "all-lines
298 adjuster" is a person who, for money, commission, or any other
299 thing of value, directly or indirectly is self-employed or
300 employed by an insurer, a wholly owned subsidiary of an insurer,
301 or an independent adjusting firm or other independent adjuster,
302 and who undertakes on behalf of a public adjuster or an insurer
303 or other insurers under common control or ownership to ascertain
304 and determine the amount of any claim, loss, or damage payable
305 under an insurance contract or undertakes to effect settlement
306 of such claim, loss, or damage. The term also includes any
307 person who, for money, commission, or any other thing of value,
308 directly or indirectly solicits claims on behalf of a public
309 adjuster, but does not include a paid spokesperson used as part
310 of a written or an electronic advertisement or a person who
311 photographs or inventories damaged personal property or business
312 personal property if such person does not otherwise adjust,
313 investigate, or negotiate for or attempt to effect the
314 settlement of a claim. The term does not apply to life insurance
315 or annuity contracts.
316 Section 8. Section 626.8561, Florida Statutes, is created
317 to read:



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318 626.8561 "Public adjuster apprentice" defined.—The term
319 "public adjuster apprentice" means a person licensed as an all-
320 lines adjuster who:
321 (1) Is appointed and employed or contracted by a public
322 adjuster or a public adjusting firm;
323 (2) Assists the public adjuster or public adjusting firm in
324 ascertaining and determining the amount of any claim, loss, or
325 damage payable under an insurance contract, or who undertakes to
326 effect settlement of such claim, loss, or damage; and
327 (3) Satisfies the requirements of s. 626.8651.
328 Section 9. Subsection (3) of section 626.8584, Florida
329 Statutes, is amended to read:
330 626.8584 "Nonresident all-lines adjuster" defined.—A
331 "nonresident all-lines adjuster" means a person who:
332 (3) Is licensed as an all-lines adjuster and self-appointed
333 or appointed and employed or contracted by an independent
334 adjusting firm or other independent adjuster, by an insurer
335 admitted to do business in this state or a wholly owned
336 subsidiary of an insurer admitted to do business in this state,
337 or by a public adjuster or a public adjusting firm ~~other~~
338 ~~insurers under the common control or ownership of such insurer.~~
339 Section 10. Subsection (1) of section 626.861, Florida
340 Statutes, is amended to read:
341 626.861 Insurer's officers, insurer's employees, reciprocal
342 insurer's representatives; adjustments by.—
343 (1) ~~Nothing in~~ This part ~~may not shall~~ be construed to
344 prevent an executive officer of any insurer, an ~~or a regularly~~
345 ~~salaried~~ employee of an insurer handling claims with respect to
346 health insurance, an employee of an insurer handling claims with



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347 respect to residential property insurance in which the amount of
348 coverage for the applicable type of loss is contractually
349 limited to \$500 or less, or the duly designated attorney or
350 agent authorized and acting for subscribers to reciprocal
351 insurers, from adjusting any claim loss or damage under any
352 insurance contract of such insurer.

353 Section 11. Subsection (3) of section 626.864, Florida
354 Statutes, is amended to read:

355 626.864 Adjuster license types.-

356 (3) An all-lines adjuster may be appointed as an
357 independent adjuster, public adjuster apprentice, or company
358 employee adjuster, but not more than one of these ~~both~~
359 concurrently.

360 Section 12. Paragraphs (d) and (e) of subsection (1) of
361 section 626.865, Florida Statutes, are amended to read:

362 626.865 Public adjuster's qualifications, bond.-

363 (1) The department shall issue a license to an applicant
364 for a public adjuster's license upon determining that the
365 applicant has paid the applicable fees specified in s. 624.501
366 and possesses the following qualifications:

367 (d) Has had sufficient experience, training, or instruction
368 concerning the adjusting of damages or losses under insurance
369 contracts, other than life and annuity contracts, is
370 sufficiently informed as to the terms and effects of the
371 provisions of those types of insurance contracts, and possesses
372 adequate knowledge of the laws of this state relating to such
373 contracts as to enable and qualify him or her to engage in the
374 business of insurance adjuster fairly and without injury to the
375 public or any member thereof with whom the applicant may have



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376 business as a public adjuster, ~~or has been licensed and employed~~
377 ~~as a resident insurance company adjuster or independent adjuster~~
378 ~~in this state on a continual basis for the past year.~~

379 (e) Has been licensed in this state as an all-lines
380 adjuster, and has been appointed on a continual basis for the
381 previous 6 months ~~is licensed~~ as a public adjuster apprentice
382 under s. 626.8561, as an independent adjuster under s. 626.855,
383 or as a company employee adjuster under s. 626.856 ~~under s.~~
384 ~~626.8651 and complies with the requirements of that license~~
385 ~~throughout the licensure period.~~

386 Section 13. Section 626.8651, Florida Statutes, is amended
387 to read:

388 626.8651 Public adjuster apprentice appointment license;
389 qualifications.-

390 (1) (a) The department shall issue an appointment a license
391 as a public adjuster apprentice to a licensee an applicant who
392 ~~is:~~

- 393 1. Is licensed as an all-lines adjuster under s. 626.866;
394 2. Has filed with the department a bond executed and issued
395 by a surety insurer that is authorized to transact such business
396 in this state in the amount of \$50,000, which is conditioned
397 upon the faithful performance of his or her duties as a public
398 adjuster apprentice; and
399 3. Maintains such bond unimpaired throughout the existence
400 of the appointment and for at least 1 year after termination of
401 the appointment.

402 (b) The bond must be in favor of the department and must
403 specifically authorize recovery by the department of the damages
404 sustained in case the licensee commits fraud or unfair practices



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405 ~~in connection with his or her business as a public adjuster~~
406 ~~apprentice. The aggregate liability of the surety for all such~~
407 ~~damages may not exceed the amount of the bond, and the bond may~~
408 ~~not be terminated by the issuing insurer unless written notice~~
409 ~~of at least 30 days is given to the licensee and filed with the~~
410 ~~department.~~

411 ~~(a) A natural person at least 18 years of age.~~

412 ~~(b) A United States citizen or legal alien who possesses~~
413 ~~work authorization from the United States Bureau of Citizenship~~
414 ~~and Immigration Services.~~

415 ~~(c) Trustworthy and has such business reputation as would~~
416 ~~reasonably ensure that the applicant will conduct business as a~~
417 ~~public adjuster apprentice fairly and in good faith and without~~
418 ~~detriment to the public.~~

419 ~~(2) All applicable license fees, as prescribed in s.~~
420 ~~624.501, must be paid in full before issuance of the license.~~

421 ~~(3) An applicant must pass the required written examination~~
422 ~~before a license may be issued.~~

423 ~~(4) An applicant must have received designation as an~~
424 ~~Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA),~~
425 ~~or as a Certified Claims Adjuster (CCA) after completion of~~
426 ~~training that qualifies the applicant to engage in the business~~
427 ~~of a public adjuster apprentice fairly and without injury to the~~
428 ~~public. Such training and instruction must address adjusting~~
429 ~~damages and losses under insurance contracts, the terms and~~
430 ~~effects of insurance contracts, and knowledge of the laws of~~
431 ~~this state relating to insurance contracts.~~

432 ~~(5) At the time of application for license as a public~~
433 ~~adjuster apprentice, the applicant shall file with the~~



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434 ~~department a bond executed and issued by a surety insurer~~
435 ~~authorized to transact such business in this state in the amount~~
436 ~~of \$50,000, conditioned upon the faithful performance of his or~~
437 ~~her duties as a public adjuster apprentice under the license for~~
438 ~~which the applicant has applied, and thereafter maintain the~~
439 ~~bond unimpaired throughout the existence of the license and for~~
440 ~~at least 1 year after termination of the license. The bond shall~~
441 ~~be in favor of the department and shall specifically authorize~~
442 ~~recovery by the department of the damages sustained in case the~~
443 ~~licensee commits fraud or unfair practices in connection with~~
444 ~~his or her business as a public adjuster apprentice. The~~
445 ~~aggregate liability of the surety for all such damages may not~~
446 ~~exceed the amount of the bond, and the bond may not be~~
447 ~~terminated by the issuing insurer unless written notice of at~~
448 ~~least 30 days is given to the licensee and filed with the~~
449 ~~department.~~

450 ~~(6) A public adjuster apprentice shall complete at a~~
451 ~~minimum 100 hours of employment per month for 12 months of~~
452 ~~employment under the supervision of a licensed and appointed~~
453 ~~all-lines public adjuster in order to qualify for licensure as a~~
454 ~~public adjuster. The department may adopt rules that establish~~
455 ~~standards for such employment requirements.~~

456 ~~(2)(7) An appointing public adjusting firm may not maintain~~
457 ~~more than four 12 public adjuster apprentices simultaneously.~~
458 ~~However, a supervising public adjuster may not be responsible~~
459 ~~for more than one three public adjuster apprentice apprentices~~
460 ~~simultaneously and shall be accountable for the acts of the all~~
461 ~~public adjuster apprentice apprentices which are related to~~
462 ~~transacting business as a public adjuster apprentice. This~~



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463 subsection does not apply to a public adjusting firm that
464 adjusts claims primarily for commercial entities with operations
465 in more than one state and that does not directly or indirectly
466 perform adjusting services for insurers or individual
467 homeowners.

468 ~~(8) An apprentice license is effective for 18 months unless~~
469 ~~the license expires due to lack of maintaining an appointment,~~
470 ~~is surrendered by the licensee; is terminated, suspended, or~~
471 ~~revoked by the department; or is canceled by the department upon~~
472 ~~issuance of a public adjuster license. The department may not~~
473 ~~issue a public adjuster apprentice license to any individual who~~
474 ~~has held such a license in this state within 2 years after~~
475 ~~expiration, surrender, termination, revocation, or cancellation~~
476 ~~of the license.~~

477 ~~(9) After completing the requirements for employment as a~~
478 ~~public adjuster apprentice, the licensee may file an application~~
479 ~~for a public adjuster license. The applicant and supervising~~
480 ~~public adjuster or public adjusting firm must each file a sworn~~
481 ~~affidavit, on a form prescribed by the department, verifying~~
482 ~~that the employment of the public adjuster apprentice meets the~~
483 ~~requirements of this section.~~

484 ~~(10) In no event shall A public adjuster apprentice~~
485 ~~licensed under this section perform any of the functions for~~
486 ~~which a public adjuster's license is required after expiration~~
487 ~~of the public adjuster apprentice license without having~~
488 ~~obtained a public adjuster license.~~

489 (3)(11) A public adjuster apprentice has the same authority
490 as the licensed public adjuster or public adjusting firm that
491 employs the apprentice except that an apprentice may not execute



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492 contracts for the services of a public adjuster or public
493 adjusting firm ~~and may not solicit contracts for the services~~
494 ~~except under the direct supervision and guidance of the~~
495 ~~supervisory public adjuster.~~ An individual may not be, act as,
496 or hold himself or herself out to be a public adjuster
497 apprentice unless the individual is licensed as an all-lines
498 adjuster and holds a current appointment by a licensed public
499 all-lines adjuster or a public adjusting firm that employs a
500 licensed all-lines public adjuster.

501 Section 14. Section 626.8695, Florida Statutes, is amended
502 to read:

503 626.8695 Primary adjuster.—

504 (1) Each business location established by an adjuster,
505 person operating an adjusting firm, a corporation, or an
506 association and each location of a multiple location adjusting
507 firm must designate with the department a primary adjuster who
508 is licensed and appointed to adjust the insurance claims
509 adjusted by the business location.

510 (2) An adjusting firm and each of its branch firms shall
511 designate a primary adjuster for each such firm or location and
512 must file with the department, at the department's designated
513 website, the name and license number of such primary adjuster
514 and the physical address of the adjusting firm or branch firm
515 location where he or she is the primary adjuster, on a form
516 approved by the department. The designation of the primary
517 adjuster may be changed at the option of the adjusting firm. Any
518 such change is effective upon notification to the department.
519 Notice of change must be provided sent to the department within
520 30 days after such change.



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521 ~~(3)(2)(a)~~ For purposes of this section, a "primary
522 adjuster" is the licensed adjuster who is responsible for the
523 ~~hiring and~~ supervision of all individuals within an adjusting
524 firm location who act ~~deal with the public and who acts~~ in the
525 capacity of a ~~public adjuster as defined in s. 626.854, or an~~
526 ~~independent~~ adjuster as defined in this chapter s. 626.855. An
527 adjuster may be designated as a primary adjuster for more than
528 ~~only one~~ adjusting firm location provided no person engages in
529 activity requiring licensure as an adjuster at any location when
530 an adjuster is not physically present.

531 ~~(4)(b)~~ For purposes of this section, an "adjusting firm" is
532 a location where an independent or public adjuster is engaged in
533 the business of insurance.

534 ~~(5)(3)~~ The department may suspend or revoke the license of
535 the primary adjuster if the adjusting firm employs or contracts
536 any person who has had a license denied or any person whose
537 license is currently suspended or revoked. However, if a person
538 has been denied a license for failure to pass a required
539 examination, he or she may be employed or contracted to perform
540 clerical or administrative functions for which licensure is not
541 required.

542 ~~(6)(4)~~ The primary adjuster in an ~~unincorporated~~ adjusting
543 firm, ~~or the primary adjuster in an incorporated adjusting firm~~
544 ~~in which no officer, director, or stockholder is an adjuster, is~~
545 ~~responsible and~~ accountable for misconduct or violations of this
546 code committed by the primary adjuster or by any other person
547 ~~the acts of salaried employees~~ under his or her direct
548 supervision ~~and control~~ while acting on behalf of the adjusting
549 firm. ~~This section does not render a primary adjuster Nothing in~~



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550 ~~this section renders any person~~ criminally liable for an or
551 ~~subject to any disciplinary proceedings for any~~ act unless the
552 primary adjuster person personally committed the act or knew or
553 should have known of the act and of the facts constituting a
554 violation of this code.

555 ~~(7)(5)~~ The department may suspend or revoke the license of
556 any adjuster who is employed or contracted by a person whose
557 license is currently suspended or revoked.

558 ~~(8)(6)~~ An adjusting firm location may not conduct the
559 business of insurance unless a primary adjuster is designated
560 and provides services to the firm at all times. If the Failure
561 of the person operating the adjusting firm to designate a
562 primary adjuster designated with the department ends his or her
563 affiliation with the firm for any reason and if the firm fails
564 to designate another primary adjuster, as required in subsection
565 (2), within 90 days, the firm license automatically expires on
566 the 91st day after the date the designated primary adjuster
567 ended his or her affiliation with ~~for the firm, or for each~~
568 ~~location, as applicable, on a form prescribed by the department~~
569 ~~within 30 days after inception of the firm or change of primary~~
570 ~~adjuster designation, constitutes grounds for requiring the~~
571 ~~adjusting firm to obtain an adjusting firm license pursuant to~~
572 ~~s. 626.8696.~~

573 ~~(9)(7)~~ Any adjusting firm may determine a request, on a
574 ~~form prescribed by the department, verification from the~~
575 ~~department of any person's current licensure status by~~
576 submitting an appointment request. If a request is mailed to the
577 office within 5 working days after the date an adjuster is
578 hired. If, and the department subsequently notifies the



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579 adjusting firm that ~~its appointee's an employee's~~ license is
580 currently suspended, revoked, or has been denied, the license of
581 the primary adjuster ~~may shall~~ not be revoked or suspended if
582 the unlicensed person is immediately dismissed from employment
583 as an adjuster with the firm.

584 Section 15. Section 626.8696, Florida Statutes, is amended
585 to read:

586 626.8696 Application for adjusting firm license.—

587 (1) The department may issue an adjusting firm license to a
588 person only after the person files a written application with
589 the department and qualifies for such license.

590 (2) An application for an adjusting firm license must be
591 signed by an individual required to be listed in the application
592 under paragraph (a). An adjusting firm may authorize a third
593 party to complete, submit, and sign an application on the firm's
594 behalf. However, the firm must ensure that the information on
595 the application is true and correct, and the firm is accountable
596 for any misstatement or misrepresentation. The application for
597 an adjusting firm license must include:

598 (a) The name of each majority owner, partner, officer, and
599 director, president, senior vice president, secretary,
600 treasurer, and limited liability company member who directs or
601 participates in the management or control of the adjusting firm.

602 (b) The resident address of each person required to be
603 listed in the application under paragraph (a).

604 (c) The name, of the adjusting firm and its principal
605 business street address, and valid e-mail address of the
606 adjusting firm, and the name, street address, and valid e-mail
607 address of the firm's registered agent, person, or company



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608 authorized to accept service on behalf of the firm.

609 (d) The physical address location of each branch adjusting
610 firm, including its name, valid e-mail address, and telephone
611 number, and the date that the branch firm began transacting
612 insurance business office and the name under which each office
613 conducts or will conduct business.

614 (e) The name of the primary adjuster in full-time charge of
615 the adjusting firm office, including branch firms, and his or
616 her corresponding location.

617 (f) The fingerprints of each of the following:

618 1. A sole proprietor, if the applicant is a sole
619 proprietor;

620 2. Each individual required to be listed in the application
621 under paragraph (a); and

622 3. Each individual who directs or participates in the
623 management or control of an incorporated firm whose shares are
624 not traded on a securities exchange.

625 Fingerprints must be taken by a law enforcement agency or other
626 entity approved by the department, must be accompanied by the
627 fingerprint processing fee specified in s. 624.501, and must be
628 processed in accordance with s. 624.34. However, fingerprints
629 need not be filed for an individual who is currently licensed
630 and appointed under this chapter. This paragraph does not apply
631 to corporations whose voting shares are traded on a securities
632 exchange.

633 (g) ~~(e)~~ Such Any additional information that the department
634 requires by rule to ascertain the trustworthiness and competence
635 of persons required to be listed on the application and to
636



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637 ascertain that such persons meet the requirements of this code.
638 However, the department may not require that credit or character
639 reports be submitted for such persons.

640 ~~(2) An application for an adjusting firm license must be~~
641 ~~signed by each owner of the firm. If the firm is incorporated,~~
642 ~~the application must be signed by the president and secretary of~~
643 ~~the corporation.~~

644 ~~(3) Each application must be accompanied by payment of any~~
645 ~~applicable fee as prescribed in s. 624.501.~~

646 ~~(4) License fees are not refundable.~~

647 ~~(3)(5) The license of an adjusting firm continues in force~~
648 ~~until it is canceled, required to be licensed pursuant to s.~~
649 ~~626.8695 must remain so licensed for a period of 3 years from~~
650 ~~the date of licensure, unless the license is suspended, or~~
651 ~~revoked or until it is otherwise terminated or expires by~~
652 ~~operation of law. The department may suspend or revoke the~~
653 ~~adjusting firm's authority to do business for activities~~
654 ~~occurring during the time the firm is licensed, regardless of~~
655 ~~whether the licensing period has terminated.~~

656 Section 16. Section 626.872, Florida Statutes, is repealed.

657 Section 17. Subsection (1) of section 626.874, Florida
658 Statutes, is amended to read:

659 626.874 Catastrophe or emergency adjusters.-

660 (1) In the event of a catastrophe or emergency, the
661 department may issue a license, for the purposes and under the
662 conditions and for the period of emergency as it shall
663 determine, to persons who are residents or nonresidents of this
664 state, who are at least 18 years of age, who are United States
665 citizens or legal aliens who possess work authorization from the



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666 United States Bureau of Citizenship and Immigration Services,
667 and who are not licensed adjusters under this part but who have
668 been designated and certified to it as qualified to act as
669 adjusters ~~by all-lines resident adjusters,~~ by an authorized
670 insurer, ~~or by a licensed general lines agent~~ to adjust claims,
671 losses, or damages under policies or contracts of insurance
672 issued by such insurers, or by the primary adjuster of an
673 independent adjusting firm contracted with an authorized insurer
674 to adjust claims on behalf of the insurer. The fee for the
675 license is as provided in s. 624.501(12)(c).

676 Section 18. Subsection (2) of section 626.875, Florida
677 Statutes, is amended to read:

678 626.875 Office and records.-

679 (2) The records of the adjuster relating to a particular
680 claim or loss shall be so retained in the adjuster's place of
681 business for a period of not less than 5 ~~3~~ years after
682 completion of the adjustment. This provision shall not be deemed
683 to prohibit return or delivery to the insurer or insured of
684 documents furnished to or prepared by the adjuster and required
685 by the insurer or insured to be returned or delivered thereto.

686 Section 19. Section 626.876, Florida Statutes, is amended
687 to read:

688 626.876 Exclusive employment; public adjusters, all-lines
689 ~~independent~~ adjusters.-

690 (1) An individual licensed ~~and appointed~~ as a public
691 adjuster may not be simultaneously licensed as an all-lines
692 adjuster employed during the same period by more than one public
693 ~~adjuster or public adjuster firm or corporation.~~

694 (2) An individual licensed as an all-lines adjuster and



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695 appointed as an independent adjuster, a company employee
696 adjuster, or a public adjuster apprentice may not be
697 simultaneously appointed, contracted, or employed as an adjuster
698 that requires a different appointment type during the same
699 period by more than one independent adjuster or independent
700 adjuster firm or corporation.

701 Section 20. Section 626.879, Florida Statutes, is repealed.

702 Section 21. Subsection (5) of section 626.9953, Florida
703 Statutes, is amended to read:

704 626.9953 Qualifications for registration; application
705 required.—

706 (5) An applicant must submit a set of his or her
707 fingerprints to the department and pay the processing fee
708 established under s. 624.501(23) ~~s. 624.501(24)~~. The department
709 shall submit the applicant's fingerprints to the Department of
710 Law Enforcement for processing state criminal history records
711 checks and local criminal records checks through local law
712 enforcement agencies and for forwarding to the Federal Bureau of
713 Investigation for national criminal history records checks. The
714 fingerprints shall be taken by a law enforcement agency, a
715 designated examination center, or another department-approved
716 entity. The department may not approve an application for
717 registration as a navigator if fingerprints have not been
718 submitted.

719 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.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders/Billmeier</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders/Billmeier</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 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 adjuster¹² 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 bond¹³ 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

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1 A bill to be entitled
 2 An act relating to insurance adjusters; amending s.
 3 624.501, F.S.; deleting a fee for an original or
 4 renewal license for an adjusting firm; amending s.
 5 626.015, F.S.; conforming a cross-reference; amending
 6 s. 626.022, F.S.; revising applicability of the
 7 Licensing Procedures Law to include adjusting firms;
 8 amending s. 626.112, F.S.; prohibiting certain
 9 entities from acting as insurance adjusting firms
 10 without specified licenses; providing an exemption;
 11 providing construction; specifying that an unlicensed
 12 firm is subject to a certain administrative penalty;
 13 deleting a requirement for the Department of Financial
 14 Services to automatically convert a certain
 15 registration to an insurance agency license as of a
 16 certain date; amending s. 626.854, F.S.; redefining
 17 the term "public adjuster"; deleting a certain
 18 prohibited act of a public adjuster; deleting a
 19 provision specifying the method for an insured or
 20 claimant to provide certain notice to an insurer;
 21 providing construction relating to certain limitations
 22 on insurance claim payments and public adjuster
 23 compensation; revising a prohibition against certain
 24 entities relating to a contract or power of attorney
 25 that vests certain authority in a property insurance
 26 claim; conforming a cross-reference; prohibiting
 27 persons from conducting certain activities relating to
 28 insurance claims; providing an exception for attorneys
 29 and public adjusters; repealing s. 626.8541, F.S.,

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30 relating to public adjuster apprentices; amending s.
 31 626.8548, F.S.; redefining the term "all-lines
 32 adjuster"; creating s. 626.8561, F.S.; defining the
 33 term "public adjuster apprentice"; amending s.
 34 626.8584, F.S.; redefining the term "nonresident all-
 35 lines adjuster"; amending s. 626.861, F.S.; revising
 36 construction relating to employees of an insurer;
 37 amending s. 626.864, F.S.; revising the permissible
 38 appointments of all-lines adjusters; amending s.
 39 626.865, F.S.; revising the qualifications for
 40 licensure for public adjusters; amending s. 626.8651,
 41 F.S.; requiring public adjuster apprentices to be
 42 appointed, rather than licensed, by the department;
 43 specifying qualifications for such appointments;
 44 revising requirements and limitations for public
 45 adjusting firms and public adjusters who supervise
 46 public adjuster apprentices; revising certain
 47 prohibited acts and exceptions to such acts of public
 48 adjuster apprentices; conforming provisions to changes
 49 made by the act; amending s. 626.8695, F.S.; revising
 50 requirements for designating primary adjusters;
 51 redefining the term "primary adjuster"; revising the
 52 accountability of a primary adjuster for persons under
 53 his or her supervision; revising a prohibition against
 54 an adjusting firm location conducting insurance
 55 business under certain circumstances; revising
 56 procedures for an adjusting firm to determine a
 57 person's current licensure status; amending s.
 58 626.8696, F.S.; revising conditions for the issuance

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59 of an adjusting firm license; revising application
 60 requirements for such license; providing rulemaking
 61 authority of the department; prohibiting the
 62 department from requiring certain information on an
 63 application; providing for expiration of such license;
 64 repealing s. 626.872, F.S., relating to all-lines
 65 adjuster temporary licenses; amending s. 626.874,
 66 F.S.; revising conditions for the department to issue
 67 adjuster licenses in the event of catastrophes or
 68 emergencies; amending s. 626.875, F.S.; revising the
 69 minimum time period in a records retention requirement
 70 for adjusters; amending s. 626.876, F.S.; revising
 71 certain prohibitions relating to exclusive employment
 72 of public adjusters and all-lines adjusters and
 73 appointed independent adjusters; repealing s. 626.879,
 74 F.S., relating to pools of insurance adjusters;
 75 amending s. 626.9953, F.S.; conforming a cross-
 76 reference; providing an effective date.

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

79
 80 Section 1. Subsection (20) of section 624.501, Florida
 81 Statutes, is amended to read:
 82 624.501 Filing, license, appointment, and miscellaneous
 83 fees.—The department, commission, or office, as appropriate,
 84 shall collect in advance, and persons so served shall pay to it
 85 in advance, fees, licenses, and miscellaneous charges as
 86 follows:
 87 ~~(20) Adjusting firm, original or renewal 3-year license~~

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88 ~~— \$60.00~~
 89 Section 2. Subsection (1) of section 626.015, Florida
 90 Statutes, is amended to read:
 91 626.015 Definitions.—As used in this part:
 92 (1) "Adjuster" means a public adjuster as defined in s.
 93 ~~626.854, a public adjuster apprentice as defined in s. 626.8541,~~
 94 or an all-lines adjuster as defined in s. 626.8548.
 95 Section 3. Subsection (1) of section 626.022, Florida
 96 Statutes, is amended to read:
 97 626.022 Scope of part.—
 98 (1) This part applies as to insurance agents, service
 99 representatives, adjusters, adjusting firms, and insurance
 100 agencies; as to any and all kinds of insurance; and as to stock
 101 insurers, mutual insurers, reciprocal insurers, and all other
 102 types of insurers, except that:
 103 (a) It does not apply as to reinsurance, except that ss.
 104 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss.
 105 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-
 106 626.591, and ss. 626.601-626.711 shall apply as to reinsurance
 107 intermediaries as defined in s. 626.7492.
 108 (b) The applicability of this chapter as to fraternal
 109 benefit societies shall be as provided in chapter 632.
 110 (c) It does not apply to a bail bond agent, as defined in
 111 s. 648.25, except as provided in chapter 648 or chapter 903.
 112 (d) This part does not apply to a certified public
 113 accountant licensed under chapter 473 who is acting within the
 114 scope of the practice of public accounting, as defined in s.
 115 473.302, provided that the activities of the certified public
 116 accountant are limited to advising a client of the necessity of

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117 obtaining insurance, the amount of insurance needed, or the line
118 of coverage needed, and provided that the certified public
119 accountant does not directly or indirectly receive or share in
120 any commission or referral fee.

121 Section 4. Subsection (7) of section 626.112, Florida
122 Statutes, is amended to read:

123 626.112 License and appointment required; agents, customer
124 representatives, adjusters, insurance agencies, adjusting firms,
125 service representatives, managing general agents.-

126 (7) (a) An individual, firm, partnership, corporation,
127 association, or other entity may ~~shall~~ not act in its own name
128 or under a trade name, directly or indirectly, as an insurance
129 agency unless it complies with s. 626.172 with respect to
130 possessing an insurance agency license for each place of
131 business at which it engages in an activity that may be
132 performed only by a licensed insurance agent. However, an
133 insurance agency that is owned and operated by a single licensed
134 agent conducting business in his or her individual name and not
135 employing or otherwise using the services of or appointing other
136 licensees is ~~shall be~~ exempt from the agency licensing
137 requirements of this subsection.

138 (b) A branch place of business that is established by a
139 licensed agency is considered a branch agency and is not
140 required to be licensed so long as it transacts business under
141 the same name and federal tax identification number as the
142 licensed agency and has designated with the department a
143 licensed agent in charge of the branch location as required by
144 s. 626.0428 and the address and telephone number of the branch
145 location have been submitted to the department for inclusion in

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146 the licensing record of the licensed agency within 30 days after
147 insurance transactions begin at the branch location.

148 (c) An individual, a firm, a partnership, a corporation, an
149 association, or any other entity may not act in its own name or
150 under a trade name, directly or indirectly, as an adjusting firm
151 unless it possesses an adjusting firm license under s. 626.8696
152 for each place of business at which it engages in an activity
153 that may be performed only by a licensed adjuster. However, an
154 insurance company authorized to transact insurance in this state
155 which directly appoints adjusters, or an adjusting firm that is
156 owned and operated by a single licensed adjuster who is
157 conducting business in his or her individual name and who is not
158 employing or otherwise using the services of or appointing other
159 licensees, is exempt from the adjusting firm licensing
160 requirements of this subsection.

161 (d) A branch place of business that is established by a
162 licensed adjusting firm is considered a branch firm and is not
163 required to be licensed so long as:

164 1. It transacts business under the same name and federal
165 tax identification number as the licensed adjusting firm;

166 2. It has designated with the department a licensed primary
167 adjuster in charge of the branch firm as required by s.
168 626.8695; and

169 3. Within 30 days after insurance transactions begin at the
170 branch firm, the address and telephone number of the branch firm
171 are submitted to the department for inclusion in the licensing
172 record of the licensed adjusting firm.

173 (e) ~~(e)~~ If an agency or firm is required to be licensed but
174 fails to file an application for licensure in accordance with

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175 this section, the department ~~must shall~~ impose on the agency or
 176 firm an administrative penalty of up to \$2,500 for a first
 177 violation and up to \$10,000 for any subsequent violation.

178 ~~(d) Effective October 1, 2015, the department must~~
 179 ~~automatically convert the registration of an approved registered~~
 180 ~~insurance agency to an insurance agency license.~~

181 Section 5. Present subsections (7) through (19) of section
 182 626.854, Florida Statutes, are renumbered as subsections (6)
 183 through (18), respectively, subsection (1) and present
 184 subsections (6), (7), (11), (18), and (19) are amended, and a
 185 new subsection (19) is added to that section, to read:

186 626.854 "Public adjuster" defined; prohibitions.—The
 187 Legislature finds that it is necessary for the protection of the
 188 public to regulate public insurance adjusters and to prevent the
 189 unauthorized practice of law.

190 (1) A "public adjuster" is any person, except a duly
 191 licensed attorney at law as exempted under s. 626.860, who, for
 192 money, commission, or any other thing of value, directly or
 193 indirectly prepares, completes, or files an insurance claim ~~form~~
 194 for an insured or third-party claimant or who, for money,
 195 commission, or any other thing of value, acts on behalf of, or
 196 aids an insured or third-party claimant in negotiating for or
 197 effecting the settlement of a claim or claims for loss or damage
 198 covered by an insurance contract or who advertises for
 199 employment as an adjuster of such claims. The term also includes
 200 any person who, for money, commission, or any other thing of
 201 value, directly or indirectly solicits, investigates, or adjusts
 202 such claims on behalf of a public adjuster, an insured, or a
 203 third-party claimant, unless such person is performing duties

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204 under another professional license.

205 ~~(6) A public adjuster may not directly or indirectly~~
 206 ~~through any other person or entity initiate contact or engage in~~
 207 ~~face-to-face or telephonic solicitation or enter into a contract~~
 208 ~~with any insured or claimant under an insurance policy until at~~
 209 ~~least 48 hours after the occurrence of an event that may be the~~
 210 ~~subject of a claim under the insurance policy unless contact is~~
 211 ~~initiated by the insured or claimant.~~

212 ~~(6)(7)~~ An insured or claimant may cancel a public
 213 adjuster's contract to adjust a claim without penalty or
 214 obligation within 3 business days after the date on which the
 215 contract is executed or within 3 business days after the date on
 216 which the insured or claimant has notified the insurer of the
 217 claim, ~~by phone or in writing~~, whichever is later. The public
 218 adjuster's contract must disclose to the insured or claimant his
 219 or her right to cancel the contract and advise the insured or
 220 claimant that notice of cancellation must be submitted in
 221 writing and sent by certified mail, return receipt requested, or
 222 other form of mailing that provides proof thereof, to the public
 223 adjuster at the address specified in the contract; provided,
 224 during any state of emergency as declared by the Governor and
 225 for 1 year after the date of loss, the insured or claimant has 5
 226 business days after the date on which the contract is executed
 227 to cancel a public adjuster's contract.

228 ~~(10)(a)(11)(a)~~ If a public adjuster enters into a contract
 229 with an insured or claimant to reopen a claim or file a
 230 supplemental claim that seeks additional payments for a claim
 231 that has been previously paid in part or in full or settled by
 232 the insurer, the public adjuster may not charge, agree to, or

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233 accept from any source compensation, payment, commission, fee,
 234 or any other thing of value based on a previous settlement or
 235 previous claim payments by the insurer for the same cause of
 236 loss. The charge, compensation, payment, commission, fee, or any
 237 other thing of value must be based only on the claim payments or
 238 settlement obtained through the work of the public adjuster
 239 after entering into the contract with the insured or claimant.
 240 Compensation for the reopened or supplemental claim may not
 241 exceed 20 percent of the reopened or supplemental claim payment.
 242 In no event shall the contracts described in this paragraph
 243 exceed the limitations in paragraph (b).

244 (b) A public adjuster may not charge, agree to, or accept
 245 from any source compensation, payment, commission, fee, or any
 246 other thing of value in excess of:

247 1. Ten percent of the amount of insurance claim payments
 248 made by the insurer for claims based on events that are the
 249 subject of a declaration of a state of emergency by the
 250 Governor. This provision applies to claims made during the year
 251 after the declaration of emergency. After that year, the
 252 limitations in subparagraph 2. apply.

253 2. Twenty percent of the amount of insurance claim payments
 254 made by the insurer for claims that are not based on events that
 255 are the subject of a declaration of a state of emergency by the
 256 Governor.

257 (c) Insurance claim payments made by the insurer do not
 258 include policy deductibles, and public adjuster compensation may
 259 not be based on the deductible portion of a claim.

260 (d) ~~(e)~~ Any maneuver, shift, or device through which the
 261 limits on compensation set forth in this subsection are exceeded

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262 is a violation of this chapter punishable as provided under s.
 263 626.8698.

264 (17) ~~(18)~~ A public adjuster, a public adjuster apprentice,
 265 or a person acting on behalf of an adjuster or apprentice may
 266 not enter into a contract or accept a power of attorney that
 267 vests in the public adjuster, the public adjuster apprentice, or
 268 the person acting on behalf of the adjuster or apprentice the
 269 effective authority to choose the persons or entities that will
 270 perform salvage, repair, or any other work in a property
 271 insurance claim.

272 (18) ~~(19)~~ Subsections (5)-(17) ~~(5)-(18)~~ apply only to
 273 residential property insurance policies and condominium unit
 274 owner policies as described in s. 718.111(11).

275 (19) Except as otherwise provided in this chapter, no
 276 person, except an attorney at law or a public adjuster, may for
 277 money, commission, or any other thing of value, directly or
 278 indirectly:

279 (a) Prepare, complete, or file an insurance claim for an
 280 insured or a third-party claimant;

281 (b) Act on behalf of or aid an insured or a third-party
 282 claimant in negotiating for or effecting the settlement of a
 283 claim for loss or damage covered by an insurance contract;

284 (c) Advertise for employment as a public adjuster; or

285 (d) Solicit, investigate, or adjust a claim on behalf of a
 286 public adjuster, an insured, or a third-party claimant.

287 Section 6. Section 626.8541, Florida Statutes, is repealed.

288 Section 7. Section 626.8548, Florida Statutes, is amended
 289 to read:

290 626.8548 "All-lines adjuster" defined.—An "all-lines

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291 adjuster" is a person who, for money, commission, or any other
 292 thing of value, directly or indirectly ~~is self-employed or~~
 293 ~~employed by an insurer, a wholly owned subsidiary of an insurer,~~
 294 ~~or an independent adjusting firm or other independent adjuster,~~
 295 ~~and who~~ undertakes on behalf of a public adjuster or an insurer
 296 ~~or other insurers under common control or ownership~~ to ascertain
 297 and determine the amount of any claim, loss, or damage payable
 298 under an insurance contract or undertakes to effect settlement
 299 of such claim, loss, or damage. The term also includes any
 300 person who, for money, commission, or any other thing of value,
 301 directly or indirectly solicits claims on behalf of a public
 302 adjuster, but does not include paid spokespersons used as part
 303 of a written or an electronic advertisement. The term does not
 304 apply to life insurance or annuity contracts.

305 Section 8. Section 626.8561, Florida Statutes, is created
 306 to read:

307 626.8561 "Public adjuster apprentice" defined.—The term
 308 "public adjuster apprentice" means a person licensed as an all-
 309 lines adjuster who:

310 (1) Is appointed and employed or contracted by a public
 311 adjuster or a public adjusting firm;

312 (2) Assists the public adjuster or public adjusting firm in
 313 ascertaining and determining the amount of any claim, loss, or
 314 damage payable under an insurance contract, or who undertakes to
 315 effect settlement of such claim, loss, or damage; and

316 (3) Satisfies the requirements of s. 626.8651.

317 Section 9. Subsection (3) of section 626.8584, Florida
 318 Statutes, is amended to read:

319 626.8584 "Nonresident all-lines adjuster" defined.—A

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320 "nonresident all-lines adjuster" means a person who:

321 (3) Is licensed as an all-lines adjuster and self-appointed
 322 or appointed and employed ~~or contracted~~ by an independent
 323 adjusting firm or other independent adjuster, by an insurer
 324 admitted to do business in this state or a wholly owned
 325 subsidiary of an insurer admitted to do business in this state,
 326 or by a public adjuster or a public adjusting firm ~~other~~
 327 ~~insurers under the common control or ownership of such insurer.~~

328 Section 10. Subsection (1) of section 626.861, Florida
 329 Statutes, is amended to read:

330 626.861 Insurer's officers, insurer's employees, reciprocal
 331 insurer's representatives; adjustments by.—

332 (1) ~~Nothing in~~ This part may not shall be construed to
 333 prevent an executive officer of any insurer, an ~~or a~~ regularly
 334 ~~salaries~~ employee of an insurer handling claims with respect to
 335 health insurance, an employee of an insurer handling claims with
 336 respect to residential property insurance in which the amount of
 337 coverage for the applicable type of loss is contractually
 338 limited to \$500 or less, or the duly designated attorney or
 339 agent authorized and acting for subscribers to reciprocal
 340 insurers, from adjusting any claim loss or damage under any
 341 insurance contract of such insurer.

342 Section 11. Subsection (3) of section 626.864, Florida
 343 Statutes, is amended to read:

344 626.864 Adjuster license types.—

345 (3) An all-lines adjuster may be appointed as an
 346 independent adjuster, public adjuster apprentice, or company
 347 employee adjuster, but not more than one of these ~~both~~
 348 concurrently.

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349 Section 12. Paragraphs (d) and (e) of subsection (1) of
350 section 626.865, Florida Statutes, are amended to read:

351 626.865 Public adjuster's qualifications, bond.-

352 (1) The department shall issue a license to an applicant
353 for a public adjuster's license upon determining that the
354 applicant has paid the applicable fees specified in s. 624.501
355 and possesses the following qualifications:

356 (d) Has had sufficient experience, training, or instruction
357 concerning the adjusting of damages or losses under insurance
358 contracts, other than life and annuity contracts, is
359 sufficiently informed as to the terms and effects of the
360 provisions of those types of insurance contracts, and possesses
361 adequate knowledge of the laws of this state relating to such
362 contracts as to enable and qualify him or her to engage in the
363 business of insurance adjuster fairly and without injury to the
364 public or any member thereof with whom the applicant may have
365 business as a public adjuster, ~~or has been licensed and employed~~
366 ~~as a resident insurance company adjuster or independent adjuster~~
367 ~~in this state on a continual basis for the past year.~~

368 (e) Has been licensed in this state as an all-lines
369 adjuster, and has been appointed on a continual basis for the
370 previous 6 months ~~is licensed~~ as a public adjuster apprentice
371 under s. 626.8561, as an independent adjuster under s. 626.855,
372 or as a company employee adjuster under s. 626.856 ~~under s.~~
373 ~~626.8651 and complies with the requirements of that license~~
374 ~~throughout the licensure period.~~

375 Section 13. Section 626.8651, Florida Statutes, is amended
376 to read:

377 626.8651 Public adjuster apprentice appointment license;

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378 qualifications.-

379 (1) ~~(a)~~ The department shall issue an appointment a license
380 as a public adjuster apprentice to a licensee an applicant who
381 ~~is~~:

382 1. Is licensed as an all-lines adjuster under s. 626.866;
383 2. Has filed with the department a bond executed and issued
384 by a surety insurer that is authorized to transact such business
385 in this state in the amount of \$50,000, which is conditioned
386 upon the faithful performance of his or her duties as a public
387 adjuster apprentice; and
388 3. Maintains such bond unimpaired throughout the existence
389 of the appointment and for at least 1 year after termination of
390 the appointment.

391 (b) The bond must be in favor of the department and must
392 specifically authorize recovery by the department of the damages
393 sustained in case the licensee commits fraud or unfair practices
394 in connection with his or her business as a public adjuster
395 apprentice. The aggregate liability of the surety for all such
396 damages may not exceed the amount of the bond, and the bond may
397 not be terminated by the issuing insurer unless written notice
398 of at least 30 days is given to the licensee and filed with the
399 department.

400 ~~(a) A natural person at least 18 years of age.~~

401 ~~(b) A United States citizen or legal alien who possesses~~
402 ~~work authorization from the United States Bureau of Citizenship~~
403 ~~and Immigration Services.~~

404 ~~(c) Trustworthy and has such business reputation as would~~
405 ~~reasonably ensure that the applicant will conduct business as a~~
406 ~~public adjuster apprentice fairly and in good faith and without~~

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407 detriment to the public.

408 (2) All applicable license fees, as prescribed in s.
409 624.501, must be paid in full before issuance of the license.

410 (3) An applicant must pass the required written examination
411 before a license may be issued.

412 (4) An applicant must have received designation as an
413 Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA),
414 or as a Certified Claims Adjuster (CCA) after completion of
415 training that qualifies the applicant to engage in the business
416 of a public adjuster apprentice fairly and without injury to the
417 public. Such training and instruction must address adjusting
418 damages and losses under insurance contracts, the terms and
419 effects of insurance contracts, and knowledge of the laws of
420 this state relating to insurance contracts.

421 (5) At the time of application for license as a public
422 adjuster apprentice, the applicant shall file with the
423 department a bond executed and issued by a surety insurer
424 authorized to transact such business in this state in the amount
425 of \$50,000, conditioned upon the faithful performance of his or
426 her duties as a public adjuster apprentice under the license for
427 which the applicant has applied, and thereafter maintain the
428 bond unimpaired throughout the existence of the license and for
429 at least 1 year after termination of the license. The bond shall
430 be in favor of the department and shall specifically authorize
431 recovery by the department of the damages sustained in case the
432 licensee commits fraud or unfair practices in connection with
433 his or her business as a public adjuster apprentice. The
434 aggregate liability of the surety for all such damages may not
435 exceed the amount of the bond, and the bond may not be

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436 terminated by the issuing insurer unless written notice of at
437 least 30 days is given to the licensee and filed with the
438 department.

439 (6) A public adjuster apprentice shall complete at a
440 minimum 100 hours of employment per month for 12 months of
441 employment under the supervision of a licensed and appointed
442 all-lines public adjuster in order to qualify for licensure as a
443 public adjuster. The department may adopt rules that establish
444 standards for such employment requirements.

445 (2)(7) An appointing public adjusting firm may not maintain
446 more than four 12 public adjuster apprentices simultaneously.
447 However, a supervising public adjuster may not be responsible
448 for more than one three public adjuster apprentice apprentices
449 simultaneously and shall be accountable for the acts of the all
450 public adjuster apprentice apprentices which are related to
451 transacting business as a public adjuster apprentice. This
452 subsection does not apply to a public adjusting firm that
453 adjusts claims primarily for commercial entities with operations
454 in more than one state and that does not directly or indirectly
455 perform adjusting services for insurers or individual
456 homeowners.

457 (8) An apprentice license is effective for 18 months unless
458 the license expires due to lack of maintaining an appointment,
459 is surrendered by the licensee, is terminated, suspended, or
460 revoked by the department, or is canceled by the department upon
461 issuance of a public adjuster license. The department may not
462 issue a public adjuster apprentice license to any individual who
463 has held such a license in this state within 2 years after
464 expiration, surrender, termination, revocation, or cancellation

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465 ~~of the license.~~

466 ~~(9) After completing the requirements for employment as a~~
 467 ~~public adjuster apprentice, the licensee may file an application~~
 468 ~~for a public adjuster license. The applicant and supervising~~
 469 ~~public adjuster or public adjusting firm must each file a sworn~~
 470 ~~affidavit, on a form prescribed by the department, verifying~~
 471 ~~that the employment of the public adjuster apprentice meets the~~
 472 ~~requirements of this section.~~

473 ~~(10) In no event shall A public adjuster apprentice~~
 474 ~~licensed under this section perform any of the functions for~~
 475 ~~which a public adjuster's license is required after expiration~~
 476 ~~of the public adjuster apprentice license without having~~
 477 ~~obtained a public adjuster license.~~

478 ~~(3)(11)~~ A public adjuster apprentice has the same authority
 479 as the licensed public adjuster or public adjusting firm that
 480 employs the apprentice except that an apprentice may not execute
 481 contracts for the services of a public adjuster or public
 482 adjusting firm and may not solicit contracts for the services
 483 except under the direct supervision and guidance of the
 484 supervisory public adjuster. An individual may not be, act as,
 485 or hold himself or herself out to be a public adjuster
 486 apprentice unless the individual is licensed as an all-lines
 487 adjuster and holds a current appointment by a licensed public
 488 all-lines adjuster or a public adjusting firm that employs a
 489 licensed all-lines public adjuster.

490 Section 14. Section 626.8695, Florida Statutes, is amended
 491 to read:

492 626.8695 Primary adjuster.—

493 (1) Each business location established by an adjuster,

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494 ~~person operating~~ an adjusting firm, a corporation, or an
 495 association and each location of a multiple location adjusting
 496 firm must designate with the department a primary adjuster who
 497 is licensed and appointed to adjust the insurance claims
 498 adjusted by the business location.

499 (2) An adjusting firm and each of its branch firms shall
 500 designate a primary adjuster for each such firm or location and
 501 ~~must~~ file with the department, at the department's designated
 502 website, the name and license number of such primary adjuster
 503 and the physical address of the adjusting firm or branch firm
 504 location where he or she is the primary adjuster, ~~on a form~~
 505 ~~approved by the department~~. The designation of the primary
 506 adjuster may be changed at the option of the adjusting firm. Any
 507 such change is effective upon notification to the department.
 508 Notice of change must be provided ~~sent~~ to the department within
 509 30 days after such change.

510 ~~(3)(2)(a)~~ For purposes of this section, a "primary
 511 adjuster" is the licensed adjuster who is responsible for the
 512 ~~hiring and~~ supervision of all individuals within an adjusting
 513 firm location who act ~~deal with the public and who acts~~ in the
 514 capacity of a ~~public adjuster as defined in s. 626.854, or an~~
 515 ~~independent~~ adjuster as defined in this chapter ~~s. 626.855~~. An
 516 adjuster may be designated as a primary adjuster for more than
 517 ~~only~~ one adjusting firm location provided no person engages in
 518 activity requiring licensure as an adjuster at any location when
 519 an adjuster is not physically present.

520 ~~(4)(b)~~ For purposes of this section, an "adjusting firm" is
 521 a location where an independent or public adjuster is engaged in
 522 the business of insurance.

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523 (5)(3) The department may suspend or revoke the license of
 524 the primary adjuster if the adjusting firm employs or contracts
 525 any person who has had a license denied or any person whose
 526 license is currently suspended or revoked. However, if a person
 527 has been denied a license for failure to pass a required
 528 examination, he or she may be employed or contracted to perform
 529 clerical or administrative functions for which licensure is not
 530 required.

531 (6)(4) The primary adjuster in an ~~unincorporated~~ adjusting
 532 firm, ~~or the primary adjuster in an incorporated adjusting firm~~
 533 ~~in which no officer, director, or stockholder is an adjuster, is~~
 534 ~~responsible and accountable for misconduct or violations of this~~
 535 ~~code committed by the primary adjuster or by any other person~~
 536 ~~the acts of salaried employees under his or her direct~~
 537 ~~supervision and control while acting on behalf of the adjusting~~
 538 ~~firm. This section does not render a primary adjuster~~ Nothing in
 539 ~~this section renders any person~~ criminally liable for an or
 540 ~~subject to any disciplinary proceedings for any act unless the~~
 541 ~~primary adjuster~~ person personally committed the act or knew or
 542 should have known of the act and of the facts constituting a
 543 violation of this code.

544 (7)(5) The department may suspend or revoke the license of
 545 any adjuster who is employed or contracted by a person whose
 546 license is currently suspended or revoked.

547 (8)(6) An adjusting firm location may not conduct the
 548 business of insurance unless a primary adjuster is designated
 549 and provides services to the firm at all times. If the Failure
 550 ~~of the person operating the adjusting firm to designate a~~
 551 primary adjuster designated with the department ends his or her

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552 affiliation with the firm for any reason and if the firm fails
 553 to designate another primary adjuster, as required in subsection
 554 (2), within 90 days, the firm license automatically expires on
 555 the 91st day after the date the designated primary adjuster
 556 ended his or her affiliation with ~~for the firm, or for each~~
 557 ~~location, as applicable, on a form prescribed by the department~~
 558 ~~within 30 days after inception of the firm or change of primary~~
 559 ~~adjuster designation, constitutes grounds for requiring the~~
 560 ~~adjusting firm to obtain an adjusting firm license pursuant to~~
 561 ~~s. 626.8696.~~

562 (9)(7) Any adjusting firm may determine a request, on a
 563 form prescribed by the department, verification from the
 564 department of any person's current licensure status by
 565 submitting an appointment request. If a request is mailed to the
 566 office within 5 working days after the date an adjuster is
 567 hired. If, and the department subsequently notifies the
 568 adjusting firm that its appointee's an employee's license is
 569 currently suspended, revoked, or has been denied, the license of
 570 the primary adjuster may shall not be revoked or suspended if
 571 the unlicensed person is immediately dismissed from employment
 572 as an adjuster with the firm.

573 Section 15. Section 626.8696, Florida Statutes, is amended
 574 to read:

575 626.8696 Application for adjusting firm license.—

576 (1) The department may issue an adjusting firm license to a
 577 person only after the person files a written application with
 578 the department and qualifies for such license.

579 (2) An application for an adjusting firm license must be
 580 signed by an individual required to be listed in the application

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581 under paragraph (a). An adjusting firm may authorize a third
 582 party to complete, submit, and sign an application on the firm's
 583 behalf. However, the firm must ensure that the information on
 584 the application is true and correct, and the firm is accountable
 585 for any misstatement or misrepresentation. The application for
 586 an adjusting firm license must include:

587 (a) The name of each majority owner, partner, officer, and
 588 director, president, senior vice president, secretary,
 589 treasurer, and limited liability company member who directs or
 590 participates in the management or control of the adjusting firm.

591 (b) The resident address of each person required to be
 592 listed in the application under paragraph (a).

593 (c) The name, of the adjusting firm and its principal
 594 business street address, and valid e-mail address of the
 595 adjusting firm, and the name, street address, and valid e-mail
 596 address of the firm's registered agent, person, or company
 597 authorized to accept service on behalf of the firm.

598 (d) The physical address location of each branch adjusting
 599 firm, including its name, valid e-mail address, and telephone
 600 number, and the date that the branch firm began transacting
 601 insurance business office and the name under which each office
 602 conducts or will conduct business.

603 (e) The name of the primary adjuster in full-time charge of
 604 the adjusting firm office, including branch firms, and his or
 605 her corresponding location.

606 (f) The fingerprints of each of the following:

607 1. A sole proprietor, if the applicant is a sole
 608 proprietor;

609 2. Each individual required to be listed in the application

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610 under paragraph (a); and

611 3. Each individual who directs or participates in the
 612 management or control of an incorporated firm whose shares are
 613 not traded on a securities exchange.

614 Fingerprints must be taken by a law enforcement agency or other
 615 entity approved by the department, must be accompanied by the
 616 fingerprint processing fee specified in s. 624.501, and must be
 617 processed in accordance with s. 624.34. However, fingerprints
 618 need not be filed for an individual who is currently licensed
 619 and appointed under this chapter. This paragraph does not apply
 620 to corporations whose voting shares are traded on a securities
 621 exchange.

622 (g) ~~(e)~~ Such Any additional information that the department
 623 requires by rule to ascertain the trustworthiness and competence
 624 of persons required to be listed on the application and to
 625 ascertain that such persons meet the requirements of this code.
 626 However, the department may not require that credit or character
 627 reports be submitted for such persons.

628 (2) An application for an adjusting firm license must be
 629 signed by each owner of the firm. If the firm is incorporated,
 630 the application must be signed by the president and secretary of
 631 the corporation.

632 (3) Each application must be accompanied by payment of any
 633 applicable fee as prescribed in s. 624.501.

634 (4) License fees are not refundable.

635 (3)(5) The license of an adjusting firm continues in force
 636 until it is canceled, required to be licensed pursuant to s.
 637 626.8695 must remain so licensed for a period of 3 years from
 638

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639 ~~the date of licensure, unless the license is suspended, or~~
 640 ~~revoked or until it is otherwise terminated or expires by~~
 641 ~~operation of law.~~ The department may suspend or revoke the
 642 adjusting firm's authority to do business for activities
 643 occurring during the time the firm is licensed, regardless of
 644 whether the licensing period has terminated.

645 Section 16. Section 626.872, Florida Statutes, is repealed.

646 Section 17. Subsection (1) of section 626.874, Florida
 647 Statutes, is amended to read:

648 626.874 Catastrophe or emergency adjusters.—

649 (1) In the event of a catastrophe or emergency, the
 650 department may issue a license, for the purposes and under the
 651 conditions and for the period of emergency as it shall
 652 determine, to persons who are residents or nonresidents of this
 653 state, who are at least 18 years of age, who are United States
 654 citizens or legal aliens who possess work authorization from the
 655 United States Bureau of Citizenship and Immigration Services,
 656 and who are not licensed adjusters under this part but who have
 657 been designated and certified to it as qualified to act as
 658 adjusters ~~by all-lines resident adjusters,~~ by an authorized
 659 insurer, ~~or by a licensed general lines agent~~ to adjust claims,
 660 losses, or damages under policies or contracts of insurance
 661 issued by such insurers, or by the primary adjuster of an
 662 independent adjusting firm contracted with an authorized insurer
 663 to adjust claims on behalf of the insurer. The fee for the
 664 license is as provided in s. 624.501(12)(c).

665 Section 18. Subsection (2) of section 626.875, Florida
 666 Statutes, is amended to read:

667 626.875 Office and records.—

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668 (2) The records of the adjuster relating to a particular
 669 claim or loss shall be so retained in the adjuster's place of
 670 business for a period of not less than 5 ~~3~~ years after
 671 completion of the adjustment. This provision shall not be deemed
 672 to prohibit return or delivery to the insurer or insured of
 673 documents furnished to or prepared by the adjuster and required
 674 by the insurer or insured to be returned or delivered thereto.

675 Section 19. Section 626.876, Florida Statutes, is amended
 676 to read:

677 626.876 Exclusive employment; public adjusters, all-lines
 678 ~~independent~~ adjusters.—

679 (1) An individual licensed ~~and appointed~~ as a public
 680 adjuster may not be simultaneously licensed as an all-lines
 681 adjuster employed during the same period by more than one public
 682 adjuster or public adjuster firm or corporation.

683 (2) An individual licensed as an all-lines adjuster and
 684 appointed as an independent adjuster, a company employee
 685 adjuster, or a public adjuster apprentice may not be
 686 simultaneously appointed, contracted, or employed as an adjuster
 687 that requires a different appointment type during the same
 688 period by more than one independent adjuster or independent
 689 adjuster firm or corporation.

690 Section 20. Section 626.879, Florida Statutes, is repealed.

691 Section 21. Subsection (5) of section 626.9953, Florida
 692 Statutes, is amended to read:

693 626.9953 Qualifications for registration; application
 694 required.—

695 (5) An applicant must submit a set of his or her
 696 fingerprints to the department and pay the processing fee

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697 established under s. 624.501(23) ~~s. 624.501(24)~~. The department
698 shall submit the applicant's fingerprints to the Department of
699 Law Enforcement for processing state criminal history records
700 checks and local criminal records checks through local law
701 enforcement agencies and for forwarding to the Federal Bureau of
702 Investigation for national criminal history records checks. The
703 fingerprints shall be taken by a law enforcement agency, a
704 designated examination center, or another department-approved
705 entity. The department may not approve an application for
706 registration as a navigator if fingerprints have not been
707 submitted.

708 Section 22. This act shall take effect January 1, 2018.

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 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)

Topic SB 922

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 400 N. Monroe St

Phone 850-413-2863

Street

Tallahassee FL 32399

Email elizabeth.boyd@myfloridacfo.com

City

State

Zip

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.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Sneed</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/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:

Paternalty 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 paternalty 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 system¹⁰ 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 either 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

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(1), 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

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

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. July 26, 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.

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 unknown⁷⁸ 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

11 (a) The Legislature finds that children, their families,
12 and child welfare agencies have been affected by multiple
13 substance abuse epidemics over the past several decades, and
14 parental substance abuse is again becoming a growing reason for
15 removing children from their homes and placing them in foster
16 care.

17 (b) The Legislature also finds that infants are the largest
18 age group of children entering foster care and that parental
19 substance abuse disorders are having a major impact not only on
20 increasing child removals, but also on preventing or delaying
21 reunification of families and increasing termination of parental
22 rights.

23 (c) The Legislature further finds that two aspects of
24 parental substance abuse affect the child welfare system:
25 prenatal exposure when it is determined that there are immediate
26 safety factors that necessitate the newborn being placed in
27 protective custody; and postnatal use that affects the ability
28 of the parent to safely care for the child.

29 (d) Therefore, it is the intent of the Legislature that the
30 department establish and monitor a coordinated approach to
31 working with children and their families affected by substance
32 abuse and dependence.

33 (2) SCREENING AND ASSESSMENT.—The department shall develop
34 or adopt one or more initial screening and assessment
35 instruments to identify, determine the needs of, and plan
36 services for substance-exposed newborns and their families. In
37 addition to the conditions of the infant, conditions or
38 behaviors of the mother or father which may indicate a risk of
39 harm to the child shall be considered during any assessment.



40 (3) CASE MANAGEMENT.—
41 (a) The department shall conduct regular multidisciplinary
42 staffings relating to services provided for substance-exposed
43 newborns and their families to ensure that all parties possess
44 relevant information and that services are coordinated across
45 systems identified in this chapter. The department or community-
46 based care lead agency, as appropriate, shall coordinate these
47 staffings and include individuals involved in the child's care.
48 (b) Each region of the department and each community-based
49 care lead agency shall jointly assess local service capacity to
50 meet the specialized service needs of substance-exposed newborns
51 and their families and establish a plan to develop the necessary
52 capacity. Each plan shall be developed in consultation with
53 entities and agencies involved in the individuals' care.
54 (4) TRAINING.—The department and community-based care lead
55 agencies shall ensure that cases in which there is a substance-
56 exposed newborn are assigned to child protective investigators
57 and case managers who have specialized training in working with
58 substance-exposed newborns and their families. The department
59 and lead agencies shall ensure that child protective
60 investigators and case managers receive this training before
61 accepting a case when possible. If a child protective
62 investigator or case manager with specialized training is not
63 available, the investigator or case manager shall consult with
64 department staff or the case management organization staff with
65 such expertise.

66
67 ===== T I T L E A M E N D M E N T =====
68 And the title is amended as follows:



69 Delete line 136
70 and insert:
71 cases when possible; providing for consultation;
72 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

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12
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17

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

And the title is amended as follows:

Delete line 166

and insert:

providing an appropriation; providing effective
dates.

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senators Garcia and Campbell

590-04111-17

20171044c2

1 A bill to be entitled
 2 An act relating to child welfare; amending s. 39.01,
 3 F.S.; defining the term "legal father" and redefining
 4 the term "parent"; amending s. 39.201, F.S.; providing
 5 that central abuse hotline information may be used for
 6 employment screening of residential group home
 7 caregivers; amending s. 39.202, F.S.; providing that
 8 confidential records held by the department concerning
 9 reports of child abandonment, abuse, or neglect,
 10 including reports made to the central abuse hotline
 11 and all records generated as a result of such reports,
 12 may be accessed for employment screening of
 13 residential group home caregivers; changing the time
 14 period for the release of records to certain
 15 individuals; amending s. 39.301, F.S.; requiring a
 16 safety plan to be issued for a perpetrator of domestic
 17 violence only if the perpetrator can be located;
 18 specifying what constitutes reasonable efforts;
 19 requiring that a child new to a family under
 20 investigation be added to the investigation and
 21 assessed for safety; amending s. 39.302, F.S.;
 22 conforming a cross-reference; providing that central
 23 abuse hotline information may be used for certain
 24 employment screenings; amending s. 39.402, F.S.;
 25 requiring a court to inquire as to the identity and
 26 location of a child's legal father at the shelter
 27 hearing; specifying the types of information that fall
 28 within the scope of such inquiry; amending s. 39.503,
 29 F.S.; requiring a court to conduct under oath the

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

590-04111-17

20171044c2

30 inquiry to determine the identity or location of an
 31 unknown parent; requiring a court to seek additional
 32 information relating to a father's identity in such
 33 inquiry; requiring the diligent search to determine a
 34 parent's or prospective parent's location to include a
 35 search of the Florida Putative Father Registry;
 36 authorizing the court to order scientific testing to
 37 determine parentage if certain conditions exist;
 38 amending s. 39.504, F.S.; requiring the same judge to
 39 hear a pending dependency proceeding and an injunction
 40 proceeding; providing that the court may enter an
 41 injunction based on specified evidence; amending s.
 42 39.507, F.S.; requiring a court to consider
 43 maltreatment allegations against a parent in an
 44 evidentiary hearing relating to a dependency petition;
 45 amending s. 39.5085, F.S.; revising eligibility
 46 guidelines for the Relative Caregiver Program with
 47 respect to relative and nonrelative caregivers;
 48 amending s. 39.521, F.S.; providing new time
 49 guidelines for filing with the court and providing
 50 copies of case plans and family functioning
 51 assessments; providing for assessment and program
 52 compliance for a parent who caused harm to a child by
 53 exposing the child to a controlled substance;
 54 providing in-home safety plan requirements; providing
 55 requirements for family functioning assessments;
 56 providing supervision requirements after
 57 reunification; amending s. 39.522, F.S.; providing
 58 conditions for returning a child to the home with an

Page 2 of 75

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

590-04111-17

20171044c2

59 in-home safety plan; amending s. 39.523, F.S.;

60 providing legislative findings and intent; requiring

61 children placed in out-of-home care to be assessed to

62 determine the most appropriate placement; requiring

63 the placement assessments to be documented in the

64 Florida Safe Families Network; requiring a court to

65 review and approve placements; requiring the

66 Department of Children and Families to post specified

67 information relating to assessment and placement on

68 its website and update that information annually on

69 specified dates; authorizing the department to adopt

70 rules; creating s. 39.6001, F.S.; requiring the

71 Department of Children and Families, in partnership

72 with the Department of Health, the Agency for Health

73 Care Administration, and other state agencies and

74 community partners, to develop a strategy for certain

75 coordinated services; providing for creation of a safe

76 care plan that addresses the health and substance

77 abuse disorder treatment needs of a newborn and

78 affected family or caregivers and provides for the

79 monitoring of services provided under the plan;

80 amending s. 39.6011, F.S.; providing requirements for

81 confidential information in a case planning

82 conference; providing restrictions; amending s.

83 39.6012, F.S.; providing for assessment and program

84 compliance for a parent who caused harm to a child by

85 exposing the child to a controlled substance; amending

86 s. 39.6221, F.S.; providing that relocation

87 requirements for parents in dissolution proceedings do

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88 not apply to certain permanent guardianships; amending

89 s. 39.701, F.S.; providing safety assessment

90 requirements for children coming into a home under

91 court jurisdiction; granting rulemaking authority;

92 amending s. 39.801, F.S.; providing an exception to

93 the notice requirement regarding the advisory hearing

94 for a petition to terminate parental rights; amending

95 s. 39.803, F.S.; requiring a court to conduct under

96 oath the inquiry to determine the identity or location

97 of an unknown parent after the filing of a termination

98 of parental rights petition; requiring a court to seek

99 additional information relating to a legal father's

100 identity in such inquiry; revising minimum

101 requirements for the diligent search to determine the

102 location of a parent or prospective parent;

103 authorizing the court to order scientific testing to

104 determine parentage if certain conditions exist;

105 amending s. 39.806, F.S.; revising circumstances under

106 which grounds for the termination of parental rights

107 may be established; amending s. 39.811, F.S.; revising

108 circumstances under which the rights of one parent may

109 be terminated without terminating the rights of the

110 other parent; amending s. 125.901, F.S.; creating an

111 exception to the requirement that, for an independent

112 special district in existence on a certain date and

113 serving a population of a specified size, the

114 governing body of the county submit the question of

115 the district's retention or dissolution to the

116 electorate in a specified general election; amending

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117 s. 322.051, F.S., requiring that an identification
 118 card for certified unaccompanied homeless youth
 119 include a specified statement; amending s. 395.3025,
 120 F.S.; revising requirements for access to patient
 121 records; amending s. 402.40, F.S.; defining the term
 122 "child welfare trainer"; providing rulemaking
 123 authority; creating s. 409.16741, F.S.; providing
 124 legislative findings and intent; requiring the
 125 Department of Children and Families to develop or
 126 adopt one or more initial screening assessment
 127 instruments to identify and determine the needs of,
 128 and plan services for, substance-exposed newborns and
 129 their families; requiring the department to conduct
 130 certain staffings relating to services for substance-
 131 exposed newborns and their families; requiring that
 132 certain local service capacity be assessed; requiring
 133 that child protective investigators receive
 134 specialized training in working with substance-exposed
 135 newborns and their families before they accept such
 136 cases; creating s. 409.16742, F.S.; providing
 137 legislative findings and intent; establishing a shared
 138 family care residential services pilot program for
 139 substance-exposed newborns; amending s. 409.992, F.S.;
 140 limiting compensation from state-appropriated funds
 141 for administrative employees of community-based care
 142 agencies; amending s. 456.057, F.S.; revising
 143 requirements for access to patient records; repealing
 144 s. 409.141, F.S., relating to equitable reimbursement
 145 methodology; repealing s. 409.1677, F.S., relating to

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146 model comprehensive residential services programs;
 147 amending s. 743.067, F.S.; defining the term
 148 "certified unaccompanied homeless youth"; requiring
 149 the Office on Homelessness within the Department of
 150 Children and Families to develop a standardized form
 151 to be used in the certification process; providing
 152 information that must be included in the form;
 153 authorizing a certified unaccompanied homeless youth
 154 to apply at no charge to the Department of Highway
 155 Safety and Motor Vehicles for an identification card;
 156 conforming terminology; amending s. 1009.25, F.S.;
 157 revising the exemption from the payment of tuition and
 158 fees for homeless students; amending ss. 39.524,
 159 394.495, 409.1678, and 960.065, F.S.; conforming
 160 cross-references; amending ss. 409.1679 and 1002.3305,
 161 F.S.; conforming provisions to changes made by the
 162 act; reenacting s. 483.181(2), F.S., relating to
 163 acceptance, collection, identification, and
 164 examination of specimens, to incorporate the amendment
 165 made to s. 456.057, F.S., in a reference thereto;
 166 providing effective dates.

167
 168 Be It Enacted by the Legislature of the State of Florida:
 169

170 Section 1. Present subsections (35) through (80) of section
 171 39.01, Florida Statutes, are redesignated as subsections (36)
 172 through (81), respectively, a new subsection (35) is added to
 173 that section, and subsections (10) and (32) and present
 174 subsection (49) of that section are amended, to read:

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175 39.01 Definitions.—When used in this chapter, unless the
176 context otherwise requires:

177 (10) “Caregiver” means the parent, legal custodian,
178 permanent guardian, adult household member, or other person
179 responsible for a child’s welfare as defined in subsection (48)
180 ~~(47)~~.

181 (32) “Institutional child abuse or neglect” means
182 situations of known or suspected child abuse or neglect in which
183 the person allegedly perpetrating the child abuse or neglect is
184 an employee of a private school, public or private day care
185 center, residential home, institution, facility, or agency or
186 any other person at such institution responsible for the child’s
187 care as defined in subsection (48) ~~(47)~~.

188 (35) “Legal father” means a man married to the mother at
189 the time of conception or birth of their child, unless paternity
190 has been otherwise determined by a court of competent
191 jurisdiction. If no man was married to the mother at the time of
192 birth or conception of the child, the term “legal father” means
193 a man named on the birth certificate of the child pursuant to s.
194 382.013(2), a man determined by a court order to be the father
195 of the child, or a man determined by an administrative
196 proceeding to be the father of the child.

197 ~~(50)-(49)~~ “Parent” means a woman who gives birth to a child
198 and a man whose consent to the adoption of the child would be
199 required under s. 63.062(1). “Parent” also means a man married
200 to the mother at the time of conception or birth of their child,
201 unless paternity has been otherwise determined by a court of
202 competent jurisdiction. If no man was married to the mother at
203 the time of birth or conception of the child, the term “legal

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204 father” means a man named on the birth certificate of the child
205 pursuant to s. 382.013(2), a man determined by court order to be
206 the father of the child, or a man determined by an
207 administrative proceeding to be the father of the child. If a
208 child has been legally adopted, the term “parent” means the
209 adoptive mother or father of the child. For purposes of this
210 chapter only, when the phrase “parent or legal custodian” is
211 used, it refers to rights or responsibilities of the parent and,
212 only if there is no living parent with intact parental rights,
213 to the rights or responsibilities of the legal custodian who has
214 assumed the role of the parent. The term does not include an
215 individual whose parental relationship to the child has been
216 legally terminated, or an alleged or prospective parent, unless:

217 (a) The parental status falls within the terms of s.
218 39.503(1) or s. 63.062(1); or

219 (b) Parental status is applied for the purpose of
220 determining whether the child has been abandoned.

221 Section 2. Subsection (6) of section 39.201, Florida
222 Statutes, is amended to read:

223 39.201 Mandatory reports of child abuse, abandonment, or
224 neglect; mandatory reports of death; central abuse hotline.—

225 (6) Information in the central abuse hotline may not be
226 used for employment screening, except as provided in s.
227 39.202(2) (a) and (h) or s. 402.302(15). Information in the
228 central abuse hotline and the department’s automated abuse
229 information system may be used by the department, its authorized
230 agents or contract providers, the Department of Health, or
231 county agencies as part of the licensure or registration process
232 pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

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233 Pursuant to s. 39.202(2)(q), the information in the central
 234 abuse hotline may also be used by the Department of Education
 235 for purposes of educator certification discipline and review.
 236 Additionally, in accordance with s. 409.145(2)(e), the
 237 information in the central abuse hotline may be used for
 238 employment screening for caregivers at residential group homes.

239 Section 3. Paragraphs (a), (d), and (e) of subsection (2)
 240 of section 39.202, Florida Statutes, are amended to read:

241 39.202 Confidentiality of reports and records in cases of
 242 child abuse or neglect.—

243 (2) Except as provided in subsection (4), access to such
 244 records, excluding the name of the reporter which shall be
 245 released only as provided in subsection (5), shall be granted
 246 only to the following persons, officials, and agencies:

247 (a) Employees, authorized agents, or contract providers of
 248 the department, the Department of Health, the Agency for Persons
 249 with Disabilities, the Office of Early Learning, or county
 250 agencies responsible for carrying out:

- 251 1. Child or adult protective investigations;
- 252 2. Ongoing child or adult protective services;
- 253 3. Early intervention and prevention services;
- 254 4. Healthy Start services;
- 255 5. Licensure or approval of adoptive homes, foster homes,
 256 child care facilities, facilities licensed under chapter 393,
 257 family day care homes, providers who receive school readiness
 258 funding under part VI of chapter 1002, or other homes used to
 259 provide for the care and welfare of children; ~~or~~

260 6. Employment screening for caregivers in residential group
 261 homes; or

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262 ~~7.6-~~ Services for victims of domestic violence when
 263 provided by certified domestic violence centers working at the
 264 department's request as case consultants or with shared clients.
 265

266 Also, employees or agents of the Department of Juvenile Justice
 267 responsible for the provision of services to children, pursuant
 268 to chapters 984 and 985.

269 (d) The parent or legal custodian of any child who is
 270 alleged to have been abused, abandoned, or neglected, and the
 271 child, and their attorneys, including any attorney representing
 272 a child in civil or criminal proceedings. This access shall be
 273 made available no later than 60 ~~30~~ days after the department
 274 receives the initial report of abuse, neglect, or abandonment.
 275 However, any information otherwise made confidential or exempt
 276 by law shall not be released pursuant to this paragraph.

277 (e) Any person alleged in the report as having caused the
 278 abuse, abandonment, or neglect of a child. This access shall be
 279 made available no later than 60 ~~30~~ days after the department
 280 receives the initial report of abuse, abandonment, or neglect
 281 and, when the alleged perpetrator is not a parent, shall be
 282 limited to information involving the protective investigation
 283 only and shall not include any information relating to
 284 subsequent dependency proceedings. However, any information
 285 otherwise made confidential or exempt by law shall not be
 286 released pursuant to this paragraph.

287 Section 4. Paragraph (a) of subsection (9) of section
 288 39.301, Florida Statutes, is amended, and subsection (23) is
 289 added to that section, to read:

290 39.301 Initiation of protective investigations.—

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291 (9) (a) For each report received from the central abuse
 292 hotline and accepted for investigation, the department or the
 293 sheriff providing child protective investigative services under
 294 s. 39.3065, shall perform the following child protective
 295 investigation activities to determine child safety:

- 296 1. Conduct a review of all relevant, available information
 297 specific to the child and family and alleged maltreatment;
 298 family child welfare history; local, state, and federal criminal
 299 records checks; and requests for law enforcement assistance
 300 provided by the abuse hotline. Based on a review of available
 301 information, including the allegations in the current report, a
 302 determination shall be made as to whether immediate consultation
 303 should occur with law enforcement, the child protection team, a
 304 domestic violence shelter or advocate, or a substance abuse or
 305 mental health professional. Such consultations should include
 306 discussion as to whether a joint response is necessary and
 307 feasible. A determination shall be made as to whether the person
 308 making the report should be contacted before the face-to-face
 309 interviews with the child and family members.
- 310 2. Conduct face-to-face interviews with the child; other
 311 siblings, if any; and the parents, legal custodians, or
 312 caregivers.
- 313 3. Assess the child's residence, including a determination
 314 of the composition of the family and household, including the
 315 name, address, date of birth, social security number, sex, and
 316 race of each child named in the report; any siblings or other
 317 children in the same household or in the care of the same
 318 adults; the parents, legal custodians, or caregivers; and any
 319 other adults in the same household.

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320 4. Determine whether there is any indication that any child
 321 in the family or household has been abused, abandoned, or
 322 neglected; the nature and extent of present or prior injuries,
 323 abuse, or neglect, and any evidence thereof; and a determination
 324 as to the person or persons apparently responsible for the
 325 abuse, abandonment, or neglect, including the name, address,
 326 date of birth, social security number, sex, and race of each
 327 such person.

- 328 5. Complete assessment of immediate child safety for each
 329 child based on available records, interviews, and observations
 330 with all persons named in subparagraph 2. and appropriate
 331 collateral contacts, which may include other professionals. The
 332 department's child protection investigators are hereby
 333 designated a criminal justice agency for the purpose of
 334 accessing criminal justice information to be used for enforcing
 335 this state's laws concerning the crimes of child abuse,
 336 abandonment, and neglect. This information shall be used solely
 337 for purposes supporting the detection, apprehension,
 338 prosecution, pretrial release, posttrial release, or
 339 rehabilitation of criminal offenders or persons accused of the
 340 crimes of child abuse, abandonment, or neglect and may not be
 341 further disseminated or used for any other purpose.
- 342 6. Document the present and impending dangers to each child
 343 based on the identification of inadequate protective capacity
 344 through utilization of a standardized safety assessment
 345 instrument. If present or impending danger is identified, the
 346 child protective investigator must implement a safety plan or
 347 take the child into custody. If present danger is identified and
 348 the child is not removed, the child protective investigator

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349 shall create and implement a safety plan before leaving the home
 350 or the location where there is present danger. If impending
 351 danger is identified, the child protective investigator shall
 352 create and implement a safety plan as soon as necessary to
 353 protect the safety of the child. The child protective
 354 investigator may modify the safety plan if he or she identifies
 355 additional impending danger.

356 a. If the child protective investigator implements a safety
 357 plan, the plan must be specific, sufficient, feasible, and
 358 sustainable in response to the realities of the present or
 359 impending danger. A safety plan may be an in-home plan or an
 360 out-of-home plan, or a combination of both. A safety plan may
 361 include tasks or responsibilities for a parent, caregiver, or
 362 legal custodian. However, a safety plan may not rely on
 363 promissory commitments by the parent, caregiver, or legal
 364 custodian who is currently not able to protect the child or on
 365 services that are not available or will not result in the safety
 366 of the child. A safety plan may not be implemented if for any
 367 reason the parents, guardian, or legal custodian lacks the
 368 capacity or ability to comply with the plan. If the department
 369 is not able to develop a plan that is specific, sufficient,
 370 feasible, and sustainable, the department shall file a shelter
 371 petition. A child protective investigator shall implement
 372 separate safety plans for the perpetrator of domestic violence,
 373 if the investigator, using reasonable efforts, is able to locate
 374 the perpetrator to implement a safety plan, and for the parent
 375 who is a victim of domestic violence as defined in s. 741.28.
 376 Reasonable efforts to locate a perpetrator include, but are not
 377 limited to, a diligent search pursuant to the same requirements

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378 as in s. 39.503. If the perpetrator of domestic violence is not
 379 the parent, guardian, or legal custodian of any child in the
 380 home and if the department does not intend to file a shelter
 381 petition or dependency petition that will assert allegations
 382 against the perpetrator as a parent of a child in the home ~~the~~
 383 ~~child~~, the child protective investigator shall seek issuance of
 384 an injunction authorized by s. 39.504 to implement a safety plan
 385 for the perpetrator and impose any other conditions to protect
 386 the child. The safety plan for the parent who is a victim of
 387 domestic violence may not be shared with the perpetrator. If any
 388 party to a safety plan fails to comply with the safety plan
 389 resulting in the child being unsafe, the department shall file a
 390 shelter petition.

391 b. The child protective investigator shall collaborate with
 392 the community-based care lead agency in the development of the
 393 safety plan as necessary to ensure that the safety plan is
 394 specific, sufficient, feasible, and sustainable. The child
 395 protective investigator shall identify services necessary for
 396 the successful implementation of the safety plan. The child
 397 protective investigator and the community-based care lead agency
 398 shall mobilize service resources to assist all parties in
 399 complying with the safety plan. The community-based care lead
 400 agency shall prioritize safety plan services to families who
 401 have multiple risk factors, including, but not limited to, two
 402 or more of the following:

- 403 (I) The parent or legal custodian is of young age;
 404 (II) The parent or legal custodian, or an adult currently
 405 living in or frequently visiting the home, has a history of
 406 substance abuse, mental illness, or domestic violence;

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407 (III) The parent or legal custodian, or an adult currently
 408 living in or frequently visiting the home, has been previously
 409 found to have physically or sexually abused a child;

410 (IV) The parent or legal custodian or an adult currently
 411 living in or frequently visiting the home has been the subject
 412 of multiple allegations by reputable reports of abuse or
 413 neglect;

414 (V) The child is physically or developmentally disabled; or

415 (VI) The child is 3 years of age or younger.

416 c. The child protective investigator shall monitor the
 417 implementation of the plan to ensure the child's safety until
 418 the case is transferred to the lead agency at which time the
 419 lead agency shall monitor the implementation.

420 (23) If, at any time during a child protective
 421 investigation, a child is born into a family under investigation
 422 or a child moves into the home under investigation, the child
 423 protective investigator shall add the child to the investigation
 424 and assess the child's safety pursuant to subsection (7) and
 425 paragraph (9) (a) .

426 Section 5. Subsections (1) and (7) of section 39.302,
 427 Florida Statutes, are amended to read:

428 39.302 Protective investigations of institutional child
 429 abuse, abandonment, or neglect.—

430 (1) The department shall conduct a child protective
 431 investigation of each report of institutional child abuse,
 432 abandonment, or neglect. Upon receipt of a report that alleges
 433 that an employee or agent of the department, or any other entity
 434 or person covered by s. 39.01(32) or (48) ~~s. 39.01(32) or (47)~~,
 435 acting in an official capacity, has committed an act of child

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436 abuse, abandonment, or neglect, the department shall initiate a
 437 child protective investigation within the timeframe established
 438 under s. 39.201(5) and notify the appropriate state attorney,
 439 law enforcement agency, and licensing agency, which shall
 440 immediately conduct a joint investigation, unless independent
 441 investigations are more feasible. When conducting investigations
 442 or having face-to-face interviews with the child, investigation
 443 visits shall be unannounced unless it is determined by the
 444 department or its agent that unannounced visits threaten the
 445 safety of the child. If a facility is exempt from licensing, the
 446 department shall inform the owner or operator of the facility of
 447 the report. Each agency conducting a joint investigation is
 448 entitled to full access to the information gathered by the
 449 department in the course of the investigation. A protective
 450 investigation must include an interview with the child's parent
 451 or legal guardian. The department shall make a full written
 452 report to the state attorney within 3 working days after making
 453 the oral report. A criminal investigation shall be coordinated,
 454 whenever possible, with the child protective investigation of
 455 the department. Any interested person who has information
 456 regarding the offenses described in this subsection may forward
 457 a statement to the state attorney as to whether prosecution is
 458 warranted and appropriate. Within 15 days after the completion
 459 of the investigation, the state attorney shall report the
 460 findings to the department and shall include in the report a
 461 determination of whether or not prosecution is justified and
 462 appropriate in view of the circumstances of the specific case.

463 (7) When an investigation of institutional abuse, neglect,
 464 or abandonment is closed and a person is not identified as a

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465 caregiver responsible for the abuse, neglect, or abandonment
 466 alleged in the report, the fact that the person is named in some
 467 capacity in the report may not be used in any way to adversely
 468 affect the interests of that person. This prohibition applies to
 469 any use of the information in employment screening, licensing,
 470 child placement, adoption, or any other decisions by a private
 471 adoption agency or a state agency or its contracted providers.

472 (a) However, if such a person is a licensee of the
 473 department and is named in any capacity in three or more reports
 474 within a 5-year period, the department may review those reports
 475 and determine whether the information contained in the reports
 476 is relevant for purposes of determining whether the person's
 477 license should be renewed or revoked. If the information is
 478 relevant to the decision to renew or revoke the license, the
 479 department may rely on the information contained in the report
 480 in making that decision.

481 (b) Likewise, if a person is employed as a caregiver in a
 482 residential group home licensed pursuant to s. 409.175 and is
 483 named in any capacity in three or more reports within a 5-year
 484 period, all reports may be reviewed for the purposes of the
 485 employment screening required pursuant to s. 409.145(2)(e).

486 Section 6. Paragraph (c) of subsection (8) of section
 487 39.402, Florida Statutes, is amended to read:

488 39.402 Placement in a shelter.—

489 (8)

490 (c) At the shelter hearing, the court shall:

491 1. Appoint a guardian ad litem to represent the best
 492 interest of the child, unless the court finds that such
 493 representation is unnecessary;

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494 2. Inform the parents or legal custodians of their right to
 495 counsel to represent them at the shelter hearing and at each
 496 subsequent hearing or proceeding, and the right of the parents
 497 to appointed counsel, pursuant to the procedures set forth in s.
 498 39.013; ~~and~~

499 3. Give the parents or legal custodians an opportunity to
 500 be heard and to present evidence; and

501 4. Inquire of those present at the shelter hearing as to
 502 the identity and location of the legal father. In determining
 503 who the legal father of the child may be, the court shall
 504 inquire under oath of those present at the shelter hearing
 505 whether they have any of the following information:

506 a. Whether the mother of the child was married at the
 507 probable time of conception of the child or at the time of birth
 508 of the child.

509 b. Whether the mother was cohabiting with a male at the
 510 probable time of conception of the child.

511 c. Whether the mother has received payments or promises of
 512 support with respect to the child or because of her pregnancy
 513 from a man who claims to be the father.

514 d. Whether the mother has named any man as the father on
 515 the birth certificate of the child or in connection with
 516 applying for or receiving public assistance.

517 e. Whether any man has acknowledged or claimed paternity of
 518 the child in a jurisdiction in which the mother resided at the
 519 time of or since conception of the child or in which the child
 520 has resided or resides.

521 f. Whether a man is named on the birth certificate of the
 522 child pursuant to s. 382.013(2).

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523 g. Whether a man has been determined by a court order to be
524 the father of the child.

525 h. Whether a man has been determined by an administrative
526 proceeding to be the father of the child.

527 Section 7. Subsections (1), (6), and (8) of section 39.503,
528 Florida Statutes, are amended, subsection (9) is added to that
529 section, and subsection (7) of that section is republished, to
530 read:

531 39.503 Identity or location of parent unknown; special
532 procedures.—

533 (1) If the identity or location of a parent is unknown and
534 a petition for dependency or shelter is filed, the court shall
535 conduct under oath the following inquiry of the parent or legal
536 custodian who is available, or, if no parent or legal custodian
537 is available, of any relative or custodian of the child who is
538 present at the hearing and likely to have any of the following
539 information:

540 (a) Whether the mother of the child was married at the
541 probable time of conception of the child or at the time of birth
542 of the child.

543 (b) Whether the mother was cohabiting with a male at the
544 probable time of conception of the child.

545 (c) Whether the mother has received payments or promises of
546 support with respect to the child or because of her pregnancy
547 from a man who claims to be the father.

548 (d) Whether the mother has named any man as the father on
549 the birth certificate of the child or in connection with
550 applying for or receiving public assistance.

551 (e) Whether any man has acknowledged or claimed paternity

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552 of the child in a jurisdiction in which the mother resided at
553 the time of or since conception of the child, or in which the
554 child has resided or resides.

555 (f) Whether a man is named on the birth certificate of the
556 child pursuant to s. 382.013(2).

557 (g) Whether a man has been determined by a court order to
558 be the father of the child.

559 (h) Whether a man has been determined by an administrative
560 proceeding to be the father of the child.

561 (6) The diligent search required by subsection (5) must
562 include, at a minimum, inquiries of all relatives of the parent
563 or prospective parent made known to the petitioner, inquiries of
564 all offices of program areas of the department likely to have
565 information about the parent or prospective parent, inquiries of
566 other state and federal agencies likely to have information
567 about the parent or prospective parent, inquiries of appropriate
568 utility and postal providers, a thorough search of at least one
569 electronic database specifically designed for locating persons,
570 a search of the Florida Putative Father Registry, and inquiries
571 of appropriate law enforcement agencies. Pursuant to s. 453 of
572 the Social Security Act, 42 U.S.C. s. 653(c)(4), the department,
573 as the state agency administering Titles IV-B and IV-E of the
574 act, shall be provided access to the federal and state parent
575 locator service for diligent search activities.

576 (7) Any agency contacted by a petitioner with a request for
577 information pursuant to subsection (6) shall release the
578 requested information to the petitioner without the necessity of
579 a subpoena or court order.

580 (8) If the inquiry and diligent search identifies a

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581 prospective parent, that person must be given the opportunity to
 582 become a party to the proceedings by completing a sworn
 583 affidavit of parenthood and filing it with the court or the
 584 department. A prospective parent who files a sworn affidavit of
 585 parenthood while the child is a dependent child but no later
 586 than at the time of or ~~before~~ ~~prior to~~ the adjudicatory hearing
 587 in any termination of parental rights proceeding for the child
 588 shall be considered a parent for all purposes under this section
 589 unless the other parent contests the determination of
 590 parenthood. If the prospective parent does not file a sworn
 591 affidavit of parenthood or if the other parent contests the
 592 determination of parenthood, the court may, after considering
 593 the best interest of the child, order scientific testing to
 594 determine the maternity or paternity of the child. The court
 595 shall assess the cost of the maternity or paternity
 596 determination as a cost of litigation. If the court finds the
 597 prospective parent to be a parent as a result of the scientific
 598 testing, the court shall enter a judgment of maternity or
 599 paternity, shall assess the cost of the scientific testing to
 600 the parent, and shall enter an amount of child support to be
 601 paid by the parent as determined under s. 61.30. If the known
 602 parent contests the recognition of the prospective parent as a
 603 parent, the prospective parent shall not be recognized as a
 604 parent until proceedings to determine maternity or paternity
 605 under chapter 742 have been concluded. However, the prospective
 606 parent shall continue to receive notice of hearings as a
 607 participant until pending results of the chapter 742 proceedings
 608 to determine maternity or paternity have been concluded.
 609 (9) If the diligent search under subsection (5) fails to

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610 identify and locate a prospective parent, the court shall so
 611 find and may proceed without further notice.
 612 Section 8. Section 39.504, Florida Statutes, is amended to
 613 read:
 614 39.504 Injunction ~~pending disposition of petition;~~
 615 penalty.-
 616 (1) At any time after a protective investigation has been
 617 initiated pursuant to part III of this chapter, the court, upon
 618 the request of the department, a law enforcement officer, the
 619 state attorney, or other responsible person, or upon its own
 620 motion, may, if there is reasonable cause, issue an injunction
 621 to prevent any act of child abuse. Reasonable cause for the
 622 issuance of an injunction exists if there is evidence of child
 623 abuse or if there is a reasonable likelihood of such abuse
 624 occurring based upon a recent overt act or failure to act. If
 625 there is a pending dependency proceeding regarding the child
 626 whom the injunction is sought to protect, the judge hearing the
 627 dependency proceeding must also hear the injunction proceeding
 628 regarding the child.
 629 (2) The petitioner seeking the injunction shall file a
 630 verified petition, or a petition along with an affidavit,
 631 setting forth the specific actions by the alleged offender from
 632 which the child must be protected and all remedies sought. Upon
 633 filing the petition, the court shall set a hearing to be held at
 634 the earliest possible time. Pending the hearing, the court may
 635 issue a temporary ex parte injunction, with verified pleadings
 636 or affidavits as evidence. The temporary ex parte injunction
 637 pending a hearing is effective for up to 15 days and the hearing
 638 must be held within that period unless continued for good cause

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639 shown, which may include obtaining service of process, in which
640 case the temporary ex parte injunction shall be extended for the
641 continuance period. The hearing may be held sooner if the
642 alleged offender has received reasonable notice.

643 (3) Before the hearing, the alleged offender must be
644 personally served with a copy of the petition, all other
645 pleadings related to the petition, a notice of hearing, and, if
646 one has been entered, the temporary injunction. If the
647 petitioner is unable to locate the alleged offender for service
648 after a diligent search pursuant to the same requirements as in
649 s. 39.503 and the filing of an affidavit of diligent search, the
650 court may enter the injunction based on the sworn petition and
651 any affidavits. At the hearing, the court may base its
652 determination on a sworn petition, testimony, or an affidavit
653 and may hear all relevant and material evidence, including oral
654 and written reports, to the extent of its probative value even
655 though it would not be competent evidence at an adjudicatory
656 hearing. Following the hearing, the court may enter a final
657 injunction. The court may grant a continuance of the hearing at
658 any time for good cause shown by any party. If a temporary
659 injunction has been entered, it shall be continued during the
660 continuance.

661 (4) If an injunction is issued under this section, the
662 primary purpose of the injunction must be to protect and promote
663 the best interests of the child, taking the preservation of the
664 child's immediate family into consideration.

665 (a) The injunction applies to the alleged or actual
666 offender in a case of child abuse or acts of domestic violence.
667 The conditions of the injunction shall be determined by the

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668 court, which may include ordering the alleged or actual offender
669 to:

- 670 1. Refrain from further abuse or acts of domestic violence.
- 671 2. Participate in a specialized treatment program.
- 672 3. Limit contact or communication with the child victim,
673 other children in the home, or any other child.
- 674 4. Refrain from contacting the child at home, school, work,
675 or wherever the child may be found.
- 676 5. Have limited or supervised visitation with the child.
- 677 6. Vacate the home in which the child resides.
- 678 7. Comply with the terms of a safety plan implemented in
679 the injunction pursuant to s. 39.301.

680 (b) Upon proper pleading, the court may award the following
681 relief in a temporary ex parte or final injunction:

- 682 1. Exclusive use and possession of the dwelling to the
683 caregiver or exclusion of the alleged or actual offender from
684 the residence of the caregiver.
- 685 2. Temporary support for the child or other family members.
- 686 3. The costs of medical, psychiatric, and psychological
687 treatment for the child incurred due to the abuse, and similar
688 costs for other family members.

689
690 This paragraph does not preclude an adult victim of domestic
691 violence from seeking protection for himself or herself under s.
692 741.30.

693 (c) The terms of the final injunction shall remain in
694 effect until modified or dissolved by the court. The petitioner,
695 respondent, or caregiver may move at any time to modify or
696 dissolve the injunction. Notice of hearing on the motion to

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697 modify or dissolve the injunction must be provided to all
698 parties, including the department. The injunction is valid and
699 enforceable in all counties in the state.

700 (5) Service of process on the respondent shall be carried
701 out pursuant to s. 741.30. The department shall deliver a copy
702 of any injunction issued pursuant to this section to the
703 protected party or to a parent, caregiver, or individual acting
704 in the place of a parent who is not the respondent. Law
705 enforcement officers may exercise their arrest powers as
706 provided in s. 901.15(6) to enforce the terms of the injunction.

707 (6) Any person who fails to comply with an injunction
708 issued pursuant to this section commits a misdemeanor of the
709 first degree, punishable as provided in s. 775.082 or s.
710 775.083.

711 (7) The person against whom an injunction is entered under
712 this section does not automatically become a party to a
713 subsequent dependency action concerning the same child.

714 Section 9. Paragraph (b) of subsection (7) of section
715 39.507, Florida Statutes, is amended to read:

716 39.507 Adjudicatory hearings; orders of adjudication.-

717 (7)

718 (b) However, the court must determine whether each parent
719 or legal custodian identified in the case abused, abandoned, or
720 neglected the child or engaged in conduct that placed the child
721 at substantial risk of imminent abuse, abandonment, or neglect
722 in a subsequent evidentiary hearing. If a second parent is
723 served and brought into the proceeding after the adjudication,
724 and an the evidentiary hearing for the second parent is
725 conducted ~~subsequent to the adjudication of the child,~~ the court

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726 shall supplement the adjudicatory order, disposition order, and
727 the case plan, as necessary. The petitioner is not required to
728 prove actual harm or actual abuse by the second parent in order
729 for the court to make supplemental findings regarding the
730 conduct of the second parent. The court is not required to
731 conduct an evidentiary hearing for the second parent in order to
732 supplement the adjudicatory order, the disposition order, and
733 the case plan if the requirements of s. 39.506(3) or (5) are
734 satisfied. With the exception of proceedings pursuant to s.
735 39.811, the child's dependency status may not be retried or
736 readjudicated.

737 Section 10. Paragraph (a) of subsection (2) of section
738 39.5085, Florida Statutes, is amended to read:

739 39.5085 Relative Caregiver Program.-

740 (2)(a) The Department of Children and Families shall
741 establish, ~~and operate,~~ and implement the Relative Caregiver
742 Program ~~pursuant to eligibility guidelines established in this~~
743 ~~section as further implemented~~ by rule of the department. The
744 Relative Caregiver Program shall, within the limits of available
745 funding, provide financial assistance to:

746 1. Relatives who are within the fifth degree by blood or
747 marriage to the parent or stepparent of a child and who are
748 caring full-time for that dependent child in the role of
749 substitute parent as a result of a court's determination of
750 child abuse, neglect, or abandonment and subsequent placement
751 with the relative under this chapter.

752 2. Relatives who are within the fifth degree by blood or
753 marriage to the parent or stepparent of a child and who are
754 caring full-time for that dependent child, and a dependent half-

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755 brother or half-sister of that dependent child, in the role of
756 substitute parent as a result of a court's determination of
757 child abuse, neglect, or abandonment and subsequent placement
758 with the relative under this chapter.

759 3. Nonrelatives who are willing to assume custody and care
760 of a dependent child in the role of substitute parent as a
761 result of a court's determination of child abuse, neglect, or
762 abandonment and subsequent placement with the nonrelative
763 caregiver under this chapter. The court must find that a
764 proposed placement under this subparagraph is in the best
765 interest of the child.

766 4. The relative or nonrelative caregiver may not receive a
767 Relative Caregiver Program payment if the parent or stepparent
768 of the child resides in the home. However, a relative or
769 nonrelative may receive the Relative Caregiver Program payment
770 for a minor parent who is in his or her care, as well as for the
771 minor parent's child, if both children have been adjudicated
772 dependent and meet all other eligibility requirements. If the
773 caregiver is currently receiving the payment, the Relative
774 Caregiver Program payment must be terminated no later than the
775 first of the following month after the parent or stepparent
776 moves into the home, allowing for 10-day notice of adverse
777 action.

778
779 The placement may be court-ordered temporary legal custody to
780 the relative or nonrelative under protective supervision of the
781 department pursuant to s. 39.521(1)(c)3. ~~s. 39.521(1)(b)3.~~, or
782 court-ordered placement in the home of a relative or nonrelative
783 as a permanency option under s. 39.6221 or s. 39.6231 or under

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784 former s. 39.622 if the placement was made before July 1, 2006.
785 The Relative Caregiver Program shall offer financial assistance
786 to caregivers who would be unable to serve in that capacity
787 without the caregiver payment because of financial burden, thus
788 exposing the child to the trauma of placement in a shelter or in
789 foster care.

790 Section 11. Subsections (1), (2), (6), and (7) of section
791 39.521, Florida Statutes, are amended to read:

792 39.521 Disposition hearings; powers of disposition.-

793 (1) A disposition hearing shall be conducted by the court,
794 if the court finds that the facts alleged in the petition for
795 dependency were proven in the adjudicatory hearing, or if the
796 parents or legal custodians have consented to the finding of
797 dependency or admitted the allegations in the petition, have
798 failed to appear for the arraignment hearing after proper
799 notice, or have not been located despite a diligent search
800 having been conducted.

801 (a) A written case plan and a family functioning assessment
802 ~~pre-disposition study~~ prepared by an authorized agent of the
803 department must be approved by ~~filed with~~ the court. The
804 department must file the case plan and the family functioning
805 assessment with the court, serve a copy of the case plan on-
806 ~~served upon~~ the parents of the child, and provide a copy of the
807 case plan provided to the representative of the guardian ad
808 litem program, if the program has been appointed, and provide a
809 copy provided to all other parties:

810 1. Not less than 72 hours before the disposition hearing,
811 if the disposition hearing occurs on or after the 60th day after
812 the child was placed in out-of-home care. All such case plans

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813 must be approved by the court.

814 2. Not less than 72 hours before the case plan acceptance
 815 hearing, if the disposition hearing occurs before the 60th day
 816 after the date the child was placed in out-of-home care and a
 817 case plan has not been submitted pursuant to this paragraph, or
 818 if the court does not approve the case plan at the disposition
 819 hearing, ~~7~~ The case plan acceptance hearing must occur ~~the court~~
 820 ~~must set a hearing~~ within 30 days after the disposition hearing
 821 to review and approve the case plan.

822 (b) The court may grant an exception to the requirement for
 823 a family functioning assessment ~~predisposition study~~ by separate
 824 order or within the judge's order of disposition upon finding
 825 that all the family and child information required by subsection
 826 (2) is available in other documents filed with the court.

827 (c) ~~(b)~~ When any child is adjudicated by a court to be
 828 dependent, the court having jurisdiction of the child has the
 829 power by order to:

830 1. Require the parent and, when appropriate, the legal
 831 custodian and the child to participate in treatment and services
 832 identified as necessary. The court may require the person who
 833 has custody or who is requesting custody of the child to submit
 834 to a mental health or substance abuse disorder assessment or
 835 evaluation. The order may be made only upon good cause shown and
 836 pursuant to notice and procedural requirements provided under
 837 the Florida Rules of Juvenile Procedure. The mental health
 838 assessment or evaluation must be administered by a qualified
 839 professional as defined in s. 39.01, and the substance abuse
 840 assessment or evaluation must be administered by a qualified
 841 professional as defined in s. 397.311. The court may also

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842 require such person to participate in and comply with treatment
 843 and services identified as necessary, including, when
 844 appropriate and available, participation in and compliance with
 845 a mental health court program established under chapter 394 or a
 846 treatment-based drug court program established under s. 397.334.
 847 Adjudication of a child as dependent based upon evidence of harm
 848 as defined in s. 39.01(30)(g) demonstrates good cause, and the
 849 court shall require the parent whose actions caused the harm to
 850 submit to a substance abuse disorder assessment or evaluation
 851 and to participate and comply with treatment and services
 852 identified in the assessment or evaluation as being necessary.

853 In addition to supervision by the department, the court,
 854 including the mental health court program or the treatment-based
 855 drug court program, may oversee the progress and compliance with
 856 treatment by a person who has custody or is requesting custody
 857 of the child. The court may impose appropriate available
 858 sanctions for noncompliance upon a person who has custody or is
 859 requesting custody of the child or make a finding of
 860 noncompliance for consideration in determining whether an
 861 alternative placement of the child is in the child's best
 862 interests. Any order entered under this subparagraph may be made
 863 only upon good cause shown. This subparagraph does not authorize
 864 placement of a child with a person seeking custody of the child,
 865 other than the child's parent or legal custodian, who requires
 866 mental health or substance abuse disorder treatment.

867 2. Require, if the court deems necessary, the parties to
 868 participate in dependency mediation.

869 3. Require placement of the child either under the
 870 protective supervision of an authorized agent of the department

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871 in the home of one or both of the child's parents or in the home
 872 of a relative of the child or another adult approved by the
 873 court, or in the custody of the department. Protective
 874 supervision continues until the court terminates it or until the
 875 child reaches the age of 18, whichever date is first. Protective
 876 supervision shall be terminated by the court whenever the court
 877 determines that permanency has been achieved for the child,
 878 whether with a parent, another relative, or a legal custodian,
 879 and that protective supervision is no longer needed. The
 880 termination of supervision may be with or without retaining
 881 jurisdiction, at the court's discretion, and shall in either
 882 case be considered a permanency option for the child. The order
 883 terminating supervision by the department must set forth the
 884 powers of the custodian of the child and include the powers
 885 ordinarily granted to a guardian of the person of a minor unless
 886 otherwise specified. Upon the court's termination of supervision
 887 by the department, further judicial reviews are not required if
 888 permanency has been established for the child.

889 (d)~~(e)~~ At the conclusion of the disposition hearing, the
 890 court shall schedule the initial judicial review hearing which
 891 must be held no later than 90 days after the date of the
 892 disposition hearing or after the date of the hearing at which
 893 the court approves the case plan, whichever occurs earlier, but
 894 in no event shall the review hearing be held later than 6 months
 895 after the date of the child's removal from the home.

896 (e)~~(d)~~ The court shall, in its written order of
 897 disposition, include all of the following:

- 898 1. The placement or custody of the child.
- 899 2. Special conditions of placement and visitation.

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900 3. Evaluation, counseling, treatment activities, and other
 901 actions to be taken by the parties, if ordered.
 902 4. The persons or entities responsible for supervising or
 903 monitoring services to the child and parent.
 904 5. Continuation or discharge of the guardian ad litem, as
 905 appropriate.
 906 6. The date, time, and location of the next scheduled
 907 review hearing, which must occur within the earlier of:
 908 a. Ninety days after the disposition hearing;
 909 b. Ninety days after the court accepts the case plan;
 910 c. Six months after the date of the last review hearing; or
 911 d. Six months after the date of the child's removal from
 912 his or her home, if no review hearing has been held since the
 913 child's removal from the home.
 914 7. If the child is in an out-of-home placement, child
 915 support to be paid by the parents, or the guardian of the
 916 child's estate if possessed of assets which under law may be
 917 disbursed for the care, support, and maintenance of the child.
 918 The court may exercise jurisdiction over all child support
 919 matters, shall adjudicate the financial obligation, including
 920 health insurance, of the child's parents or guardian, and shall
 921 enforce the financial obligation as provided in chapter 61. The
 922 state's child support enforcement agency shall enforce child
 923 support orders under this section in the same manner as child
 924 support orders under chapter 61. Placement of the child shall
 925 not be contingent upon issuance of a support order.
 926 8.a. If the court does not commit the child to the
 927 temporary legal custody of an adult relative, legal custodian,
 928 or other adult approved by the court, the disposition order

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929 shall include the reasons for such a decision and shall include
 930 a determination as to whether diligent efforts were made by the
 931 department to locate an adult relative, legal custodian, or
 932 other adult willing to care for the child in order to present
 933 that placement option to the court instead of placement with the
 934 department.

935 b. If no suitable relative is found and the child is placed
 936 with the department or a legal custodian or other adult approved
 937 by the court, both the department and the court shall consider
 938 transferring temporary legal custody to an adult relative
 939 approved by the court at a later date, but neither the
 940 department nor the court is obligated to so place the child if
 941 it is in the child's best interest to remain in the current
 942 placement.

943
 944 For the purposes of this section, "diligent efforts to locate an
 945 adult relative" means a search similar to the diligent search
 946 for a parent, but without the continuing obligation to search
 947 after an initial adequate search is completed.

948 9. Other requirements necessary to protect the health,
 949 safety, and well-being of the child, to preserve the stability
 950 of the child's educational placement, and to promote family
 951 preservation or reunification whenever possible.

952 ~~(f)(e)~~ If the court finds that an in-home safety plan
 953 prepared or approved by the department ~~the prevention or~~
 954 ~~reunification efforts of the department~~ will allow the child to
 955 remain safely at home or that conditions for return have been
 956 met and an in-home safety plan prepared or approved by the
 957 department will allow the child to be safely returned to the

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958 home, the court shall allow the child to remain in or return to
 959 the home after making a specific finding of fact that ~~the~~
 960 ~~reasons for removal have been remedied to the extent that the~~
 961 ~~child's safety, well-being, and physical, mental, and emotional~~
 962 ~~health will not be endangered.~~

963 ~~(g)(f)~~ If the court places the child in an out-of-home
 964 placement, the disposition order must include a written
 965 determination that the child cannot safely remain at home with
 966 an in-home safety plan ~~reunification or family preservation~~
 967 ~~services~~ and that removal of the child is necessary to protect
 968 the child. If the child is removed before the disposition
 969 hearing, the order must also include a written determination as
 970 to whether, after removal, the department made a reasonable
 971 effort to reunify the parent and child. Reasonable efforts to
 972 reunify are not required if the court finds that any of the acts
 973 listed in s. 39.806(1)(f)-(l) have occurred. The department has
 974 the burden of demonstrating that it made reasonable efforts.

975 1. For the purposes of this paragraph, the term "reasonable
 976 effort" means the exercise of reasonable diligence and care by
 977 the department to provide the services ordered by the court or
 978 delineated in the case plan.

979 2. In support of its determination as to whether reasonable
 980 efforts have been made, the court shall:

981 a. Enter written findings as to whether an in-home safety
 982 plan could have prevented removal ~~prevention or reunification~~
 983 ~~efforts were indicated.~~

984 b. If an in-home safety plan was ~~prevention or~~
 985 ~~reunification efforts were~~ indicated, include a brief written
 986 description of what appropriate and available safety management

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987 ~~services prevention and reunification efforts were initiated~~
 988 ~~made.~~
 989 c. Indicate in writing why further efforts could or could
 990 not have prevented or shortened the separation of the parent and
 991 child.
 992 3. A court may find that the department made a reasonable
 993 effort to prevent or eliminate the need for removal if:
 994 a. The first contact of the department with the family
 995 occurs during an emergency;
 996 b. The department's assessment appraisal by the department
 997 of the home situation indicates a substantial and immediate
 998 danger to the child's safety or physical, mental, or emotional
 999 health which cannot be mitigated by the provision of safety
 1000 management preventive services;
 1001 c. The child cannot safely remain at home, because there
 1002 are no safety management preventive services that can ensure the
 1003 health and safety of the child or, even with appropriate and
 1004 available services being provided, the health and safety of the
 1005 child cannot be ensured; or
 1006 d. The parent is alleged to have committed any of the acts
 1007 listed as grounds for expedited termination of parental rights
 1008 under s. 39.806(1)(f)-(l).
 1009 4. A reasonable effort by the department for reunification
 1010 has been made if the appraisal of the home situation by the
 1011 department indicates that the severity of the conditions of
 1012 dependency is such that reunification efforts are inappropriate.
 1013 The department has the burden of demonstrating to the court that
 1014 reunification efforts were inappropriate.
 1015 5. If the court finds that the provision of safety

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1016 ~~management services by prevention or reunification effort of the~~
 1017 department would not have permitted the child to remain safely
 1018 at home, the court may commit the child to the temporary legal
 1019 custody of the department or take any other action authorized by
 1020 this chapter.
 1021 (2) The family functioning assessment predisposition study
 1022 must provide the court with the following documented
 1023 information:
 1024 (a) Evidence of maltreatment and the circumstances
 1025 accompanying the maltreatment.
 1026 (b) Identification of all danger threats active in the
 1027 home.
 1028 (c) An assessment of the adult functioning of the parents.
 1029 (d) An assessment of general parenting practices and the
 1030 parent's disciplinary approach and behavior management methods.
 1031 (e) An assessment of the parent's behavioral, emotional,
 1032 and cognitive protective capacities.
 1033 (f) An assessment of child functioning.
 1034 (g) A safety analysis describing the capacity for an in-
 1035 home safety plan to control the conditions that result in the
 1036 child being unsafe and the specific actions necessary to keep
 1037 the child safe.
 1038 (h) Identification of the conditions for return which would
 1039 allow the child to be placed safely back into the home with an
 1040 in-home safety plan and any safety management services necessary
 1041 to ensure the child's safety.
 1042 ~~(a) The capacity and disposition of the parents to provide~~
 1043 ~~the child with food, clothing, medical care, or other remedial~~
 1044 ~~care recognized and permitted under the laws of this state in~~

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1045 lieu of medical care, and other material needs.

1046 ~~(b) The length of time the child has lived in a stable,~~

1047 ~~satisfactory environment and the desirability of maintaining~~

1048 ~~continuity.~~

1049 ~~(c) The mental and physical health of the parents.~~

1050 ~~(d) The home, school, and community record of the child.~~

1051 (i) ~~(e) The reasonable preference of the child, if the court~~

1052 ~~deems the child to be of sufficient intelligence, understanding,~~

1053 ~~and experience to express a preference.~~

1054 ~~(f) Evidence of domestic violence or child abuse.~~

1055 ~~(g) An assessment defining the dangers and risks of~~

1056 ~~returning the child home, including a description of the changes~~

1057 ~~in and resolutions to the initial risks.~~

1058 ~~(h) A description of what risks are still present and what~~

1059 ~~resources are available and will be provided for the protection~~

1060 ~~and safety of the child.~~

1061 ~~(i) A description of the benefits of returning the child~~

1062 ~~home.~~

1063 ~~(j) A description of all unresolved issues.~~

1064 (j) ~~(k) Child welfare A Florida Abuse Hotline Information~~

1065 ~~System (FAHIS) history from the Statewide Automated Child~~

1066 ~~Welfare Information System (SACWIS) and criminal records check~~

1067 ~~for all caregivers, family members, and individuals residing~~

1068 ~~within the household from which the child was removed.~~

1069 (k) ~~(l) The complete report and recommendation of the child~~

1070 ~~protection team of the Department of Health or, if no report~~

1071 ~~exists, a statement reflecting that no report has been made.~~

1072 (l) ~~(m) All opinions or recommendations from other~~

1073 ~~professionals or agencies that provide evaluative, social,~~

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1074 reunification, or other services to the parent and child.

1075 (m) ~~(n) A listing of appropriate and available safety~~

1076 ~~management prevention and reunification services for the parent~~

1077 ~~and child to prevent the removal of the child from the home or~~

1078 ~~to reunify the child with the parent after removal and an ~~to~~~~

1079 ~~reunify the child with the parent after removal, including the~~

1080 ~~availability of family preservation services and an explanation~~

1081 ~~of the following:~~

1082 1. If the services were or were not provided.

1083 2. If the services were provided, the outcome of the

1084 services.

1085 3. If the services were not provided, why they were not

1086 provided.

1087 4. If the services are currently being provided and if they

1088 need to be continued.

1089 ~~(o) A listing of other prevention and reunification~~

1090 ~~services that were available but determined to be inappropriate~~

1091 ~~and why.~~

1092 ~~(p) Whether dependency mediation was provided.~~

1093 (n) ~~(q) If the child has been removed from the home and~~

1094 ~~there is a parent who may be considered for custody pursuant to~~

1095 ~~this section, a recommendation as to whether placement of the~~

1096 ~~child with that parent would be detrimental to the child.~~

1097 (o) ~~(r) If the child has been removed from the home and will~~

1098 ~~be remaining with a relative, parent, or other adult approved by~~

1099 ~~the court, a home study report concerning the proposed placement~~

1100 ~~shall be provided to the court included in the predisposition~~

1101 ~~report. Before recommending to the court any out-of-home~~

1102 ~~placement for a child other than placement in a licensed shelter~~

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1103 or foster home, the department shall conduct a study of the home
 1104 of the proposed legal custodians, which must include, at a
 1105 minimum:

- 1106 1. An interview with the proposed legal custodians to
 1107 assess their ongoing commitment and ability to care for the
 1108 child.
- 1109 2. Records checks through the State Automated Child Welfare
 1110 Information System (SACWIS), and local and statewide criminal
 1111 and juvenile records checks through the Department of Law
 1112 Enforcement, on all household members 12 years of age or older.
 1113 In addition, the fingerprints of any household members who are
 1114 18 years of age or older may be submitted to the Department of
 1115 Law Enforcement for processing and forwarding to the Federal
 1116 Bureau of Investigation for state and national criminal history
 1117 information. The department has the discretion to request State
 1118 Automated Child Welfare Information System (SACWIS) and local,
 1119 statewide, and national criminal history checks and
 1120 fingerprinting of any other visitor to the home who is made
 1121 known to the department. Out-of-state criminal records checks
 1122 must be initiated for any individual who has resided in a state
 1123 other than Florida if that state's laws allow the release of
 1124 these records. The out-of-state criminal records must be filed
 1125 with the court within 5 days after receipt by the department or
 1126 its agent.
- 1127 3. An assessment of the physical environment of the home.
- 1128 4. A determination of the financial security of the
 1129 proposed legal custodians.
- 1130 5. A determination of suitable child care arrangements if
 1131 the proposed legal custodians are employed outside of the home.

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1132 6. Documentation of counseling and information provided to
 1133 the proposed legal custodians regarding the dependency process
 1134 and possible outcomes.

1135 7. Documentation that information regarding support
 1136 services available in the community has been provided to the
 1137 proposed legal custodians.

1138 8. The reasonable preference of the child, if the court
 1139 deems the child to be of sufficient intelligence, understanding,
 1140 and experience to express a preference.

1141
 1142 The department may not place the child or continue the placement
 1143 of the child in a home under shelter or postdisposition
 1144 placement if the results of the home study are unfavorable,
 1145 unless the court finds that this placement is in the child's
 1146 best interest.

1147 (p) (s) If the child has been removed from the home, a
 1148 determination of the amount of child support each parent will be
 1149 required to pay pursuant to s. 61.30.

1150 ~~(t) If placement of the child with anyone other than the~~
 1151 ~~child's parent is being considered, the predisposition study~~
 1152 ~~shall include the designation of a specific length of time as to~~
 1153 ~~when custody by the parent will be reconsidered.~~

1154
 1155 Any other relevant and material evidence, including other
 1156 written or oral reports, may be received by the court in its
 1157 effort to determine the action to be taken with regard to the
 1158 child and may be relied upon to the extent of its probative
 1159 value, even though not competent in an adjudicatory hearing.
 1160 Except as otherwise specifically provided, nothing in this

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1161 section prohibits the publication of proceedings in a hearing.

1162 (6) With respect to a child who is the subject in
 1163 proceedings under this chapter, the court may issue to the
 1164 department an order to show cause why it should not return the
 1165 child to the custody of the parents upon the presentation of
 1166 evidence that the conditions for return of the child have been
 1167 met ~~expiration of the case plan, or sooner if the parents have~~
 1168 ~~substantially complied with the case plan.~~

1169 (7) The court may enter an order ending its jurisdiction
 1170 over a child when a child has been returned to the parents,
 1171 provided the court shall not terminate its jurisdiction or the
 1172 department's supervision over the child until 6 months after the
 1173 child's return. The department shall supervise the placement of
 1174 the child after reunification for at least 6 months with each
 1175 parent or legal custodian from whom the child was removed. The
 1176 court shall determine whether its jurisdiction should be
 1177 continued or terminated in such a case based on a report of the
 1178 department or agency or the child's guardian ad litem, and any
 1179 other relevant factors; if its jurisdiction is to be terminated,
 1180 the court shall enter an order to that effect.

1181 Section 12. Subsections (2) and (3) of section 39.522,
 1182 Florida Statutes, are amended to read:

1183 39.522 Postdisposition change of custody.—The court may
 1184 change the temporary legal custody or the conditions of
 1185 protective supervision at a postdisposition hearing, without the
 1186 necessity of another adjudicatory hearing.

1187 (2) In cases where the issue before the court is whether a
 1188 child should be reunited with a parent, the court shall review
 1189 the conditions for return and determine whether the

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1190 circumstances that caused the out-of-home placement and issues
 1191 subsequently identified have been remedied ~~parent has~~
 1192 ~~substantially complied with the terms of the case plan to the~~
 1193 ~~extent that the~~ return of the child to the home with an in-home
 1194 safety plan prepared or approved by the department will not be
 1195 detrimental to the child's safety, well-being, and physical,
 1196 mental, and emotional health ~~of the child is not endangered by~~
 1197 ~~the return of the child to the home.~~

1198 (3) In cases where the issue before the court is whether a
 1199 child who is placed in the custody of a parent should be
 1200 reunited with the other parent upon a finding that the
 1201 circumstances that caused the out-of-home placement and issues
 1202 subsequently identified have been remedied to the extent that
 1203 the return of the child to the home of the other parent with an
 1204 in-home safety plan prepared or approved by the department will
 1205 not be detrimental to the child of substantial compliance with
 1206 ~~the terms of the case plan~~, the standard shall be that the
 1207 safety, well-being, and physical, mental, and emotional health
 1208 of the child would not be endangered by reunification and that
 1209 reunification would be in the best interest of the child.

1210 Section 13. Effective January 1, 2018, section 39.523,
 1211 Florida Statutes, is amended to read:

1212 (Substantial rewording of section. See
 1213 s. 39.523, F.S., for present text.)

1214 39.523 Placement in out-of-home care.—

1215 (1) LEGISLATIVE FINDINGS AND INTENT.—

1216 (a) The Legislature finds that it is a basic tenet of child
 1217 welfare practice and the law that children be placed in the
 1218 least restrictive, most family-like setting available in close

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1219 proximity to the home of their parents, consistent with the best
 1220 interests and needs of the child, and that children be placed in
 1221 permanent homes in a timely manner.

1222 (b) The Legislature also finds that there is an association
 1223 between frequent placement changes and adverse outcomes for the
 1224 child, that mismatching placements to children's needs has been
 1225 identified as a factor that negatively impacts placement
 1226 stability, and that identifying the right placement for each
 1227 child requires effective assessment.

1228 (c) It is the intent of the Legislature that whenever a
 1229 child is unable to safely remain at home with a parent, the most
 1230 appropriate available out-of-home placement shall be chosen
 1231 after an assessment of the child's needs and the availability of
 1232 caregivers qualified to meet the child's needs.

1233 (2) ASSESSMENT AND PLACEMENT.—When any child is removed
 1234 from a home and placed into out-of-home care, a comprehensive
 1235 placement assessment process shall be completed to determine the
 1236 level of care needed by the child and match the child with the
 1237 most appropriate placement.

1238 (a) The community-based care lead agency or sub-contracted
 1239 agency with the responsibility for assessment and placement must
 1240 coordinate a multi-disciplinary team staffing with any available
 1241 individual currently involved with the child including, but not
 1242 limited to, a representative from the department and the case
 1243 manager for the child; a therapist, attorney ad-litem, guardian
 1244 ad litem, teachers, coaches, Children's Medical Services; and
 1245 other community providers of services to the child or
 1246 stakeholders as applicable. The team should also include clergy,
 1247 relatives and fictive kin. Team participants must gather data

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1248 and information on the child that is known at the time
 1249 including, but not limited to:

- 1250 1. Mental, medical, behavioral health and medication
- 1251 history;
- 1252 2. Community ties and school placement;
- 1253 3. Current placement decisions relating to any siblings;
- 1254 4. Alleged type of abuse or neglect including sexual abuse
- 1255 and trafficking history; and
- 1256 5. The child's age, maturity, strengths, hobbies or
- 1257 activities, and the child's preference for placement.

1258 (b) The comprehensive placement assessment process may also
 1259 include the use of an assessment instrument or tool that is best
 1260 suited for the individual child.

1261 (c) The most appropriate available out-of-home placement
 1262 shall be chosen after consideration by all members of the multi-
 1263 disciplinary team of all of the information and data gathered,
 1264 including the results and recommendations of any evaluations
 1265 conducted.

1266 (d) Placement decisions for each child in out-of-home
 1267 placement must be reviewed as often as necessary to ensure that
 1268 permanency issues related to this population of children are
 1269 addressed.

1270 (e) The department shall document all placement assessments
 1271 and placement decisions in the Florida Safe Families Network.

1272 (f) If it is determined during the comprehensive placement
 1273 assessment process that residential treatment as defined in s.
 1274 39.407 would be suitable for the child, the procedures in that
 1275 section must be followed.

1276 (3) JUDICIAL REVIEW.—At each judicial review, the court

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1277 shall consider the results of the assessment, the placement
 1278 decision made for the child, and the services provided to the
 1279 child as required under s. 39.701.

1280 (4) DATA COLLECTION.—The department shall collect the
 1281 following information by community-based care lead agency and
 1282 post it on the Department of Children and Families' website. The
 1283 information must be updated on January 1 and July 1 of each
 1284 year.

1285 (a) The number of children placed with relatives and
 1286 nonrelatives, in family foster homes, and in residential group
 1287 care.

1288 (b) An inventory of available services that are necessary
 1289 to maintain children in the least restrictive settings and a
 1290 plan for filling any identified gap in those services.

1291 (c) The number of children who were placed based upon the
 1292 assessment.

1293 (d) An inventory of existing placements for children by
 1294 type and by community-based care lead agency.

1295 (e) The strategies being used by community-based care lead
 1296 agencies to recruit, train, and support an adequate number of
 1297 families to provide home-based family care.

1298 (5) RULEMAKING.—The department may adopt rules necessary to
 1299 carry out the provisions of this section.

1300 Section 14. Section 39.6001, Florida Statutes, is created
 1301 to read:

1302 39.6001 Safe care plans for substance-exposed newborns.—The
 1303 department, in partnership with the Department of Health, the
 1304 Agency for Health Care Administration, other state agencies, and
 1305 community partners, shall develop a strategy for coordinated

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1306 services to ensure the safety and well-being of newborns with
 1307 prenatal substance exposure by creating, implementing, and
 1308 monitoring safe care plans. A safe care plan is a written plan
 1309 for a newborn with prenatal substance abuse exposure following
 1310 the newborn's release from the care of a health care provider.
 1311 The plan must address the health and substance abuse disorder
 1312 treatment needs of the newborn through infancy and the affected
 1313 family or caregiver. The department shall monitor such plans to
 1314 ensure appropriate referrals are made and services are delivered
 1315 to the newborn and the affected family or caregiver.

1316 Section 15. Subsection (1) of section 39.6011, Florida
 1317 Statutes, is amended to read:

1318 39.6011 Case plan development.—

1319 (1) The department shall prepare a draft of the case plan
 1320 for each child receiving services under this chapter. A parent
 1321 of a child may not be threatened or coerced with the loss of
 1322 custody or parental rights for failing to admit in the case plan
 1323 of abusing, neglecting, or abandoning a child. Participating in
 1324 the development of a case plan is not an admission to any
 1325 allegation of abuse, abandonment, or neglect, and it is not a
 1326 consent to a finding of dependency or termination of parental
 1327 rights. The case plan shall be developed subject to the
 1328 following requirements:

1329 (a) The case plan must be developed in a face-to-face
 1330 conference with the parent of the child, any court-appointed
 1331 guardian ad litem, and, if appropriate, the child and the
 1332 temporary custodian of the child.

1333 (b) Notwithstanding s. 39.202, the department may discuss
 1334 confidential information during the case planning conference in

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1335 the presence of individuals who participate in the conference.
 1336 All individuals who participate in the conference shall maintain
 1337 the confidentiality of all information shared during the case
 1338 planning conference.

1339 ~~(c)~~ ~~(b)~~ The parent may receive assistance from any person or
 1340 social service agency in preparing the case plan. The social
 1341 service agency, the department, and the court, when applicable,
 1342 shall inform the parent of the right to receive such assistance,
 1343 including the right to assistance of counsel.

1344 ~~(d)~~ ~~(e)~~ If a parent is unwilling or unable to participate in
 1345 developing a case plan, the department shall document that
 1346 unwillingness or inability to participate. The documentation
 1347 must be provided in writing to the parent when available for the
 1348 court record, and the department shall prepare a case plan
 1349 conforming as nearly as possible with the requirements set forth
 1350 in this section. The unwillingness or inability of the parent to
 1351 participate in developing a case plan does not preclude the
 1352 filing of a petition for dependency or for termination of
 1353 parental rights. The parent, if available, must be provided a
 1354 copy of the case plan and be advised that he or she may, at any
 1355 time before the filing of a petition for termination of parental
 1356 rights, enter into a case plan and that he or she may request
 1357 judicial review of any provision of the case plan with which he
 1358 or she disagrees at any court hearing set for the child.

1359 Section 16. Subsection (1) of section 39.6012, Florida
 1360 Statutes, is amended to read:

1361 39.6012 Case plan tasks; services.—

1362 (1) The services to be provided to the parent and the tasks
 1363 that must be completed are subject to the following:

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1364 (a) The services described in the case plan must be
 1365 designed to improve the conditions in the home and aid in
 1366 maintaining the child in the home, facilitate the child's safe
 1367 return to the home, ensure proper care of the child, or
 1368 facilitate the child's permanent placement. The services offered
 1369 must be the least intrusive possible into the life of the parent
 1370 and child, must focus on clearly defined objectives, and must
 1371 provide the most efficient path to quick reunification or
 1372 permanent placement given the circumstances of the case and the
 1373 child's need for safe and proper care.

1374 (b) The case plan must describe each of the tasks with
 1375 which the parent must comply and the services to be provided to
 1376 the parent, specifically addressing the identified problem,
 1377 including:

- 1378 1. The type of services or treatment.
- 1379 2. The date the department will provide each service or
 1380 referral for the service if the service is being provided by the
 1381 department or its agent.
- 1382 3. The date by which the parent must complete each task.
- 1383 4. The frequency of services or treatment provided. The
 1384 frequency of the delivery of services or treatment provided
 1385 shall be determined by the professionals providing the services
 1386 or treatment on a case-by-case basis and adjusted according to
 1387 their best professional judgment.
- 1388 5. The location of the delivery of the services.
- 1389 6. The staff of the department or service provider
 1390 accountable for the services or treatment.
- 1391 7. A description of the measurable objectives, including
 1392 the timeframes specified for achieving the objectives of the

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1393 case plan and addressing the identified problem.

1394 (c) If there is evidence of harm as defined in s.

1395 39.01(30)(g), the case plan must include as a required task for

1396 the parent whose actions caused the harm that the parent submit

1397 to a substance abuse disorder assessment or evaluation and

1398 participate and comply with treatment and services identified in

1399 the assessment or evaluation as being necessary.

1400 Section 17. Subsection (7) is added to section 39.6221,

1401 Florida Statutes, to read:

1402 39.6221 Permanent guardianship of a dependent child.-

1403 (7) The requirements of s. 61.13001 do not apply to

1404 permanent guardianships established under this section.

1405 Section 18. Paragraph (h) is added to subsection (1) of

1406 section 39.701, Florida Statutes, to read:

1407 39.701 Judicial review.-

1408 (1) GENERAL PROVISIONS.-

1409 (h) If a child is born into a family that is under the

1410 court's jurisdiction or a child moves into a home that is under

1411 the court's jurisdiction, the department shall assess the

1412 child's safety and provide notice to the court.

1413 1. The department shall complete an assessment to determine

1414 how the addition of a child will impact family functioning. The

1415 assessment must be completed at least 30 days before a child is

1416 expected to be born or to move into a home, or within 72 hours

1417 after the department learns of the pregnancy or addition if the

1418 child is expected to be born or to move into the home in less

1419 than 30 days. The assessment shall be filed with the court.

1420 2. Once a child is born into a family or a child moves into

1421 the home, the department shall complete a progress update and

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1422 file it with the court.

1423 3. The court has the discretion to hold a hearing on the

1424 progress update filed by the department.

1425 4. The department shall adopt rules to implement this

1426 subsection.

1427 Section 19. Subsection (3) of section 39.801, Florida

1428 Statutes, is amended to read:

1429 39.801 Procedures and jurisdiction; notice; service of

1430 process.-

1431 (3) Before the court may terminate parental rights, in

1432 addition to the other requirements set forth in this part, the

1433 following requirements must be met:

1434 (a) Notice of the date, time, and place of the advisory

1435 hearing for the petition to terminate parental rights and a copy

1436 of the petition must be personally served upon the following

1437 persons, specifically notifying them that a petition has been

1438 filed:

1439 1. The parents of the child.

1440 2. The legal custodians of the child.

1441 3. If the parents who would be entitled to notice are dead

1442 or unknown, a living relative of the child, unless upon diligent

1443 search and inquiry no such relative can be found.

1444 4. Any person who has physical custody of the child.

1445 5. Any grandparent entitled to priority for adoption under

1446 s. 63.0425.

1447 6. Any prospective parent who has been identified under s.

1448 39.503 or s. 39.803, unless a court order has been entered

1449 pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which

1450 indicates no further notice is required. Except as otherwise

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1451 provided in this section, if there is not a legal father, notice
 1452 of the petition for termination of parental rights must be
 1453 provided to any known prospective father who is identified under
 1454 oath before the court or who is identified by a diligent search
 1455 of the Florida Putative Father Registry. Service of the notice
 1456 of the petition for termination of parental rights is not
 1457 required if the prospective father executes an affidavit of
 1458 nonpaternity or a consent to termination of his parental rights
 1459 which is accepted by the court after notice and opportunity to
 1460 be heard by all parties to address the best interests of the
 1461 child in accepting such affidavit.

1462 7. The guardian ad litem for the child or the
 1463 representative of the guardian ad litem program, if the program
 1464 has been appointed.

1465
 1466 The document containing the notice to respond or appear must
 1467 contain, in type at least as large as the type in the balance of
 1468 the document, the following or substantially similar language:
 1469 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
 1470 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
 1471 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
 1472 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
 1473 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
 1474 NOTICE."

1475 (b) If a party required to be served with notice as
 1476 prescribed in paragraph (a) cannot be served, notice of hearings
 1477 must be given as prescribed by the rules of civil procedure, and
 1478 service of process must be made as specified by law or civil
 1479 actions.

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1480 (c) Notice as prescribed by this section may be waived, in
 1481 the discretion of the judge, with regard to any person to whom
 1482 notice must be given under this subsection if the person
 1483 executes, before two witnesses and a notary public or other
 1484 officer authorized to take acknowledgments, a written surrender
 1485 of the child to a licensed child-placing agency or the
 1486 department.

1487 (d) If the person served with notice under this section
 1488 fails to personally appear at the advisory hearing, the failure
 1489 to personally appear shall constitute consent for termination of
 1490 parental rights by the person given notice. If a parent appears
 1491 for the advisory hearing and the court orders that parent to
 1492 personally appear at the adjudicatory hearing for the petition
 1493 for termination of parental rights, stating the date, time, and
 1494 location of said hearing, then failure of that parent to
 1495 personally appear at the adjudicatory hearing shall constitute
 1496 consent for termination of parental rights.

1497 Section 20. Section 39.803, Florida Statutes, is amended to
 1498 read:

1499 39.803 Identity or location of parent unknown after filing
 1500 of termination of parental rights petition; special procedures.-

1501 (1) If the identity or location of a parent is unknown and
 1502 a petition for termination of parental rights is filed, the
 1503 court shall conduct under oath the following inquiry of the
 1504 parent who is available, or, if no parent is available, of any
 1505 relative, caregiver, or legal custodian of the child who is
 1506 present at the hearing and likely to have the information:

1507 (a) Whether the mother of the child was married at the
 1508 probable time of conception of the child or at the time of birth

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1509 of the child.

1510 (b) Whether the mother was cohabiting with a male at the
1511 probable time of conception of the child.

1512 (c) Whether the mother has received payments or promises of
1513 support with respect to the child or because of her pregnancy
1514 from a man who claims to be the father.

1515 (d) Whether the mother has named any man as the father on
1516 the birth certificate of the child or in connection with
1517 applying for or receiving public assistance.

1518 (e) Whether any man has acknowledged or claimed paternity
1519 of the child in a jurisdiction in which the mother resided at
1520 the time of or since conception of the child, or in which the
1521 child has resided or resides.

1522 (f) Whether a man is named on the birth certificate of the
1523 child pursuant to s. 382.013(2).

1524 (g) Whether a man has been determined by a court order to
1525 be the father of the child.

1526 (h) Whether a man has been determined by an administrative
1527 proceeding to be the father of the child.

1528 (2) The information required in subsection (1) may be
1529 supplied to the court or the department in the form of a sworn
1530 affidavit by a person having personal knowledge of the facts.

1531 (3) If the inquiry under subsection (1) identifies any
1532 person as a parent or prospective parent, the court shall
1533 require notice of the hearing to be provided to that person.

1534 (4) If the inquiry under subsection (1) fails to identify
1535 any person as a parent or prospective parent, the court shall so
1536 find and may proceed without further notice.

1537 (5) If the inquiry under subsection (1) identifies a parent

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1538 or prospective parent, and that person's location is unknown,
1539 the court shall direct the petitioner to conduct a diligent
1540 search for that person before scheduling an adjudicatory hearing
1541 regarding the petition for termination of parental rights to the
1542 child unless the court finds that the best interest of the child
1543 requires proceeding without actual notice to the person whose
1544 location is unknown.

1545 (6) The diligent search required by subsection (5) must
1546 include, at a minimum, inquiries of all known relatives of the
1547 parent or prospective parent, inquiries of all offices of
1548 program areas of the department likely to have information about
1549 the parent or prospective parent, inquiries of other state and
1550 federal agencies likely to have information about the parent or
1551 prospective parent, inquiries of appropriate utility and postal
1552 providers, a thorough search of at least one electronic database
1553 specifically designed for locating persons, a search of the
1554 Florida Putative Father Registry, and inquiries of appropriate
1555 law enforcement agencies. Pursuant to s. 453 of the Social
1556 Security Act, 42 U.S.C. s. 653(c)(4), the department, as the
1557 state agency administering Titles IV-B and IV-E of the act,
1558 shall be provided access to the federal and state parent locator
1559 service for diligent search activities.

1560 (7) Any agency contacted by petitioner with a request for
1561 information pursuant to subsection (6) shall release the
1562 requested information to the petitioner without the necessity of
1563 a subpoena or court order.

1564 (8) If the inquiry and diligent search identifies a
1565 prospective parent, that person must be given the opportunity to
1566 become a party to the proceedings by completing a sworn

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1567 affidavit of parenthood and filing it with the court or the
 1568 department. A prospective parent who files a sworn affidavit of
 1569 parenthood while the child is a dependent child but no later
 1570 than at the time of or ~~before~~ ~~prior~~ to the adjudicatory hearing
 1571 in the termination of parental rights proceeding for the child
 1572 shall be considered a parent for all purposes under this
 1573 section. If the prospective parent does not file a sworn
 1574 affidavit of parenthood or if the other parent contests the
 1575 determination of parenthood, the court may, after considering
 1576 the best interests of the child, order scientific testing to
 1577 determine the maternity or paternity of the child. The court
 1578 shall assess the cost of the paternity determination as a cost
 1579 of litigation. If the court finds the prospective parent to be a
 1580 parent as a result of the scientific testing, the court shall
 1581 enter a judgment of maternity or paternity, shall assess the
 1582 cost of the scientific testing to the parent, and shall enter an
 1583 amount of child support to be paid by the parent as determined
 1584 under s. 61.30. If the known parent contests the recognition of
 1585 the prospective parent as a parent, the prospective parent may
 1586 not be recognized as a parent until proceedings to establish
 1587 maternity or paternity have been concluded. However, the
 1588 prospective parent shall continue to receive notice of hearings
 1589 as a participant until proceedings to establish maternity or
 1590 paternity have been concluded.

1591 (9) If the diligent search under subsection (5) fails to
 1592 identify and locate a prospective parent, the court shall so
 1593 find and may proceed without further notice.

1594 Section 21. Paragraph (1) of subsection (1) of section
 1595 39.806, Florida Statutes, is amended, and subsections (2) and

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1596 (3) are republished, to read:

1597 39.806 Grounds for termination of parental rights.—

1598 (1) Grounds for the termination of parental rights may be
 1599 established under any of the following circumstances:

1600 (1) On three or more occasions the child or another child
 1601 of the parent or parents has been placed in out-of-home care
 1602 pursuant to this chapter or the law of any state, territory, or
 1603 jurisdiction of the United States which is substantially similar
 1604 to this chapter, and the conditions that led to the child's out-
 1605 of-home placement were caused by the parent or parents.

1606 (2) Reasonable efforts to preserve and reunify families are
 1607 not required if a court of competent jurisdiction has determined
 1608 that any of the events described in paragraphs (1)(b)-(d) or
 1609 paragraphs (1)(f)-(m) have occurred.

1610 (3) If a petition for termination of parental rights is
 1611 filed under subsection (1), a separate petition for dependency
 1612 need not be filed and the department need not offer the parents
 1613 a case plan having a goal of reunification, but may instead file
 1614 with the court a case plan having a goal of termination of
 1615 parental rights to allow continuation of services until the
 1616 termination is granted or until further orders of the court are
 1617 issued.

1618 Section 22. Subsection (6) of section 39.811, Florida
 1619 Statutes, is amended to read:

1620 39.811 Powers of disposition; order of disposition.—

1621 (6) The parental rights of one parent may be severed
 1622 without severing the parental rights of the other parent only
 1623 under the following circumstances:

1624 (a) If the child has only one surviving parent;

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1625 (b) If the identity of a prospective parent has been
 1626 established as unknown after sworn testimony;
 1627 (c) If the parent whose rights are being terminated became
 1628 a parent through a single-parent adoption;
 1629 (d) If the protection of the child demands termination of
 1630 the rights of a single parent; or
 1631 (e) If the parent whose rights are being terminated meets
 1632 any of the criteria specified in s. 39.806(1)(c), (d), (f), (g),
 1633 (h), (i), (j), (k), (l), (m), or (n) ~~and (f)-(m)~~.
 1634 Section 23. Paragraph (b) of subsection (4) of section
 1635 125.901, Florida Statutes, is amended to read:
 1636 125.901 Children's services; independent special district;
 1637 council; powers, duties, and functions; public records
 1638 exemption.-
 1639 (4)
 1640 (b)1.a. Notwithstanding paragraph (a), the governing body
 1641 of the county shall submit the question of retention or
 1642 dissolution of a district with voter-approved taxing authority
 1643 to the electorate in the general election according to the
 1644 following schedule:
 1645 (I) For a district in existence on July 1, 2010, and
 1646 serving a county with a population of 400,000 or fewer persons
 1647 as of that date.....2014.
 1648 (II) For a district in existence on July 1, 2010, and
 1649 serving a county with a population of 2 million or more persons
 1650 as of that date, unless the governing body of the county has
 1651 previously submitted such question voluntarily to the electorate
 1652 for a second time since 2005,.....2020.
 1653 b. A referendum by the electorate on or after July 1, 2010,

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1654 creating a new district with taxing authority may specify that
 1655 the district is not subject to reauthorization or may specify
 1656 the number of years for which the initial authorization shall
 1657 remain effective. If the referendum does not prescribe terms of
 1658 reauthorization, the governing body of the county shall submit
 1659 the question of retention or dissolution of the district to the
 1660 electorate in the general election 12 years after the initial
 1661 authorization.
 1662 2. The governing body of the district may specify, and
 1663 submit to the governing body of the county no later than 9
 1664 months before the scheduled election, that the district is not
 1665 subsequently subject to reauthorization or may specify the
 1666 number of years for which a reauthorization under this paragraph
 1667 shall remain effective. If the governing body of the district
 1668 makes such specification and submission, the governing body of
 1669 the county shall include that information in the question
 1670 submitted to the electorate. If the governing body of the
 1671 district does not specify and submit such information, the
 1672 governing body of the county shall resubmit the question of
 1673 reauthorization to the electorate every 12 years after the year
 1674 prescribed in subparagraph 1. The governing body of the district
 1675 may recommend to the governing body of the county language for
 1676 the question submitted to the electorate.
 1677 3. Nothing in this paragraph limits the authority to
 1678 dissolve a district as provided under paragraph (a).
 1679 4. Nothing in this paragraph precludes the governing body
 1680 of a district from requesting that the governing body of the
 1681 county submit the question of retention or dissolution of a
 1682 district with voter-approved taxing authority to the electorate

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1683 at a date earlier than the year prescribed in subparagraph 1. If
1684 the governing body of the county accepts the request and submits
1685 the question to the electorate, the governing body satisfies the
1686 requirement of that subparagraph.

1687
1688 If any district is dissolved pursuant to this subsection, each
1689 county must first obligate itself to assume the debts,
1690 liabilities, contracts, and outstanding obligations of the
1691 district within the total millage available to the county
1692 governing body for all county and municipal purposes as provided
1693 for under s. 9, Art. VII of the State Constitution. Any district
1694 may also be dissolved pursuant to part VII of chapter 189.

1695 Section 24. Subsection (9) of section 322.051, Florida
1696 Statutes, is amended to read:

1697 322.051 Identification cards.—

1698 (9) (a) Notwithstanding any other provision of this section
1699 or s. 322.21 to the contrary, the department shall issue or
1700 renew a card at no charge to a person who presents evidence
1701 satisfactory to the department that he or she is homeless as
1702 defined in s. 414.0252(7), to a juvenile offender who is in the
1703 custody or under the supervision of the Department of Juvenile
1704 Justice and receiving services pursuant to s. 985.461, to an
1705 inmate receiving a card issued pursuant to s. 944.605(7), or, if
1706 necessary, to an inmate receiving a replacement card if the
1707 department determines that he or she has a valid state
1708 identification card. If the replacement state identification
1709 card is scheduled to expire within 6 months, the department may
1710 also issue a temporary permit valid for at least 6 months after
1711 the release date. The department's mobile issuing units shall

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1712 process the identification cards for juvenile offenders and
1713 inmates at no charge, as provided by s. 944.605 (7) (a) and (b).

1714 (b) If the person who presents evidence that he or she is a
1715 certified unaccompanied homeless youth as defined in s. 743.067,
1716 the back of the card must exhibit the following: As a certified
1717 unaccompanied homeless youth, this individual may consent to
1718 diagnosis and treatment and any forensic medical examination
1719 authorized pursuant to s. 743.067, F.S.

1720 Section 25. Paragraph (g) of subsection (4) of section
1721 395.3025, Florida Statutes, is amended, and subsection (8) of
1722 that section is republished, to read:

1723 395.3025 Patient and personnel records; copies;
1724 examination.—

1725 (4) Patient records are confidential and must not be
1726 disclosed without the consent of the patient or his or her legal
1727 representative, but appropriate disclosure may be made without
1728 such consent to:

1729 (g) The Department of Children and Families, ~~or~~ its agent,
1730 or its contracted entity, for the purpose of investigations of
1731 or services for cases of abuse, neglect, or exploitation of
1732 children or vulnerable adults.

1733 (8) Patient records at hospitals and ambulatory surgical
1734 centers are exempt from disclosure under s. 119.07(1), except as
1735 provided by subsections (1)-(5).

1736 Section 26. Subsections (2) and (6) of section 402.40,
1737 Florida Statutes, are amended to read:

1738 402.40 Child welfare training and certification.—

1739 (2) DEFINITIONS.—As used in this section, the term:

1740 (a) "Child welfare certification" means a professional

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1741 credential awarded by a department-approved third-party
 1742 credentialing entity to individuals demonstrating core
 1743 competency in any child welfare practice area.

1744 (b) "Child welfare services" means any intake, protective
 1745 investigations, preprotective services, protective services,
 1746 foster care, shelter and group care, and adoption and related
 1747 services program, including supportive services and supervision
 1748 provided to children who are alleged to have been abused,
 1749 abandoned, or neglected or who are at risk of becoming, are
 1750 alleged to be, or have been found dependent pursuant to chapter
 1751 39.

1752 (c) "Child welfare trainer" means any person providing
 1753 training for the purposes of child welfare professionals earning
 1754 certification.

1755 (d)(e) "Core competency" means the minimum knowledge,
 1756 skills, and abilities necessary to carry out work
 1757 responsibilities.

1758 (e)(d) "Person providing child welfare services" means a
 1759 person who has a responsibility for supervisory, direct care, or
 1760 support-related work in the provision of child welfare services
 1761 pursuant to chapter 39.

1762 (f)(e) "Preservice curriculum" means the minimum statewide
 1763 training content based upon the core competencies which is made
 1764 available to all persons providing child welfare services.

1765 (g)(f) "Third-party credentialing entity" means a
 1766 department-approved nonprofit organization that has met
 1767 nationally recognized standards for developing and administering
 1768 professional certification programs.

1769 (6) ADOPTION OF RULES.—The Department of Children and

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1770 Families shall adopt rules necessary to carry out ~~the provisions~~
 1771 ~~of this section, including the requirements for child welfare~~
 1772 ~~trainers.~~

1773 Section 27. Section 409.16741, Florida Statutes, is created
 1774 to read:

1775 409.16741 Substance-exposed newborns; legislative findings
 1776 and intent; screening and assessment; case management;
 1777 training.—

1778 (1) LEGISLATIVE FINDINGS AND INTENT.—

1779 (a) The Legislature finds that children, their families,
 1780 and child welfare agencies have been affected by multiple
 1781 substance abuse epidemics over the past several decades, and
 1782 parental substance abuse is again becoming a growing reason for
 1783 removing children from their homes and placing them in foster
 1784 care.

1785 (b) The Legislature also finds that infants are the largest
 1786 age group of children entering foster care and that parental
 1787 substance abuse disorders are having a major impact not only on
 1788 increasing child removals, but also on preventing or delaying
 1789 reunification of families and increasing termination of parental
 1790 rights.

1791 (c) The Legislature further finds that two aspects of
 1792 parental substance abuse affect the child welfare system:
 1793 prenatal exposure when it is determined that there are immediate
 1794 safety factors that necessitate the newborn being placed in
 1795 protective custody; and postnatal use that affects the ability
 1796 of the parent to safely care for the child.

1797 (d) Therefore, it is the intent of the Legislature that the
 1798 department establish and monitor a coordinated approach to

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1799 working with children and their families affected by substance
 1800 abuse and dependence.

1801 (2) SCREENING AND ASSESSMENT.—The department shall develop
 1802 or adopt one or more initial screening and assessment
 1803 instruments to identify, determine the needs of, and plan
 1804 services for substance-exposed newborns and their families. In
 1805 addition to the conditions of the infant, conditions or
 1806 behaviors of the mother or father which may indicate a risk of
 1807 harm to the child shall be considered during any assessment.

1808 (3) CASE MANAGEMENT.—

1809 (a) The department shall conduct regular multidisciplinary
 1810 staffings relating to services provided for substance-exposed
 1811 newborns and their families to ensure that all parties possess
 1812 relevant information and that services are coordinated across
 1813 systems identified in this chapter. The department or community-
 1814 based care lead agency, as appropriate, shall coordinate these
 1815 staffings and include individuals involved in the child's care.

1816 (b) Each region of the department and each community-based
 1817 care lead agency shall jointly assess local service capacity to
 1818 meet the specialized service needs of substance-exposed newborns
 1819 and their families and establish a plan to develop the necessary
 1820 capacity. Each plan shall be developed in consultation with
 1821 entities and agencies involved in the individuals' care.

1822 (4) TRAINING.—The department and community-based care lead
 1823 agencies shall ensure that cases in which there is a substance-
 1824 exposed newborn are assigned to child protective investigators
 1825 and case managers who have specialized training in working with
 1826 substance-exposed newborns and their families. The department
 1827 and lead agencies shall ensure that child protective

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1828 investigators and case managers receive this training before
 1829 accepting a case.

1830 Section 28. Section 409.16742, Florida Statutes, is created
 1831 to read:

1832 409.16742 Shared family care residential services program
 1833 for substance-exposed newborns.—

1834 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 1835 that there is evidence that, with appropriate support and
 1836 training, some families can remain safely together without court
 1837 involvement or traumatic separations. Therefore, it is the
 1838 intent of the Legislature that alternative types of placement
 1839 options be available which provide both safety for substance-
 1840 exposed newborns and an opportunity for parents recovering from
 1841 substance abuse disorders to achieve independence while living
 1842 together in a protective, nurturing family environment.

1843 (2) ESTABLISHMENT OF PILOT PROGRAM.—The department shall
 1844 establish a shared family care residential services program in
 1845 the Fourth Judicial Circuit to serve substance-exposed newborns
 1846 and their families through a contract with the designated lead
 1847 agency established in accordance with s. 409.987 or with a
 1848 private entity capable of providing residential care that
 1849 satisfies the requirements of this section. The private entity
 1850 or lead agency is responsible for all programmatic functions
 1851 necessary to carry out the intent of this section. As used in
 1852 this section, the term "shared family care" means out-of-home
 1853 care in which an entire family in need is temporarily placed in
 1854 the home of a family who is trained to mentor and support the
 1855 biological parents as they develop caring skills and supports
 1856 necessary for independent living.

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1857 (3) SERVICES.—The department shall specify services that
 1858 should be made available to newborns and their families through
 1859 the pilot program.

1860 Section 29. Section 409.992, Florida Statutes, is amended
 1861 to read:

1862 409.992 Lead agency expenditures.—

1863 (1) The procurement of commodities or contractual services
 1864 by lead agencies shall be governed by the financial guidelines
 1865 developed by the department and must comply with applicable
 1866 state and federal law and follow good business practices.

1867 Pursuant to s. 11.45, the Auditor General may provide technical
 1868 advice in the development of the financial guidelines.

1869 (2) Notwithstanding any other provision of law, a
 1870 community-based care lead agency may make expenditures for staff
 1871 cellular telephone allowances, contracts requiring deferred
 1872 payments and maintenance agreements, security deposits for
 1873 office leases, related agency professional membership dues other
 1874 than personal professional membership dues, promotional
 1875 materials, and grant writing services. Expenditures for food and
 1876 refreshments, other than those provided to clients in the care
 1877 of the agency or to foster parents, adoptive parents, and
 1878 caseworkers during training sessions, are not allowable.

1879 (3) Notwithstanding any other provision of law, a
 1880 community-based care lead agency administrative employee may not
 1881 receive a salary, whether base pay or base pay combined with any
 1882 bonus or incentive payments, in excess of the salary paid to the
 1883 secretary of the Department of Children and Families from state-
 1884 appropriated funds, including state-appropriated federal funds.
 1885 This subsection does not prohibit any party from providing cash

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1886 that is not from appropriated state funds to a community-based
 1887 care lead agency administrative employee.

1888 ~~(4)(3)~~ A lead community-based care agency and its
 1889 subcontractors are exempt from state travel policies as provided
 1890 in s. 112.061(3) (a) for their travel expenses incurred in order
 1891 to comply with the requirements of this section.

1892 Section 30. Paragraph (a) of subsection (7) of section
 1893 456.057, Florida Statutes, is amended to read:

1894 456.057 Ownership and control of patient records; report or
 1895 copies of records to be furnished; disclosure of information.—

1896 (7) (a) Except as otherwise provided in this section and in
 1897 s. 440.13(4) (c), such records may not be furnished to, and the
 1898 medical condition of a patient may not be discussed with, any
 1899 person other than the patient, the patient's legal
 1900 representative, or other health care practitioners and providers
 1901 involved in the patient's care or treatment, except upon written
 1902 authorization from the patient. However, such records may be
 1903 furnished without written authorization under the following
 1904 circumstances:

1905 1. To any person, firm, or corporation that has procured or
 1906 furnished such care or treatment with the patient's consent.

1907 2. When compulsory physical examination is made pursuant to
 1908 Rule 1.360, Florida Rules of Civil Procedure, in which case
 1909 copies of the medical records shall be furnished to both the
 1910 defendant and the plaintiff.

1911 3. In any civil or criminal action, unless otherwise
 1912 prohibited by law, upon the issuance of a subpoena from a court
 1913 of competent jurisdiction and proper notice to the patient or
 1914 the patient's legal representative by the party seeking such

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1915 records.

1916 4. For statistical and scientific research, provided the
1917 information is abstracted in such a way as to protect the
1918 identity of the patient or provided written permission is
1919 received from the patient or the patient's legal representative.

1920 5. To a regional poison control center for purposes of
1921 treating a poison episode under evaluation, case management of
1922 poison cases, or compliance with data collection and reporting
1923 requirements of s. 395.1027 and the professional organization
1924 that certifies poison control centers in accordance with federal
1925 law.

1926 6. To the Department of Children and Families, its agent,
1927 or its contracted entity, for the purpose of investigations of
1928 or services for cases of abuse, neglect, or exploitation of
1929 children or vulnerable adults.

1930 Section 31. Section 409.141, Florida Statutes, is repealed.

1931 Section 32. Section 409.1677, Florida Statutes, is
1932 repealed.

1933 Section 33. Section 743.067, Florida Statutes, is amended
1934 to read:

1935 743.067 Certified unaccompanied homeless youths.—

1936 (1) For purposes of this section, the term ~~an~~ "certified
1937 unaccompanied homeless youth" means a minor who is a homeless
1938 child or youth, including an unaccompanied youth, as those terms
1939 are defined in 42 U.S.C. s. 11434a., who has been certified as a
1940 unaccompanied homeless youth by is an individual who is 16 years
1941 of age or older and is:

1942 (a) A school district homeless liaison;

1943 ~~(a) Found by a school district's liaison for homeless~~

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1944 ~~children and youths to be an unaccompanied homeless youth~~
1945 ~~eligible for services pursuant to the McKinney-Vento Homeless~~
1946 ~~Assistance Act, 42 U.S.C. ss. 11431-11435; or~~

1947 ~~(b) Believed to qualify as an unaccompanied homeless youth,~~
1948 ~~as that term is defined in the McKinney Vento Homeless~~
1949 ~~Assistance Act, by:~~

1950 (b)1- The director of an emergency shelter program funded
1951 by the United States Department of Housing and Urban
1952 Development, or the director's designee;

1953 (c)2- The director of a runaway or homeless youth basic
1954 center or transitional living program funded by the United
1955 States Department of Health and Human Services, or the
1956 director's designee; or

1957 (d) A Continuum of Care Lead Agency, or its designee.

1958 ~~3. A clinical social worker licensed under chapter 491; or~~

1959 ~~4. A circuit court.~~

1960 (2) (a) The Office on Homelessness within the Department of
1961 Children and Families shall develop a standardized form that
1962 must be used by the entities specified in subsection (1) to
1963 certify qualifying unaccompanied homeless youth. The form must
1964 include the circumstances that qualify the youth; the date the
1965 youth was certified; the name, title, and signature of the
1966 certifying individual; and a citation to this section. A minor
1967 who qualifies as an unaccompanied homeless youth shall be issued
1968 a written certificate documenting his or her status by the
1969 appropriate individual as provided in subsection (1). The
1970 certificate shall be issued on the official letterhead
1971 stationery of the person making the determination and shall
1972 include the date of the finding, a citation to this section, and

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1973 ~~the signature of the individual making the finding.~~

1974 (b) A certified unaccompanied homeless youth may use the
 1975 completed form to apply at no charge for an identification card
 1976 issued by the Department of Highway Safety and Motor Vehicles
 1977 pursuant to s. 322.051(9).

1978 (c) A health care provider may accept the written
 1979 certificate or identification card as proof of the minor's
 1980 status as a certified ~~an~~ unaccompanied homeless youth and may
 1981 keep a copy of the certificate or identification card in the
 1982 youth's medical file.

1983 (3) A certified ~~an~~ unaccompanied homeless youth may:

1984 (a) Petition the circuit court to have the disabilities of
 1985 nonage removed under s. 743.015. The youth shall qualify as a
 1986 person not required to prepay costs and fees as provided in s.
 1987 57.081. The court shall advance the cause on the calendar.

1988 (b) Notwithstanding s. 394.4625(1), consent to medical,
 1989 dental, psychological, substance abuse, and surgical diagnosis
 1990 and treatment, including preventative care and care by a
 1991 facility licensed under chapter 394, chapter 395, or chapter 397
 1992 and any forensic medical examination for the purpose of
 1993 investigating any felony offense under chapter 784, chapter 787,
 1994 chapter 794, chapter 800, or chapter 827, for:

1995 1. Himself or herself; or

1996 2. His or her child, if the certified unaccompanied
 1997 homeless youth is unmarried, is the parent of the child, and has
 1998 actual custody of the child.

1999 (4) This section does not affect the requirements of s.
 2000 390.01114.

2001 Section 34. Paragraph (f) of subsection (1) of section

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2002 1009.25, Florida Statutes, is amended to read:

2003 1009.25 Fee exemptions.—

2004 (1) The following students are exempt from the payment of
 2005 tuition and fees, including lab fees, at a school district that
 2006 provides workforce education programs, Florida College System
 2007 institution, or state university:

2008 (f) A student who lacks a fixed, regular, and adequate
 2009 nighttime residence or whose primary nighttime residence is a
 2010 public or private shelter designed to provide temporary
 2011 residence, a public or private transitional living program ~~for~~
 2012 ~~individuals intended to be institutionalized~~, or a public or
 2013 private place not designed for, or ordinarily used as, a regular
 2014 sleeping accommodation for human beings. This includes a student
 2015 who, if it were not for the availability of college or
 2016 university dormitory housing, would be homeless.

2017 Section 35. Subsection (1) of section 39.524, Florida
 2018 Statutes, is amended to read:

2019 39.524 Safe-harbor placement.—

2020 (1) Except as provided in s. 39.407 or s. 985.801, a
 2021 dependent child 6 years of age or older who has been found to be
 2022 a victim of sexual exploitation as defined in s. 39.01 ~~or~~
 2023 ~~39.01(70)(g)~~ must be assessed for placement in a safe house or
 2024 safe foster home as provided in s. 409.1678 using the initial
 2025 screening and assessment instruments provided in s. 409.1754(1).
 2026 If such placement is determined to be appropriate for the child
 2027 as a result of this assessment, the child may be placed in a
 2028 safe house or safe foster home, if one is available. However,
 2029 the child may be placed in another setting, if the other setting
 2030 is more appropriate to the child's needs or if a safe house or

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2031 safe foster home is unavailable, as long as the child's
2032 behaviors are managed so as not to endanger other children
2033 served in that setting.

2034 Section 36. Paragraph (p) of subsection (4) of section
2035 394.495, Florida Statutes, is amended to read:

2036 394.495 Child and adolescent mental health system of care;
2037 programs and services.—

2038 (4) The array of services may include, but is not limited
2039 to:

2040 (p) Trauma-informed services for children who have suffered
2041 sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~.

2042 Section 37. Paragraph (c) of subsection (1) and paragraphs
2043 (a) and (b) of subsection (6) of section 409.1678, Florida
2044 Statutes, are amended to read:

2045 409.1678 Specialized residential options for children who
2046 are victims of sexual exploitation.—

2047 (1) DEFINITIONS.—As used in this section, the term:

2048 (c) "Sexually exploited child" means a child who has
2049 suffered sexual exploitation as defined in s. 39.01 ~~s.~~
2050 ~~39.01(70)(g)~~ and is ineligible for relief and benefits under the
2051 federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101
2052 et seq.

2053 (6) LOCATION INFORMATION.—

2054 (a) Information about the location of a safe house, safe
2055 foster home, or other residential facility serving victims of
2056 sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~,
2057 which is held by an agency, as defined in s. 119.011, is
2058 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
2059 of the State Constitution. This exemption applies to such

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2060 confidential and exempt information held by an agency before,
2061 on, or after the effective date of the exemption.

2062 (b) Information about the location of a safe house, safe
2063 foster home, or other residential facility serving victims of
2064 sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~, may
2065 be provided to an agency, as defined in s. 119.011, as necessary
2066 to maintain health and safety standards and to address emergency
2067 situations in the safe house, safe foster home, or other
2068 residential facility.

2069 Section 38. Subsection (5) of section 960.065, Florida
2070 Statutes, is amended to read:

2071 960.065 Eligibility for awards.—

2072 (5) A person is not ineligible for an award pursuant to
2073 paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c) if that
2074 person is a victim of sexual exploitation of a child as defined
2075 in s. 39.01 ~~s. 39.01(70)(g)~~.

2076 Section 39. Section 409.1679, Florida Statutes, is amended
2077 to read:

2078 409.1679 Additional requirements; reimbursement
2079 methodology.—

2080 (1) Each program established under s. 409.1676 ~~ss. 409.1676~~
2081 ~~and 409.1677~~ must meet the following expectations, which must be
2082 included in its contracts with the department or lead agency:

2083 (a) No more than 10 percent of the children served may move
2084 from one living environment to another, unless the child is
2085 returned to family members or is moved, in accordance with the
2086 treatment plan, to a less-restrictive setting. Each child must
2087 have a comprehensive transitional plan that identifies the
2088 child's living arrangement upon leaving the program and specific

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2089 steps and services that are being provided to prepare for that
 2090 arrangement. Specific expectations as to the time period
 2091 necessary for the achievement of these permanency goals must be
 2092 included in the contract.

2093 (b) Each child must receive a full academic year of
 2094 appropriate educational instruction. No more than 10 percent of
 2095 the children may be in more than one academic setting in an
 2096 academic year, unless the child is being moved, in accordance
 2097 with an educational plan, to a less-restrictive setting. Each
 2098 child must demonstrate academic progress and must be performing
 2099 at grade level or at a level commensurate with a valid academic
 2100 assessment.

2101 (c) Siblings must be kept together in the same living
 2102 environment 100 percent of the time, unless that is determined
 2103 by the provider not to be in the children's best interest. When
 2104 siblings are separated in placement, the decision must be
 2105 reviewed and approved by the court within 30 days.

2106 (d) The program must experience a caregiver turnover rate
 2107 and an incidence of child runaway episodes which are at least 50
 2108 percent below the rates experienced in the rest of the state.

2109 (e) In addition to providing a comprehensive assessment,
 2110 the program must provide, 100 percent of the time, any or all of
 2111 the following services that are indicated through the
 2112 assessment: residential care; transportation; behavioral health
 2113 services; recreational activities; clothing, supplies, and
 2114 miscellaneous expenses associated with caring for these
 2115 children; necessary arrangements for or provision of educational
 2116 services; and necessary and appropriate health and dental care.

2117 (f) The children who are served in this program must be

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2118 satisfied with the services and living environment.

2119 (g) The caregivers must be satisfied with the program.

2120 (2) ~~Notwithstanding the provisions of s. 409.141,~~ The
 2121 Department of Children and Families shall fairly and reasonably
 2122 reimburse the programs established under s. 409.1676 ~~ss.~~
 2123 ~~409.1676 and 409.1677~~ based on a prospective per diem rate,
 2124 which must be specified annually in the General Appropriations
 2125 Act. Funding for these programs shall be made available from
 2126 resources appropriated and identified in the General
 2127 Appropriations Act.

2128 Section 40. Subsection (11) of section 1002.3305, Florida
 2129 Statutes, is amended to read:

2130 1002.3305 College-Preparatory Boarding Academy Pilot
 2131 Program for at-risk students.-

2132 (11) STUDENT HOUSING.-Notwithstanding s. 409.176 ~~ss.~~
 2133 ~~409.1677(3)(d) and 409.176~~ or any other provision of law, an
 2134 operator may house and educate dependent, at-risk youth in its
 2135 residential school for the purpose of facilitating the mission
 2136 of the program and encouraging innovative practices.

2137 Section 41. For the purpose of incorporating the amendment
 2138 made by this act to section 456.057, Florida Statutes, in a
 2139 reference thereto, subsection (2) of section 483.181, Florida
 2140 Statutes, is reenacted to read:

2141 483.181 Acceptance, collection, identification, and
 2142 examination of specimens.-

2143 (2) The results of a test must be reported directly to the
 2144 licensed practitioner or other authorized person who requested
 2145 it, and appropriate disclosure may be made by the clinical
 2146 laboratory without a patient's consent to other health care

Page 74 of 75

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

590-04111-17

20171044c2

2147 practitioners and providers involved in the care or treatment of
2148 the patient as specified in s. 456.057(7)(a). The report must
2149 include the name and address of the clinical laboratory in which
2150 the test was actually performed, unless the test was performed
2151 in a hospital laboratory and the report becomes an integral part
2152 of the hospital record.

2153 Section 42. Except as otherwise expressly provided in this
2154 act, this act shall take effect July 1, 2017.

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 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

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

1044
Bill Number (if applicable)

Topic CHILD WELFARE

Amendment Barcode (if applicable)

Name DIANA RAGBER

Job Title DIRECTOR PUBLIC POLICY

Address 3150 SW 3RD AVE
Street

Phone 305 571 5700

MIAMI
City

FL
State

33129
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.	<u>Stovall</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Forbes</u>	<u>Williams</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Forbes</u>	<u>Hansen</u>	<u>AP</u>	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 licensee 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 report¹⁰ 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.

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

By Senator Garcia

36-00455A-17

20171056__

1 A bill to be entitled

2 An act relating to home health care agency licenses;
3 amending s. 400.471, F.S.; removing a prohibition
4 against the issuance of an initial home health agency
5 license to an applicant who shares common controlling
6 interests with another licensed home health agency
7 located within 10 miles of the applicant and in the
8 same county; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (7) of section 400.471, Florida
13 Statutes, is amended to read:

14 400.471 Application for license; fee.—

15 ~~(7) The agency may not issue an initial license to an~~
16 ~~applicant for a home health agency license if the applicant~~
17 ~~shares common controlling interests with another licensed home~~
18 ~~health agency that is located within 10 miles of the applicant~~
19 ~~and is in the same county. The agency must return the~~
20 ~~application and fees to the applicant.~~

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

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

4/25/14

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

1056
Bill Number (if applicable)

Meeting Date
Topic Home Health 10 mile Rule Repeal

Amendment Barcode (if applicable)

Name Bobby Pollock

Job Title Executive Director

Address 2336 Capital Circle NE

Phone 850 367-1951

Tallahassee FL 32308

Email Bldlog@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.

The Florida Senate
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.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS Combined
2.	<u>Sneed</u>	<u>Williams</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Sneed</u>	<u>Hansen</u>	<u>AP</u>	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

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%3DIENTSRS#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 1998¹⁷ 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:

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

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1 A bill to be entitled
2 An act relating to child protection; amending s.
3 39.303, F.S.; revising the entities responsible for
4 screening, employing, and terminating child protection
5 team medical directors to include the Statewide
6 Medical Director for Child Protection; revising the
7 term "district medical director" to "child protection
8 team medical director"; revising references to
9 subdivisions of the state from "districts" to
10 "circuits"; revising the required board certifications
11 for child protection team medical directors and
12 reviewing physicians; revising the timeframe in which
13 child protection team medical directors must obtain
14 certification; requiring Children's Medical Services
15 to convene a task force to develop a protocol for
16 forensic interviewing of children suspected of having
17 been abused; specifying membership of the task force;
18 requiring Children's Medical Services to develop,
19 maintain, and coordinate one or more sexual abuse
20 treatment programs; amending s. 39.3031, F.S.;
21 requiring the Department of Health, in consultation
22 with the Department of Children and Families, to adopt
23 rules regarding sexual abuse treatment programs;
24 amending ss. 458.3175, 459.0066, and 827.03, F.S.;
25 revising provisions regarding expert testimony
26 provided by certain entities to include criminal cases
27 involving child abuse and neglect, dependency cases,
28 and cases involving sexual abuse of a child; providing
29 an effective date.

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30
31 Be It Enacted by the Legislature of the State of Florida:
32
33 Section 1. Section 39.303, Florida Statutes, is amended to
34 read:
35 39.303 Child protection teams and sexual abuse treatment
36 programs; services; eligible cases.—
37 (1) The Children's Medical Services Program in the
38 Department of Health shall develop, maintain, and coordinate the
39 services of one or more multidisciplinary child protection teams
40 in each of the service circuits ~~districts~~ of the Department of
41 Children and Families. Such teams may be composed of appropriate
42 representatives of school districts and appropriate health,
43 mental health, social service, legal service, and law
44 enforcement agencies. The Department of Health and the
45 Department of Children and Families shall maintain an
46 interagency agreement that establishes protocols for oversight
47 and operations of child protection teams and sexual abuse
48 treatment programs. The State Surgeon General and the Deputy
49 Secretary for Children's Medical Services, in consultation with
50 the Secretary of Children and Families and the Statewide Medical
51 Director for Child Protection, shall maintain the responsibility
52 for the screening, employment, and, if necessary, the
53 termination of child protection team medical directors, ~~at~~
54 ~~headquarters~~ and in the 15 circuits ~~districts~~.
55 (2) (a) The Statewide Medical Director for Child Protection
56 must be a physician licensed under chapter 458 or chapter 459
57 who is a board-certified pediatrician with a subspecialty
58 certification in child abuse from the American Board of

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59 Pediatrics.

60 (b) Each child protection team ~~district~~ medical director
61 must be a physician licensed under chapter 458 or chapter 459
62 who is a board-certified physician in pediatrics or family
63 medicine ~~pediatrician~~ and, within 2 ~~4~~ years after the date of
64 ~~his or her~~ employment as a child protection team ~~district~~
65 medical director, obtains ~~either obtain~~ a subspecialty
66 certification in child abuse from the American Board of
67 Pediatrics or within 2 years meet the minimum requirements
68 established by a third-party credentialing entity recognizing a
69 demonstrated specialized competence in child abuse pediatrics
70 pursuant to paragraph (d). Each child protection team ~~district~~
71 medical director employed on July 1, 2015, must, by July 1, 2019
72 ~~within 4 years~~, either obtain a subspecialty certification in
73 child abuse from the American Board of Pediatrics or meet the
74 minimum requirements established by a third-party credentialing
75 entity recognizing a demonstrated specialized competence in
76 child abuse pediatrics pursuant to paragraph (d). Child
77 protection team medical directors shall be responsible for
78 oversight of the teams in the circuits ~~districts~~.

79 (c) All medical personnel participating on a child
80 protection team must successfully complete the required child
81 protection team training curriculum as set forth in protocols
82 determined by the Deputy Secretary for Children's Medical
83 Services and the Statewide Medical Director for Child
84 Protection.

85 (d) Contingent on appropriations, the Department of Health
86 shall approve one or more third-party credentialing entities for
87 the purpose of developing and administering a professional

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88 credentialing program for child protection team ~~district~~ medical
89 directors. Within 90 days after receiving documentation from a
90 third-party credentialing entity, the department shall approve a
91 third-party credentialing entity that demonstrates compliance
92 with the following minimum standards:

93 1. Establishment of child abuse pediatrics core
94 competencies, certification standards, testing instruments, and
95 recertification standards according to national psychometric
96 standards.

97 2. Establishment of a process to administer the
98 certification application, award, and maintenance processes
99 according to national psychometric standards.

100 3. Demonstrated ability to administer a professional code
101 of ethics and disciplinary process that applies to all certified
102 persons.

103 4. Establishment of, and ability to maintain, a publicly
104 accessible Internet-based database that contains information on
105 each person who applies for and is awarded certification, such
106 as the person's first and last name, certification status, and
107 ethical or disciplinary history.

108 5. Demonstrated ability to administer biennial continuing
109 education and certification renewal requirements.

110 6. Demonstrated ability to administer an education provider
111 program to approve qualified training entities and to provide
112 precertification training to applicants and continuing education
113 opportunities to certified professionals.

114 (3) The Department of Health shall use and convene the
115 child protection teams to supplement the assessment and
116 protective supervision activities of the family safety and

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117 preservation program of the Department of Children and Families.
 118 This section does not remove or reduce the duty and
 119 responsibility of any person to report pursuant to this chapter
 120 all suspected or actual cases of child abuse, abandonment, or
 121 neglect or sexual abuse of a child. The role of the child
 122 protection teams ~~is shall be~~ to support activities of the
 123 program and to provide services deemed by the child protection
 124 teams to be necessary and appropriate to abused, abandoned, and
 125 neglected children upon referral. The specialized diagnostic
 126 assessment, evaluation, coordination, consultation, and other
 127 supportive services that a child protection team must ~~shall~~ be
 128 capable of providing include, but are not limited to, the
 129 following:

130 (a) Medical diagnosis and evaluation services, including
 131 provision or interpretation of X rays and laboratory tests, and
 132 related services, as needed, and documentation of related
 133 findings.

134 (b) Telephone consultation services in emergencies and in
 135 other situations.

136 (c) Medical evaluation related to abuse, abandonment, or
 137 neglect, as defined by policy or rule of the Department of
 138 Health.

139 (d) Such psychological and psychiatric diagnosis and
 140 evaluation services for the child or the child's parent or
 141 parents, legal custodian or custodians, or other caregivers, or
 142 any other individual involved in a child abuse, abandonment, or
 143 neglect case, as the team may determine to be needed.

144 (e) Expert medical, psychological, and related professional
 145 testimony in court cases.

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146 (f) Case staffings to develop treatment plans for children
 147 whose cases have been referred to the team. A child protection
 148 team may provide consultation with respect to a child who is
 149 alleged or is shown to be abused, abandoned, or neglected, which
 150 consultation shall be provided at the request of a
 151 representative of the family safety and preservation program or
 152 at the request of any other professional involved with a child
 153 or the child's parent or parents, legal custodian or custodians,
 154 or other caregivers. In every such child protection team case
 155 staffing, consultation, or staff activity involving a child, a
 156 family safety and preservation program representative shall
 157 attend and participate.

158 (g) Case service coordination and assistance, including the
 159 location of services available from other public and private
 160 agencies in the community.

161 (h) Such training services for program and other employees
 162 of the Department of Children and Families, employees of the
 163 Department of Health, and other medical professionals as is
 164 deemed appropriate to enable them to develop and maintain their
 165 professional skills and abilities in handling child abuse,
 166 abandonment, and neglect cases.

167 (i) Educational and community awareness campaigns on child
 168 abuse, abandonment, and neglect in an effort to enable citizens
 169 more successfully to prevent, identify, and treat child abuse,
 170 abandonment, and neglect in the community.

171 (j) Child protection team assessments that include, as
 172 appropriate, medical evaluations, medical consultations, family
 173 psychosocial interviews, specialized clinical interviews, or
 174 forensic interviews.

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176 A child protection team that is evaluating a report of medical
177 neglect and assessing the health care needs of a medically
178 complex child shall consult with a physician who has experience
179 in treating children with the same condition.

180 (4) The child abuse, abandonment, and neglect reports that
181 must be referred by the department to child protection teams of
182 the Department of Health for an assessment and other appropriate
183 available support services as set forth in subsection (3) must
184 include cases involving:

185 (a) Injuries to the head, bruises to the neck or head,
186 burns, or fractures in a child of any age.

187 (b) Bruises anywhere on a child 5 years of age or under.

188 (c) Any report alleging sexual abuse of a child.

189 (d) Any sexually transmitted disease in a prepubescent
190 child.

191 (e) Reported malnutrition of a child and failure of a child
192 to thrive.

193 (f) Reported medical neglect of a child.

194 (g) Any family in which one or more children have been
195 pronounced dead on arrival at a hospital or other health care
196 facility, or have been injured and later died, as a result of
197 suspected abuse, abandonment, or neglect, when any sibling or
198 other child remains in the home.

199 (h) Symptoms of serious emotional problems in a child when
200 emotional or other abuse, abandonment, or neglect is suspected.

201 (5) All abuse and neglect cases transmitted for
202 investigation to a circuit district by the hotline must be
203 simultaneously transmitted to the ~~Department of Health~~ child

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205 protection team for review. For the purpose of determining
206 whether a face-to-face medical evaluation by a child protection
207 team is necessary, all cases transmitted to the child protection
208 team which meet the criteria in subsection (4) must be timely
209 reviewed by:

210 (a) A physician licensed under chapter 458 or chapter 459
211 who holds board certification in pediatrics and is a member of a
212 child protection team;

213 (b) A physician licensed under chapter 458 or chapter 459
214 who holds board certification in a specialty other than
215 pediatrics, who may complete the review only when working under
216 the direction of the child protection team medical director or a
217 physician licensed under chapter 458 or chapter 459 who holds
218 board certification in pediatrics and is a member of a child
219 protection team;

220 (c) An advanced registered nurse practitioner licensed
221 under chapter 464 who has a specialty in pediatrics or family
222 medicine and is a member of a child protection team;

223 (d) A physician assistant licensed under chapter 458 or
224 chapter 459, who may complete the review only when working under
225 the supervision of the child protection team medical director or
226 a physician licensed under chapter 458 or chapter 459 who holds
227 board certification in pediatrics and is a member of a child
228 protection team; or

229 (e) A registered nurse licensed under chapter 464, who may
230 complete the review only when working under the direct
231 supervision of the child protection team medical director or a
232 board certification in pediatrics and is a member of a child

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233 protection team.

234 (6) A face-to-face medical evaluation by a child protection
235 team is not necessary when:

236 (a) The child was examined for the alleged abuse or neglect
237 by a physician who is not a member of the child protection team,
238 and a consultation between the child protection team medical
239 director or a child protection team board-certified
240 pediatrician, advanced registered nurse practitioner, physician
241 assistant working under the supervision of a child protection
242 team medical director or a child protection team board-certified
243 pediatrician, or registered nurse working under the direct
244 supervision of a child protection team medical director or a
245 child protection team board-certified pediatrician, and the
246 examining physician concludes that a further medical evaluation
247 is unnecessary;

248 (b) The child protective investigator, with supervisory
249 approval, has determined, after conducting a child safety
250 assessment, that there are no indications of injuries as
251 described in paragraphs (4) (a)-(h) as reported; or

252 (c) The child protection team medical director or a child
253 protection team board-certified pediatrician, as authorized in
254 subsection (5), determines that a medical evaluation is not
255 required.

256
257 Notwithstanding paragraphs (a), (b), and (c), a child protection
258 team medical director or a child protection team pediatrician,
259 as authorized in subsection (5), may determine that a face-to-
260 face medical evaluation is necessary.

261 (7) In all instances in which a child protection team is

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262 providing certain services to abused, abandoned, or neglected
263 children, other offices and units of the Department of Health,
264 and offices and units of the Department of Children and
265 Families, shall avoid duplicating the provision of those
266 services.

267 (8) The Department of Health child protection team quality
268 assurance program and the Family Safety Program Office of the
269 Department of Children and Families shall collaborate to ensure
270 referrals and responses to child abuse, abandonment, and neglect
271 reports are appropriate. Each quality assurance program shall
272 include a review of records in which there are no findings of
273 abuse, abandonment, or neglect, and the findings of these
274 reviews shall be included in each department's quality assurance
275 reports.

276 (9) (a) Children's Medical Services shall convene a task
277 force to develop a standardized protocol for forensic
278 interviewing of children suspected of having been abused. The
279 Department of Health shall provide staff to the task force as
280 necessary. The task force must include:

281 1. A representative from the Florida Prosecuting Attorneys
282 Association.

283 2. A representative from the Florida Psychological
284 Association.

285 3. The Statewide Medical Director for Child Protection.

286 4. A representative from the Florida Public Defender
287 Association.

288 5. The executive director of the Statewide Guardian Ad
289 Lite Office.

290 6. A representative from a community-based care lead

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291 agency.
 292 7. A representative from Children's Medical Services.
 293 8. A representative from the Florida Sheriffs Association.
 294 9. A representative from the Florida Chapter of the
 295 American Academy of Pediatrics.
 296 10. A representative from the Florida Network of Children's
 297 Advocacy Centers.
 298 11. Other representatives designated by Children's Medical
 299 Services.
 300 (b) Children's Medical Services must provide the
 301 standardized protocol to the President of the Senate and the
 302 Speaker of the House of Representatives by July 1, 2018.
 303 (c) Members of the task force are not entitled to per diem
 304 or other payment for service on the task force.
 305 (10) The Children's Medical Services program in the
 306 Department of Health shall develop, maintain, and coordinate the
 307 services of one or more sexual abuse treatment programs.
 308 (a) A child under the age of 18 who is alleged to be a
 309 victim of sexual abuse, his or her siblings, non-offending
 310 caregivers, and family members who have been impacted by sexual
 311 abuse are eligible for services.
 312 (b) Sexual abuse treatment programs must provide
 313 specialized therapeutic treatment to victims of child sexual
 314 abuse, their siblings, nonoffending caregivers, and family
 315 members to assist in recovery from sexual abuse, to prevent
 316 developmental impairment, to restore the children's pre-abuse
 317 level of developmental functioning, and to promote healthy, non-
 318 abusive relationships. Therapeutic intervention services must
 319 include crisis intervention, clinical treatment, and individual,

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320 family, and group therapy.
 321 (c) The sexual abuse treatment programs and child
 322 protection teams must provide referrals for victims of child
 323 sexual abuse and their families, as appropriate.
 324 Section 2. Section 39.3031, Florida Statutes, is amended to
 325 read:
 326 39.3031 Rules for implementation of s. 39.303.—The
 327 Department of Health, in consultation with the Department of
 328 Children and Families, shall adopt rules governing the child
 329 protection teams and sexual abuse treatment programs pursuant to
 330 s. 39.303, including definitions, organization, roles and
 331 responsibilities, eligibility, services and their availability,
 332 qualifications of staff, and a waiver-request process.
 333 Section 3. Paragraph (c) of subsection (2) of section
 334 458.3175, Florida Statutes, is amended to read:
 335 458.3175 Expert witness certificate.—
 336 (2) An expert witness certificate authorizes the physician
 337 to whom the certificate is issued to do only the following:
 338 (c) Provide expert testimony in criminal child abuse and
 339 neglect cases pursuant to chapter 827, dependency cases pursuant
 340 to chapter 39, and cases involving sexual battery of a child
 341 pursuant to chapter 794 in this state.
 342 Section 4. Paragraph (c) of subsection (2) of section
 343 459.0066, Florida Statutes, is amended to read:
 344 459.0066 Expert witness certificate.—
 345 (2) An expert witness certificate authorizes the physician
 346 to whom the certificate is issued to do only the following:
 347 (c) Provide expert testimony in criminal child abuse and
 348 neglect cases pursuant to chapter 827, dependency cases pursuant

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349 to chapter 39, and cases involving sexual battery of a child
350 pursuant to chapter 794 in this state.

351 Section 5. Paragraph (d) of subsection (3) of section
352 827.03, Florida Statutes, is amended to read:

353 827.03 Abuse, aggravated abuse, and neglect of a child;
354 penalties.-

355 (3) EXPERT TESTIMONY.-

356 (d) The expert testimony requirements of this subsection
357 apply only to criminal child abuse and neglect cases pursuant to
358 chapter 827, dependency cases pursuant to chapter 39, and cases
359 involving sexual battery of a child pursuant to chapter 794 and
360 not to family court ~~or dependency court~~ cases.

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

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 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]ny 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 system⁸ 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://miamidadefl.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](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-Plate¹¹ 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 audit¹⁵ 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. Tolloed 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

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/FLGANCVValid.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 legislation³⁵ 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.

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



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LEGISLATIVE ACTION

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

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



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11 high-occupancy toll lanes or express lanes. The department may
12 require the use of an electronic transponder interoperable with
13 the department's electronic toll collection system for the use
14 of high-occupancy toll lanes or express lanes.

15 (5) Effective July 1, 2018, if a customer's average travel
16 speed for a trip in an express lane falls below 40 miles per
17 hour, the customer must be charged the minimum express lane
18 toll. A customer's express lane average travel speed is his or
19 her average travel speed from the customer's entry point to the
20 customer's exit point.

21 Section 2. Paragraph (d) of subsection (1) of section
22 338.2216, Florida Statutes, is amended, and paragraph (e) is
23 added to that subsection, to read:

24 338.2216 Florida Turnpike Enterprise; powers and
25 authority.—

26 (1)

27 (d) The Florida Turnpike Enterprise shall pursue and
28 implement new technologies and processes in its operations and
29 collection of tolls and the collection of other amounts
30 associated with road and infrastructure usage. Such technologies
31 and processes must include, without limitation, video billing
32 and variable pricing. The Florida Turnpike Enterprise may
33 require the use of an electronic transponder interoperable with
34 the department's electronic toll collection system for the use
35 of express lanes on the turnpike system. Variable pricing may
36 not be implemented in express lanes when the level of service in
37 the express lane, determined in accordance with the criteria
38 established by the Transportation Research Board Highway
39 Capacity Manual (5th Edition, HCM 2010), as amended from time to



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40 time, is equal to level of service A. Variable pricing in
41 express lanes when the level of service in the express lane is
42 level of service B may only be implemented by charging the
43 general toll lane toll amount plus an amount set by department
44 rule. Except as otherwise provided in this subsection, pricing
45 in express lanes when the level of service is other than level
46 of service A or level of service B may vary in the manner
47 established by the Florida Turnpike Enterprise to manage
48 congestion in the express lanes.

49 (e) Effective July 1, 2018, if a customer's average travel
50 speed for a trip in an express lane falls below 40 miles per
51 hour, the customer must be charged the general toll lane toll
52 amount plus an amount set by department rule. A customer's
53 express lane average travel speed is his or her average travel
54 speed from the customer's entry point to the customer's exit
55 point.

56 Section 3. Paragraph (a) of subsection (3) of section
57 338.231, Florida Statutes, is amended to read:

58 338.231 Turnpike tolls, fixing; pledge of tolls and other
59 revenues.—The department shall at all times fix, adjust, charge,
60 and collect such tolls and amounts for the use of the turnpike
61 system as are required in order to provide a fund sufficient
62 with other revenues of the turnpike system to pay the cost of
63 maintaining, improving, repairing, and operating such turnpike
64 system; to pay the principal of and interest on all bonds issued
65 to finance or refinance any portion of the turnpike system as
66 the same become due and payable; and to create reserves for all
67 such purposes.

68 (3) (a) For the period July 1, 1998, through June 30, 2027



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69 ~~2017~~, the department shall, to the maximum extent feasible,
70 program sufficient funds in the tentative work program such that
71 the percentage of turnpike toll and bond financed commitments in
72 Miami-Dade County, Broward County, and Palm Beach County as
73 compared to total turnpike toll and bond financed commitments
74 shall be at least 90 percent of the share of net toll
75 collections attributable to users of the turnpike system in
76 Miami-Dade County, Broward County, and Palm Beach County as
77 compared to total net toll collections attributable to users of
78 the turnpike system. This subsection does not apply when the
79 application of such requirements would violate any covenant
80 established in a resolution or trust indenture relating to the
81 issuance of turnpike bonds. The department may at any time for
82 economic considerations establish lower temporary toll rates for
83 a new or existing toll facility for a period not to exceed 1
84 year, after which the toll rates adopted pursuant to s. 120.54
85 shall become effective.

86 Section 4. Present subsections (6) through (9) of section
87 348.0004, Florida Statutes, are redesignated as subsections (7)
88 through (10), respectively, paragraph (e) of subsection (2) of
89 that section is amended, and a new subsection (6) and
90 subsections (11), (12), and (13) are added to that section, to
91 read:

92 348.0004 Purposes and powers.—

93 (2) Each authority may exercise all powers necessary,
94 appurtenant, convenient, or incidental to the carrying out of
95 its purposes, including, but not limited to, the following
96 rights and powers:

97 (e) To fix, alter, charge, establish, and collect tolls,



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98 rates, fees, rentals, and other charges for the services and
99 facilities system, which tolls, rates, fees, rentals, and other
100 charges must always be sufficient to comply with any covenants
101 made with the holders of any bonds issued pursuant to the
102 Florida Expressway Authority Act. However, such right and power
103 may be assigned or delegated by the authority to the department.

104 1. Notwithstanding any other provision of law to the
105 contrary, but subject to any contractual requirements contained
106 in documents securing any indebtedness outstanding on July 1,
107 2017, in any county as defined in s. 125.011(1):

108 a. The authority may not increase a toll unless the
109 increase is justified to the satisfaction of the authority by a
110 traffic and revenue study conducted by an independent third
111 party, except for an increase to the extent necessary to adjust
112 for inflation pursuant to the procedure for toll rate
113 adjustments provided in s. 338.165.

114 b. A toll increase must be approved by a two-thirds vote of
115 the expressway authority board.

116 c. The amount of toll revenues used for administrative
117 expenses by the authority may not be greater than 10 percent
118 above the annual state average of administrative costs
119 determined as provided in this sub-subparagraph. The Florida
120 Transportation Commission shall determine the annual state
121 average of administrative costs based on the annual
122 administrative expenses of all the expressway authorities of
123 this state. For purposes of this sub-subparagraph,
124 administrative expenses include, but are not limited to,
125 employee salaries and benefits, small business outreach,
126 insurance, professional service contracts not directly related



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127 to the operation and maintenance of the expressway system, and
128 other overhead costs. The commission may adopt rules necessary
129 for the implementation of this sub-subparagraph.

130 d. On transportation facilities constructed after July 1,
131 2017, there must be a distance of at least 5 miles between main
132 through lane tolling points. The distance requirement of this
133 sub-subparagraph does not apply to entry and exit ramps.

134 2. Notwithstanding s. 338.165 or any other provision of law
135 to the contrary, in any county as defined in s. 125.011(1), to
136 the extent surplus revenues exist, they may be used for purposes
137 enumerated in subsection (8) ~~(7)~~, provided the expenditures are
138 consistent with the metropolitan planning organization's adopted
139 long-range plan.

140 3. Notwithstanding any other provision of law to the
141 contrary, but subject to any contractual requirements contained
142 in documents securing any outstanding indebtedness payable from
143 tolls, in any county as defined in s. 125.011(1), the board of
144 county commissioners may, by ordinance adopted on or before
145 September 30, 1999, alter or abolish existing tolls and
146 currently approved increases thereto if the board provides a
147 local source of funding to the county expressway system for
148 transportation in an amount sufficient to replace revenues
149 necessary to meet bond obligations secured by such tolls and
150 increases.

151 (6) Subject to compliance with any covenants made with the
152 holders of any bonds issued pursuant to the Florida Expressway
153 Authority Act, an authority in any county as defined in s.
154 125.011(1) shall, at the time that any toll is incurred, reduce
155 the toll charged on any of the authority's toll facilities by at



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156 least 5 percent, but not more than 10 percent, for each SunPass
157 registrant having an account in good standing and having the
158 license plate of the vehicle or vehicles incurring the toll
159 registered to the SunPass account at the time the toll is
160 incurred. The authority may not impose additional requirements
161 for receipt of the reduced toll amount.

162 (11) Notwithstanding any other provision of the Florida
163 Expressway Authority Act, an authority in any county as defined
164 in s. 125.011(1) shall determine its surplus revenues as defined
165 in s. 348.0002(12). The authority shall then dedicate at least
166 20 percent, but not more than 50 percent, of the annual surplus
167 revenues to transportation- and transit-related expenses for
168 projects in the area served by the authority. The metropolitan
169 planning organization for any county as defined in s. 125.011(1)
170 shall annually select a project or projects within the county to
171 be funded by the authority's dedicated surplus revenues as
172 provided in this subsection and provide to the authority a list
173 reflecting the selected project or projects. The authority shall
174 select from the list for funding from the authority's dedicated
175 surplus revenues transportation- and transit-related expenses
176 that have a rational nexus to the transportation facilities of
177 the authority and may include, but are not limited to, expenses
178 associated with the planning, design, acquisition, construction,
179 extension, rehabilitation, equipping, preservation, maintenance,
180 or improvement of public transportation facilities, transit
181 facilities, intermodal facilities, or multimodal corridors owned
182 or operated by such municipality or county; and transit-related
183 expenses that impact the capacity or use of the transportation
184 facilities of the authority. For the purpose of this subsection,



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185 a rational nexus must demonstrate that the proposed
186 transportation expenditure makes a substantial impact on the
187 capacity or use of the transportation facilities of the
188 authority, or that the proposed transit expenditure complements
189 the operation of, or expands the access to, the transportation
190 facilities of the authority.

191 (12) A county as defined in s. 125.011(1) must have a
192 financial audit of the revenues and expenditures of the county's
193 transportation plan conducted by an independent third party not
194 less than biennially and must post the audits on the county's
195 website to be eligible to receive the dedicated surplus revenues
196 as provided in subsection (11).

197 (13) An authority established in any county as defined in
198 125.011(1) must have a financial audit conducted by an
199 independent third party not less than biennially, and the audit
200 report must be made publicly available on the authority's
201 website.

202 Section 5. This act shall take effect July 1, 2017.

203
204 ===== T I T L E A M E N D M E N T =====

205 And the title is amended as follows:

206 Delete everything before the enacting clause
207 and insert:

208 A bill to be entitled
209 An act relating to limited access and toll facilities;
210 amending s. 338.166, F.S.; authorizing the Department
211 of Transportation to require the use of an electronic
212 transponder interoperable with the department's
213 electronic toll collection system for the use of high-



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214 occupancy toll lanes or express lanes; requiring, as
215 of a specified date, that a customer be charged the
216 minimum express lane toll if his or her average travel
217 speed for a trip in an express lane falls below a
218 specified rate; providing measurement of a customer's
219 express lane average travel speed; amending s.
220 338.2216, F.S.; authorizing the Florida Turnpike
221 Enterprise to require the use of an electronic
222 transponder interoperable with the department's
223 electronic toll collection system for the use of
224 express lanes on the turnpike system; prohibiting
225 variable pricing from being implemented in express
226 lanes when the level of service in the express lane,
227 determined in accordance with specified criteria, is
228 equal to level of service A; specifying that variable
229 pricing in express lanes when the level of service in
230 the express lane is level of service B may only be
231 implemented by charging the general toll lane toll
232 amount plus an amount set by department rule;
233 providing that pricing in express lanes when the level
234 of service is other than level of service A or level
235 of service B may vary in the manner established by the
236 Florida Turnpike Enterprise to manage congestion in
237 the express lanes; requiring, as of a specified date,
238 that a customer be charged a general toll lane toll
239 amount plus an amount set by department rule if his or
240 her average travel speed for a trip in an express lane
241 falls below a specified rate; providing for
242 measurement of a customer's express lane average



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243 travel speed; amending s. 338.231, F.S.; extending the
244 timeframe during which the department must program
245 sufficient funds in the tentative work program such
246 that the percentage of turnpike toll and bond financed
247 commitments in Miami-Dade County, Broward County, and
248 Palm Beach County are at least a specified percent of
249 a certain share of certain net toll collections;
250 amending s. 348.0004, F.S.; providing applicability;
251 requiring toll increases by authorities in certain
252 counties to be justified by an independent study by a
253 third party; providing an exception for an increase to
254 adjust for inflation pursuant to a specified procedure
255 for toll rate adjustments; requiring toll increases to
256 be approved by a specified margin in a vote of the
257 expressway authority board; prohibiting the amount of
258 toll revenues used for administrative expenses by the
259 authority from being greater than a specified
260 percentage above the annual state average of
261 administrative costs; requiring the Florida
262 Transportation Commission to determine the annual
263 state average of administrative costs based on the
264 annual administrative expenses of all the expressway
265 authorities of this state; authorizing the commission
266 to adopt certain rules; requiring a specified distance
267 between main through-lane tolling points on
268 transportation facilities constructed after a
269 specified date; providing applicability; conforming a
270 cross-reference; requiring authorities in certain
271 counties to reduce toll charges by a specified amount



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272 at the time that any toll is incurred for certain
273 SunPass registrants, subject to certain requirements;
274 prohibiting such authorities from imposing additional
275 requirements for receipt of the reduced toll amount;
276 requiring an authority in certain counties to
277 determine its surplus revenues and dedicate a certain
278 amount of the annual surplus revenues to
279 transportation- and transit-related expenses for
280 projects in the area served by the authority;
281 requiring the metropolitan planning organization for
282 certain counties to annually select a project or
283 projects within the counties to be funded by the
284 authority's dedicated surplus revenues and provide to
285 the authority a list reflecting the selected project
286 or projects; requiring the authority to select from
287 the list for funding from the authority's dedicated
288 surplus revenues transportation- and transit-related
289 expenses that have a rational nexus to the
290 transportation facilities of the authority; requiring
291 a rational nexus to demonstrate that the proposed
292 transportation expenditure makes a substantial impact
293 on the capacity or use of the transportation
294 facilities of the authority or that the proposed
295 transit expenditure complements the operation of, or
296 expands the access to, the transportation facilities
297 of the authority; requiring certain counties to have a
298 financial audit of the revenues and expenditures of
299 the county's transportation plan conducted by an
300 independent third party not less than biennially and



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301 to post the audits on the counties' websites to be
302 eligible to receive the dedicated surplus revenues;
303 requiring that an authority established in certain
304 counties have an audit conducted by an independent
305 third party not less than biennially; requiring the
306 audit report be made publicly available on the
307 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)

1 A bill to be entitled
2 An act relating to limited access and toll facilities;
3 amending s. 338.166, F.S.; authorizing the department
4 to require use of an electronic transponder
5 interoperable with the department's electronic toll
6 collection system for the use of high-occupancy toll
7 lanes or express lanes; requiring, as of a specified
8 date, that a customer be charged the minimum express
9 lane toll if his or her average travel speed for a
10 trip in an express lane falls below a specified rate;
11 providing for measurement of a customer's express lane
12 average travel speed; amending s. 338.2216, F.S.;
13 authorizing the Florida Turnpike Enterprise to require
14 use of an electronic transponder interoperable with
15 the department's electronic toll collection system for
16 the use of express lanes on the turnpike system;
17 prohibiting variable pricing from being implemented in
18 express lanes when the level of service in the express
19 lane, determined in accordance with specified
20 criteria, is equal to level of service A; specifying
21 that variable pricing in express lanes when the level
22 of service in the express lane is level of service B
23 may only be implemented by charging the general toll
24 lane toll amount plus a specified amount; providing
25 that pricing in express lanes when the level of
26 service is other than level of service A or B may vary



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27 in the manner established by the Florida Turnpike
28 Enterprise to manage congestion in the express lanes;
29 requiring, as of a specified date, that a customer be
30 charged a general toll lane toll amount plus a
31 specified amount if his or her average travel speed
32 for a trip in an express lane falls below a specified
33 rate; providing for measurement of a customer's
34 express lane average travel speed; amending s.
35 338.231, F.S.; extending the timeframe during which
36 the Department of Transportation must program
37 sufficient funds in the tentative work program such
38 that the percentage of turnpike toll and bond financed
39 commitments in Miami-Dade County, Broward County, and
40 Palm Beach County are at least a specified percent of
41 a certain share of certain net toll collections;
42 amending s. 348.0004, F.S.; providing applicability;
43 requiring toll increases by authorities in certain
44 counties to be justified by an independent study by a
45 third party; providing an exception for an increase to
46 adjust for inflation pursuant to a specified procedure
47 for toll rate adjustments; requiring toll increases to
48 be approved by a specified margin in a vote of the
49 expressway authority board; prohibiting the amount of
50 toll revenues used for administrative expenses by the
51 authority from being greater than a specified
52 percentage above the annual state average of
53 administrative costs; requiring the Florida
54 Transportation Commission to determine the annual
55 state average of administrative costs based on the



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56 annual administrative expenses of all the expressway
57 authorities of this state; authorizing the commission
58 to adopt certain rules; conforming a cross-reference;
59 authorizing authorities in certain counties to reduce
60 toll charges up to a specified amount at the time that
61 any toll is incurred for certain SunPass registrants,
62 subject to certain requirements; prohibiting such
63 authorities from imposing additional requirements for
64 receipt of the reduced toll amount; requiring an
65 authority in certain counties to determine its surplus
66 revenues and deduct from the surplus revenues a
67 prudent reserve as determined by the board; requiring
68 such authority to dedicate a certain amount of the
69 remaining surplus revenues after the deduction of a
70 prudent reserve to transportation- and transit-related
71 expenses for projects in municipalities and counties
72 in which the authority operates; authorizing the
73 authority to determine which specific transportation-
74 and transit-related expenses to fund from proposals
75 submitted by municipalities and counties; requiring
76 the transportation- and transit-related expenses
77 funded to have a rational nexus to the transportation
78 facilities of the authority; requiring a rational
79 nexus to demonstrate that the proposed transportation
80 expenditure makes a substantial impact on the capacity
81 or use of the transportation facilities of the
82 authority or that the proposed transit expenditure
83 complements the operation of, or expands the access
84 to, the transportation facilities of the authority;



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85 requiring that an authority established in certain
86 counties have an audit conducted by an independent
87 third party not less than biennially; requiring the
88 audit report be made publicly available on the
89 authority's website; creating s. 348.00115, F.S.;
90 requiring authorities in certain counties to post
91 certain information on a website; defining the term
92 "contract"; providing an effective date.

93
94 Be It Enacted by the Legislature of the State of Florida:

95
96 Section 1. Present subsections (5) and (6) of section
97 338.166, Florida Statutes, are redesignated as subsections (6)
98 and (7), respectively, subsection (4) is amended, and a new
99 subsection (5) is added to that section, to read:

100 338.166 High-occupancy toll lanes or express lanes.-

101 (4) The department may implement variable rate tolls on
102 high-occupancy toll lanes or express lanes. The department may
103 require use of an electronic transponder interoperable with the
104 department's electronic toll collection system for the use of
105 high-occupancy toll lanes or express lanes.

106 (5) Effective July 1, 2018, if a customer's average travel
107 speed for a trip in an express lane falls below 40 miles per
108 hour, the customer must be charged the minimum express lane
109 toll. A customer's express lane average travel speed is his or
110 her average travel speed from the customer's entry point to the
111 customer's exit point.

112 Section 2. Paragraph (d) of subsection (1) of section
113 338.2216, Florida Statutes, is amended, and paragraph (e) is



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114 added to that subsection, to read:

115 338.2216 Florida Turnpike Enterprise; powers and
116 authority.-

117 (1)

118 (d) The Florida Turnpike Enterprise shall pursue and
119 implement new technologies and processes in its operations and
120 collection of tolls and the collection of other amounts
121 associated with road and infrastructure usage. Such technologies
122 and processes must include, without limitation, video billing
123 and variable pricing. The Florida Turnpike Enterprise may
124 require use of an electronic transponder interoperable with the
125 department's electronic toll collection system for the use of
126 express lanes on the turnpike system. Variable pricing may not
127 be implemented in express lanes when the level of service in the
128 express lane, determined in accordance with the criteria
129 established by the Transportation Research Board Highway
130 Capacity Manual (5th Edition, HCM 2010), as amended from time to
131 time, is equal to level of service A. Variable pricing in
132 express lanes when the level of service in the express lane is
133 level of service B may only be implemented by charging the
134 general toll lane toll amount plus 25 cents. Except as otherwise
135 provided in this subsection, pricing in express lanes when the
136 level of service is other than level of service A or service B
137 may vary in the manner established by the Florida Turnpike
138 Enterprise to manage congestion in the express lanes.

139 (e) Effective July 1, 2018, if a customer's average travel
140 speed for a trip in an express lane falls below 40 miles per
141 hour, the customer must be charged the general toll lane toll
142 amount plus 25 cents. A customer's express lane average travel



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153 speed is his or her average travel speed from the customer's
154 entry point to the customer's exit point.

155 Section 3. Paragraph (a) of subsection (3) of section
156 338.231, Florida Statutes, is amended to read:

157 338.231 Turnpike tolls, fixing; pledge of tolls and other
158 revenues.-The department shall at all times fix, adjust, charge,
159 and collect such tolls and amounts for the use of the turnpike
160 system as are required in order to provide a fund sufficient
161 with other revenues of the turnpike system to pay the cost of
162 maintaining, improving, repairing, and operating such turnpike
163 system; to pay the principal of and interest on all bonds issued
164 to finance or refinance any portion of the turnpike system as
165 the same become due and payable; and to create reserves for all
166 such purposes.

167 (3) (a) For the period July 1, 1998, through June 30, ~~2017~~
168 ~~2017~~, the department shall, to the maximum extent feasible,
169 program sufficient funds in the tentative work program such that
170 the percentage of turnpike toll and bond financed commitments in
171 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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172 a new or existing toll facility for a period not to exceed 1
173 year, after which the toll rates adopted pursuant to s. 120.54
174 shall become effective.

175 Section 4. Present subsections (6) through (9) of section
176 348.0004, Florida Statutes, are redesignated as subsections (7)
177 through (10), respectively, paragraph (e) of subsection (2) of
178 that section is amended, and a new subsection (6), and
179 subsections (11) and (12) are added to that section, to read:

180 348.0004 Purposes and powers.—

181 (2) Each authority may exercise all powers necessary,
182 appurtenant, convenient, or incidental to the carrying out of
183 its purposes, including, but not limited to, the following
184 rights and powers:

185 (e) To fix, alter, charge, establish, and collect tolls,
186 rates, fees, rentals, and other charges for the services and
187 facilities system, which tolls, rates, fees, rentals, and other
188 charges must always be sufficient to comply with any covenants
189 made with the holders of any bonds issued pursuant to the
190 Florida Expressway Authority Act. However, such right and power
191 may be assigned or delegated by the authority to the department.

192 1. Notwithstanding any other provision of law to the
193 contrary, but subject to any contractual requirements contained
194 in documents securing any indebtedness outstanding on July 1,
195 2017, in any county as defined in s. 125.011(1):

196 a. The authority may not increase a toll unless the
197 increase is justified to the satisfaction of the authority by a
198 traffic and revenue study conducted by an independent third
199 party, except for an increase to the extent necessary to adjust
200 for inflation pursuant to the procedure for toll rate



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201 adjustments provided in s. 338.165.

202 b. A toll increase must be approved by a two-thirds vote of
203 the expressway authority board.

204 c. The amount of toll revenues used for administrative
205 expenses by the authority may not be greater than 10 percent
206 above the annual state average of administrative costs
207 determined as provided in this sub-subparagraph. The Florida
208 Transportation Commission shall determine the annual state
209 average of administrative costs based on the annual
210 administrative expenses of all the expressway authorities of
211 this state. For purposes of this sub-subparagraph,
212 administrative expenses include, but are not limited to,
213 employee salaries and benefits, small business outreach,
214 insurance, professional service contracts not directly related
215 to the operation and maintenance of the expressway system, and
216 other overhead costs. The commission may adopt rules necessary
217 for the implementation of this sub-subparagraph.

218 2. Notwithstanding s. 338.165 or any other provision of law
219 to the contrary, in any county as defined in s. 125.011(1), to
220 the extent surplus revenues exist, they may be used for purposes
221 enumerated in subsection (8) (7), provided the expenditures are
222 consistent with the metropolitan planning organization's adopted
223 long-range plan.

224 3. Notwithstanding any other provision of law to the
225 contrary, but subject to any contractual requirements contained
226 in documents securing any outstanding indebtedness payable from
227 tolls, in any county as defined in s. 125.011(1), the board of
228 county commissioners may, by ordinance adopted on or before
229 September 30, 1999, alter or abolish existing tolls and



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230 currently approved increases thereto if the board provides a
231 local source of funding to the county expressway system for
232 transportation in an amount sufficient to replace revenues
233 necessary to meet bond obligations secured by such tolls and
234 increases.

235 (6) Subject to compliance with any covenants made with the
236 holders of any bonds issued pursuant to the Florida Expressway
237 Authority Act, an authority in any county as defined in s.
238 125.011(1) may, at the time that any toll is incurred, reduce
239 the toll charged on any of the authority's toll facilities by up
240 to 10 percent for each SunPass registrant having an account in
241 good standing and having the license plate of the vehicle or
242 vehicles incurring the toll registered to the SunPass account at
243 the time the toll is incurred. The authority may not impose
244 additional requirements for receipt of the reduced toll amount.

245 (11) Notwithstanding any other provision of the Florida
246 Expressway Authority Act, an authority in any county as defined
247 in s. 125.011(1) shall determine its surplus revenues as defined
248 in s. 348.0002(12) and deduct from the surplus revenues a
249 prudent reserve as determined by the board. The authority shall
250 then dedicate at least 10 percent, but not greater than 30
251 percent, of the remaining surplus revenues after the deduction
252 of a prudent reserve to transportation- and transit-related
253 expenses for projects in municipalities and counties in which
254 the authority operates. The authority may determine which
255 specific transportation- and transit-related expenses to fund
256 from proposals submitted by municipalities and counties.
257 Transportation- and transit-related expenses funded pursuant to
258 this subsection must have a rational nexus to the transportation



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259 facilities of the authority and may include, but are not limited
260 to, expenses associated with the planning, design, acquisition,
261 construction, extension, rehabilitation, equipping,
262 preservation, maintenance, or improvement of public
263 transportation facilities, transit facilities, intermodal
264 facilities, or multimodal corridors owned or operated by such
265 municipality or county, and transit-related expenses that impact
266 the capacity or use of the transportation facilities of the
267 authority. For the purpose of this subsection, a rational nexus
268 must demonstrate that the proposed transportation expenditure
269 makes a substantial impact on the capacity or use of the
270 transportation facilities of the authority, or that the proposed
271 transit expenditure complements the operation of, or expands the
272 access to, the transportation facilities of the authority.

273 (12) An authority established in any county as defined in
274 125.011(1) must have an audit conducted by an independent third
275 party not less than biennially, and the audit report must be
276 made publicly available on the authority's website.

277 Section 5. Section 348.00115, Florida Statutes, is created
278 to read:

279 348.00115 Public accountability.—An expressway authority in
280 a county as defined in s. 125.011(1) shall post the following
281 information on its website:

282 (1) Audited financial statements and any interim financial
283 reports.

284 (2) Board and committee meeting agendas, meeting packets,
285 and minutes.

286 (3) Bond covenants for any outstanding bond issues.

287 (4) Authority budgets.



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288 (5) Authority contracts. For purposes of this subsection,
289 the term "contract" means a written agreement or purchase order
290 issued for the purchase of goods or services or a written
291 agreement for the receipt of state or federal financial
292 assistance.

293 (6) Authority expenditure data, which must include the name
294 of the payee, the date of the expenditure, and the amount of the
295 expenditure. Such data must be searchable by name of the payee,
296 name of the paying agency, and fiscal year and must be
297 downloadable in a format that allows offline analysis.

298 (7) Information relating to current, recently completed,
299 and future projects on authority facilities.

300 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]ny 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 system⁸ 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](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-Plate¹¹ 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 audit¹⁵ 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. Tolloed 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

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/FLGANCVValid.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 legislation³³ 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 with placing 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:

Page 1 of 5

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

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.

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59 c. A toll increase must be approved by a two-thirds vote of
60 the expressway authority board.

61 d. The authority may not use more than 10 percent of its
62 toll revenues for administrative expenses. For purposes of this
63 sub-subparagraph, administrative expenses include, but are not
64 limited to, employee salaries and benefits, small business
65 outreach, insurance, professional service contracts not directly
66 related to the operation and maintenance of the expressway
67 system, and other overhead costs.

68 e. On transportation facilities constructed after July 1,
69 2017, there must be a distance of at least 5 miles between main
70 through-lane tolling points. The distance requirement of this
71 sub-subparagraph does not apply to entry and exit ramps. The
72 authority may not increase a toll on an individual toll facility
73 to implement this sub-subparagraph.

74 2. Notwithstanding s. 338.165 or any other provision of law
75 to the contrary, in any county as defined in s. 125.011(1), to
76 the extent surplus revenues exist, they may be used for purposes
77 enumerated in subsection (8) ~~(7)~~, provided the expenditures are
78 consistent with the metropolitan planning organization's adopted
79 long-range plan.

80 3. Notwithstanding any other provision of law to the
81 contrary, but subject to any contractual requirements contained
82 in documents securing any outstanding indebtedness payable from
83 tolls, in any county as defined in s. 125.011(1), the board of
84 county commissioners may, by ordinance adopted on or before
85 September 30, 1999, alter or abolish existing tolls and
86 currently approved increases thereto if the board provides a
87 local source of funding to the county expressway system for

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88 transportation in an amount sufficient to replace revenues
89 necessary to meet bond obligations secured by such tolls and
90 increases.

91 (6) An authority in any county as defined in s. 125.011(1)
92 shall, at the time that any toll is incurred, reduce the toll
93 charged on any of the authority's toll facilities by 25 percent
94 for each SunPass registrant having an account in good standing
95 and having the license plate of the vehicle or vehicles
96 incurring the toll registered to the SunPass account at the time
97 the toll is incurred. The authority may not impose additional
98 requirements for receipt of the reduced toll amount.

99 Section 3. Section 348.00115, Florida Statutes, is created
100 to read:

101 348.00115 Public accountability.—An expressway authority in
102 a county as defined in s. 125.011(1) shall post the following
103 information on its website:

104 (1) Audited financial statements and any interim financial
105 reports.

106 (2) Board and committee meeting agendas, meeting packets,
107 and minutes.

108 (3) Bond covenants for any outstanding bond issues.

109 (4) Authority budgets.

110 (5) Authority contracts. For purposes of this subsection,
111 "contract" means a written agreement or purchase order issued
112 for the purchase of goods or services or a written agreement for
113 the receipt of state or federal financial assistance.

114 (6) Authority expenditure data, which must include the name
115 of the payee, the date of the expenditure, and the amount of the
116 expenditure. Such data must be searchable by name of the payee,

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117 name of the paying agency, and fiscal year and must be
118 downloadable in a format that allows offline analysis.

119 (7) Information relating to current, recently completed,
120 and future projects on authority facilities.

121 Section 4. This act shall take effect July 1, 2017.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 1564

INTRODUCER: Senator Garcia

SUBJECT: Domestic Violence

DATE: April 24, 2017

REVISED: 4/20/17

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	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 convicted³ 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 felony⁷ 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 felony⁸ 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 felony¹⁰ 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.

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

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

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59 offense, and 30 days for a third or subsequent offense as part
 60 of the sentence imposed, unless the court sentences the person
 61 to a nonsuspended period of incarceration in a state
 62 correctional facility.

63 (2) This section does not preclude the court from
 64 sentencing the person to probation, community control, or an
 65 additional period of incarceration.

66 Section 3. Paragraphs (g), (h), (i), and (j) of subsection
 67 (1) of section 741.30, Florida Statutes, are redesignated as
 68 paragraphs (h), (i), (j), and (k), respectively, and a new
 69 paragraph (g) is added to that subsection, to read:

70 741.30 Domestic violence; injunction; powers and duties of
 71 court and clerk; petition; notice and hearing; temporary
 72 injunction; issuance of injunction; statewide verification
 73 system; enforcement; public records exemption.—

74 (1) There is created a cause of action for an injunction
 75 for protection against domestic violence.

76 (g) Notwithstanding any other law, attorney fees may not be
 77 awarded in any proceeding under this section.

78 Section 4. Paragraph (c) of subsection (1) of section
 79 775.08435, Florida Statutes, is redesignated as paragraph (d),
 80 and a new paragraph (c) is added to that subsection, to read:

81 775.08435 Prohibition on withholding adjudication in felony
 82 cases.—

83 (1) Notwithstanding the provisions of s. 948.01, the court
 84 may not withhold adjudication of guilt upon the defendant for:

85 (c) A third degree felony that is a crime of domestic
 86 violence, as defined in s. 741.28, unless:

87 1. The state attorney requests in writing that adjudication

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88 be withheld; or

89 2. The court makes written findings that the withholding of
 90 adjudication is reasonably justified based on circumstances or
 91 factors in accordance with s. 921.0026.

92 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.	<u>Bouck</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Favorable</u>
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 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 audits⁴ 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

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 invest¹³ such moneys.
- Approve and administer an annual operating budget in accordance with law.¹⁴

The FSDB was appropriated \$50,188,933¹⁵ for operations \$9,074,268¹⁶ for fixed capital outlay in the 2016-17 fiscal year.

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 programs²⁵ 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 resides²⁸ if he or she meets one of the following:²⁹

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 program³⁰ 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 offices⁴⁴. 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

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](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 law⁴⁷ 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.

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.fl DOE.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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11 (a) It is the intent of the Legislature to establish a
12 coordinated program of services which will be available to
13 individuals throughout this state who are blind. The program
14 must be designed to maximize employment opportunities for such
15 individuals and to increase their independence and self-
16 sufficiency.

17 (b) A client of the division who is participating in on-
18 the-job training shall be deemed an employee of the state for
19 purposes of workers' compensation coverage.

20 Section 3. Section 413.209, Florida Statutes, is created to
21 read:

22 413.209 Workers' compensation coverage for clients in on-
23 the-job training.-A client of the Division of Vocational
24 Rehabilitation of the Department of Education who is
25 participating in on-the-job training as a vocational
26 rehabilitation service shall be deemed an employee of the state
27 for purposes of workers' compensation coverage.

28
29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 Between lines 4 and 5

32 insert:

33 amending s. 413.011, F.S.; providing that a client of
34 the Division of Blind Services of the Department of
35 Education is considered an employee of the state for
36 purposes of workers' compensation coverage; creating
37 s. 413.209, F.S.; providing that a specified client of
38 the Division of Vocational Rehabilitation of the
39 Department of Education is considered an employee of



755156

40
41

the state for purposes of workers' compensation
coverage;



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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 (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



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11 process, and in addition to the existing public school choice
12 programs provided in s. 1002.20(6)(a), each district school
13 board or charter school shall allow a parent from any school
14 district in the state whose child is not subject to a current
15 expulsion or suspension to enroll his or her child in and
16 transport his or her child to any public school, including
17 charter schools, virtual charter schools, and district virtual
18 programs, that have ~~has~~ not reached capacity in the district,
19 subject to the maximum class size pursuant to s. 1003.03 and s.
20 1, Art. IX of the State Constitution, if applicable. The school
21 district or charter school shall accept the student, pursuant to
22 that school district's or charter school's controlled open
23 enrollment process, and report the student for purposes of the
24 school district's or charter school's funding pursuant to the
25 Florida Education Finance Program. A school district or charter
26 school may provide transportation to students described under
27 this section.

28 Section 4. Subsection (8) of section 1002.37, Florida
29 Statutes, is amended to read:

30 1002.37 The Florida Virtual School.—

31 (8)(a) The Florida Virtual School may provide full-time and
32 part-time instruction for students in kindergarten through grade
33 12. ~~To receive part-time instruction in kindergarten through~~
34 ~~grade 5, a student must meet at least one of the eligibility~~
35 ~~criteria in s. 1002.455(2).~~

36 (b) For students receiving part-time instruction ~~in~~
37 ~~kindergarten through grade 5~~ and students receiving full-time
38 ~~instruction in kindergarten through grade 12~~ from the Florida
39 Virtual School, the full-time equivalent student enrollment



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40 calculated under this subsection is subject to the requirements
41 in s. 1011.61(4).

42 Section 5. Subsection (5) and paragraph (b) of subsection
43 (6) of section 1002.45, Florida Statutes, are amended to read:
44 1002.45 Virtual instruction programs.—

45 (5) STUDENT ELIGIBILITY.—A student may enroll in a full-
46 time or part-time virtual instruction program in kindergarten
47 through grade 12 which is provided by a ~~the~~ school district or
48 by a virtual charter school ~~operated in the district in which he~~
49 ~~or she resides if the student meets eligibility requirements for~~
50 ~~virtual instruction pursuant to s. 1002.455.~~

51 (6) STUDENT PARTICIPATION REQUIREMENTS.—Each student
52 enrolled in a virtual instruction program or virtual charter
53 school must:

54 (b) Take state assessment tests within the school district
55 in which such student resides or enrolls, as contractually
56 specified. If requested by the provider, the district of
57 residence ~~which~~ must provide the student with access to the
58 district's testing facilities.

59 Section 6. Section 1002.455, Florida Statutes, is repealed.

60 Section 7. Subsection (1) of section 1002.33, Florida
61 Statutes, is amended to read:

62 1002.33 Charter schools.—

63 (1) AUTHORIZATION.—Charter schools shall be part of the
64 state's program of public education. All charter schools in
65 Florida are public schools. A charter school may be formed by
66 creating a new school or converting an existing public school to
67 charter status. A charter school may operate a virtual charter
68 school pursuant to s. 1002.45(1)(d) to provide full-time online



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69 instruction to eligible students, ~~pursuant to s. 1002.455,~~ in
70 kindergarten through grade 12. An existing charter school that
71 is seeking to become a virtual charter school must amend its
72 charter or submit a new application pursuant to subsection (6)
73 to become a virtual charter school. A virtual charter school is
74 subject to the requirements of this section; however, a virtual
75 charter school is exempt from subsections (18) and (19),
76 subparagraphs (20)(a)2., 4., 5., and 7., paragraph (20)(c), and
77 s. 1003.03. A public school may not use the term charter in its
78 name unless it has been approved under this section.

79 Section 8. Subsection (2) of section 1003.498, Florida
80 Statutes, is amended to read:

81 1003.498 School district virtual course offerings.—

82 (2) School districts may offer virtual courses for students
83 enrolled in the school district. These courses must be
84 identified in the course code directory. ~~Students who meet the~~
85 ~~eligibility requirements of s. 1002.455 may participate in these~~
86 ~~virtual course offerings.~~

87 (a) Any eligible student who is enrolled in a school
88 district may register and enroll in an online course offered by
89 his or her school district.

90 (b)1. Any eligible student who is enrolled in a school
91 district may register and enroll in an online course offered by
92 any other school district in the state. The school district in
93 which the student completes the course shall report the
94 student's completion of that course for funding pursuant to s.
95 1011.61(1)(c)1.b.(VI), and the home school district may ~~shall~~
96 not report the student for funding for that course.

97 2. The full-time equivalent student membership calculated



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98 under this subsection is subject to the requirements in s.
99 1011.61(4). The Department of Education shall establish
100 procedures to enable interdistrict coordination for the delivery
101 and funding of this online option.

102 Section 9. Subsection (11) of section 1011.62, Florida
103 Statutes, is amended to read:

104 1011.62 Funds for operation of schools.—If the annual
105 allocation from the Florida Education Finance Program to each
106 district for operation of schools is not determined in the
107 annual appropriations act or the substantive bill implementing
108 the annual appropriations act, it shall be determined as
109 follows:

110 (11) VIRTUAL EDUCATION CONTRIBUTION.—The Legislature may
111 annually provide in the Florida Education Finance Program a
112 virtual education contribution. The amount of the virtual
113 education contribution shall be the difference between the
114 amount per FTE established in the General Appropriations Act for
115 virtual education and the amount per FTE for each district and
116 the Florida Virtual School, which may be calculated by taking
117 the sum of the base FEFP allocation, the discretionary local
118 effort, the state-funded discretionary contribution, the
119 discretionary millage compression supplement, the research-based
120 reading instruction allocation, and the instructional materials
121 allocation, and then dividing by the total unweighted FTE. This
122 difference shall be multiplied by the virtual education
123 unweighted FTE for school district-operated part-time and full-
124 time virtual instruction programs, full-time virtual charter
125 school programs, virtual courses offered, ~~programs and options~~
126 identified in s. 1002.455(3) and the Florida Virtual School and



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127 its franchises to equal the virtual education contribution and
128 shall be included as a separate allocation in the funding
129 formula.

130

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

132 And the title is amended as follows:

133 Delete line 8

134 and insert:

135 in an emergency situation; amending s. 1002.31, F.S.;

136 revising available controlled open enrollment options

137 to include virtual charter schools and district

138 virtual programs; amending ss. 1002.37 and 1002.45,

139 F.S.; revising student eligibility requirements for

140 the Florida Virtual School and virtual instruction

141 programs; repealing s. 1002.455, F.S., relating to

142 student eligibility for K-12 virtual instruction;

143 amending ss. 1002.33, 1003.498, and 1011.62, F.S.;

144 conforming provisions to changes made by the act;

145 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:

Page 1 of 5

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

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,

Page 2 of 5

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

581-03348-17 20171468c1

59 institution, or satellite office the ability to reopen as soon
60 as possible after considering the health, safety, and welfare of
61 students and clients.

62 Section 3. Section 1003.481, Florida Statutes, is created
63 to read:

64 1003.481 Early Childhood Music Education Incentive Pilot
65 Program.—

66 (1) Beginning with the 2017-2018 school year, the Early
67 Childhood Music Education Incentive Pilot Program is created
68 within the Department of Education for a period of 3 school
69 years. The purpose of the pilot program is to assist selected
70 school districts in implementing comprehensive music education
71 programs for students in kindergarten through grade 2.

72 (2) In order for a school district to be eligible for
73 participation in the pilot program, the superintendent must
74 certify to the Commissioner of Education, in a format prescribed
75 by the department, that each elementary school within the
76 district has established a comprehensive music education program
77 that:

78 (a) Includes all students at the school enrolled in
79 kindergarten through grade 2.

80 (b) Is staffed by certified music educators.

81 (c) Provides music instruction for at least 30 consecutive
82 minutes 2 days a week.

83 (d) Complies with class size requirements under s. 1003.03.

84 (e) Complies with the department's standards for early
85 childhood music education programs for students in kindergarten
86 through grade 2.

87 (3) (a) The commissioner shall select school districts for

581-03348-17 20171468c1

88 participation in the pilot program, subject to legislative
89 appropriation, based on the school district's proximity to the
90 University of Florida and needs-based criteria established by
91 the State Board of Education. Selected school districts shall
92 annually receive \$150 per full-time equivalent student in
93 kindergarten through grade 2 who is enrolled in a comprehensive
94 music education program.

95 (b) To maintain eligibility for participation in the pilot
96 program, a selected school district must annually certify to the
97 commissioner, in a format prescribed by the department, that
98 each elementary school within the district provides a
99 comprehensive music education program that meets the
100 requirements of subsection (2). If a selected school district
101 fails to provide the annual certification for a fiscal year, the
102 school district must return all funds received through the pilot
103 program for that fiscal year.

104 (4) The University of Florida's College of Education shall
105 evaluate the effectiveness of the pilot program by measuring
106 student academic performance and the success of the program. The
107 evaluation must include, but is not limited to, a quantitative
108 analysis of student achievement and a qualitative evaluation of
109 students enrolled in the comprehensive music education programs.

110 (5) The State Board of Education may adopt rules to
111 administer this section.

112 (6) This section expires June 30, 2020.

113 Section 4. Upon the expiration and reversion of the
114 amendment to section 1004.345, Florida Statutes, pursuant to
115 section 36 of chapter 2016-62, Laws of Florida, subsection (1)
116 of section 1004.345, Florida Statutes, is amended to read:

581-03348-17

20171468c1

117 1004.345 The Florida Polytechnic University.-

118 (1) By December 31, 2017 ~~2016~~, the Florida Polytechnic
119 University shall meet the following criteria as established by
120 the Board of Governors:

121 (a) Achieve accreditation from the Commission on Colleges
122 of the Southern Association of Colleges and Schools;

123 (b) Initiate the development of the new programs in the
124 fields of science, technology, engineering, and mathematics;

125 (c) Seek discipline-specific accreditation for programs;

126 (d) Attain a minimum FTE of 1,244, with a minimum 50
127 percent of that FTE in the fields of science, technology,
128 engineering, and mathematics and 20 percent in programs related
129 to those fields;

130 (e) Complete facilities and infrastructure, including the
131 Science and Technology Building, Phase I of the Wellness Center,
132 and a residence hall or halls containing no fewer than 190 beds;
133 and

134 (f) Have the ability to provide, either directly or where
135 feasible through a shared services model, administration of
136 financial aid, admissions, student support, information
137 technology, and finance and accounting with an internal audit
138 function.

139 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,

A handwritten signature in blue ink that reads "Bill".

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)

755156

Amendment Barcode (if applicable)

Topic Worker's Comp for VA

Name Suzanne Sewell

Job Title President & CEO

Address 2475 Apalachee Parkway

Street

Phone 850-942-3500

Tallahassee, FL 32308

City

State

Zip

Email ssewell@floridart.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)

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

Tallahassee

City

Fl

State

32399

Zip

Phone 850.245.9633

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.

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

Tallahassee

City

FL

State

32399

Zip

Phone 850.245.9633

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.

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)

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

City

FL

State

32835

Zip

Email hsagues@flus.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.

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

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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 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 34 and 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 insurance⁵ or wear safety belts⁶, but are required to:

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_rst16-015.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 protection⁹;

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 CMVs¹⁷ 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 Regulations¹⁸:

- 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 placarding²⁶;
- 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 rules³¹, 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 documents³⁷ 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 offenses³⁹:

- 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 network⁴⁵ 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 limousine⁴⁹ 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.

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:

<i>For speed exceeding the limit by:</i>	<i>Fine:</i>
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

- 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://doriseslives.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 business⁵⁵.

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

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

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 Charge⁶⁷, 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.

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 Medal⁸¹ 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 tax⁸²; 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 reposessor 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 misdemeanor⁹³, 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 misdemeanor⁹⁴, 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 misdemeanor⁹⁵, 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 misdemeanor⁹⁶, 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 misdemeanor⁹⁸, and could be liable under civil law in violation of Florida’s Deceptive and Unfair Trade Practices Act⁹⁹.

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 manufactures 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 prison¹⁰⁶ 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 permit¹¹⁰ 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

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 she¹¹⁶:

- 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 service¹¹⁹, including the DHSMV's virtual office¹²⁰.

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.

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 motorcycle 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.



265394

LEGISLATIVE ACTION

Senate

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House

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



265394

11 subsection (1) shall be punished:

12 1. By a fine of:

13 a. Not less than \$500 or more than \$1,000 for a first
14 conviction.

15 b. Not less than \$1,000 or more than \$2,000 for a second
16 conviction; and

17 2. By imprisonment for:

18 a. Not more than 6 months for a first conviction.

19 b. Not more than 9 months for a second conviction.

20 3. For a second conviction, by mandatory placement for a
21 period of at least 1 year, at the convicted person's sole
22 expense, of an ignition interlock device approved by the
23 department in accordance with s. 316.1938 upon all vehicles that
24 are individually or jointly leased or owned and routinely
25 operated by the convicted person, when the convicted person
26 qualifies for a permanent or restricted license. The
27 installation of such device may not occur before July 1, 2003.

28 (b)1. Any person who is convicted of a third violation of
29 this section for an offense that occurs within 10 years after a
30 prior conviction for a violation of this section commits a
31 felony of the third degree, punishable as provided in s.
32 775.082, s. 775.083, or s. 775.084. In addition, the court shall
33 order the mandatory placement for a period of not less than 2
34 years, at the convicted person's sole expense, of an ignition
35 interlock device approved by the department in accordance with
36 s. 316.1938 upon all vehicles that are individually or jointly
37 leased or owned and routinely operated by the convicted person,
38 when the convicted person qualifies for a permanent or
39 restricted license. The installation of such device may not



265394

40 occur before July 1, 2003.

41 2. Any person who is convicted of a third violation of this
42 section for an offense that occurs more than 10 years after the
43 date of a prior conviction for a violation of this section shall
44 be punished by a fine of not less than \$2,000 or more than
45 \$5,000 and by imprisonment for not more than 12 months. In
46 addition, the court shall order the mandatory placement for a
47 period of at least 2 years, at the convicted person's sole
48 expense, of an ignition interlock device approved by the
49 department in accordance with s. 316.1938 upon all vehicles that
50 are individually or jointly leased or owned and routinely
51 operated by the convicted person, when the convicted person
52 qualifies for a permanent or restricted license. The
53 installation of such device may not occur before July 1, 2003.

54 3. Any person who is convicted of a fourth or subsequent
55 violation of this section, regardless of when any prior
56 conviction for a violation of this section occurred, commits a
57 felony of the third degree, punishable as provided in s.
58 775.082, s. 775.083, or s. 775.084. However, the fine imposed
59 for such fourth or subsequent violation may be not less than
60 \$2,000.

61 (c) In addition to the penalties in paragraph (a), as a
62 condition of probation, the court may order placement, at the
63 convicted person's sole expense, of an ignition interlock device
64 approved by the department in accordance with s. 316.1938 for at
65 least 6 continuous months upon all vehicles that are
66 ~~individually or jointly leased or owned and routinely operated~~
67 ~~by the convicted person if, at the time of the offense, the~~
68 ~~person had a blood-alcohol level or breath-alcohol level of .08~~



265394

69 ~~or higher.~~ If the convicted person is convicted of a first
70 offense misdemeanor of the second degree and has not caused
71 injury to, or the death of, a person or damage to property and
72 such person voluntarily places, or if the court orders placement
73 of, an interlock device under this subsection, the court, upon
74 proper showing that the person has received counseling,
75 treatment, rehabilitation or is enrolled in a substance abuse
76 course pursuant to subsection (5), may withhold adjudication if
77 the person does not have a prior withholding of adjudication or
78 adjudication of guilt for any other offense. Failure of the
79 person to comply with the full terms of the order of placement
80 of the ignition interlock device may result in, among other
81 penalties, the court ordering an adjudication of guilt.

82
83 For purposes of this subsection, the term "conviction" means a
84 determination of guilt which is the result of a plea or a trial,
85 regardless of whether adjudication is withheld or a plea of nolo
86 contendere is entered.

87 Section 3. Subsection (2) of section 316.1937, Florida
88 Statutes, is amended to read:

89 316.1937 Ignition interlock devices, requiring; unlawful
90 acts.—

91 (2) If the court imposes the use of an ignition interlock
92 device, the court shall:

93 (a) Stipulate on the record the requirement for, and the
94 period of, the use of a certified ignition interlock device.

95 (b) Order that the records of the department reflect such
96 requirement.

97 (c) Order that an ignition interlock device be installed,



98 as the court may determine necessary, on any vehicle owned or
99 operated by the person.

100 (d) If the person claims inability to pay, provide the
101 following discounts on the monthly leasing fee:

102 1. If a person's family income is at or below 100 percent
103 of the federal poverty level as documented by written order of
104 the court, the regular monthly leasing fee charged to all
105 customers by the interlock provider shall be discounted by 50
106 percent.

107 2. If a person's family income is at or below 149 percent
108 of the federal poverty level as documented by written order of
109 the court, the regular monthly leasing fee charged to all
110 customers by the interlock provider shall be discounted by 25
111 percent.

112
113 Persons who qualify for a reduced leasing fee as provided in
114 this paragraph are not required to pay the costs of installation
115 or removal of the device. ~~Determine the person's ability to pay~~
116 ~~for installation of the device if the person claims inability to~~
117 ~~pay. If the court determines that the person is unable to pay~~
118 ~~for installation of the device, the court may order that any~~
119 ~~portion of a fine paid by the person for a violation of s.~~
120 ~~316.193 shall be allocated to defray the costs of installing the~~
121 ~~device.~~

122 (e) Require proof of installation of the device and
123 periodic reporting to the department for verification of the
124 operation of the device in the person's vehicle.

125
126 ===== T I T L E A M E N D M E N T =====



265394

127 And the title is amended as follows:

128 Delete line 5

129 and insert:

130 reference; amending s. 316.193, F.S.; authorizing a
131 court to order placement of an ignition interlock
132 device as a condition of probation, subject to certain
133 requirements; authorizing the court to withhold
134 adjudication if a person convicted of a certain
135 offense voluntarily places, or if the court orders
136 placement of, an ignition interlock device, under
137 certain circumstances; providing that failure of the
138 person to comply with the full terms of the order
139 requiring placement of an ignition interlock device
140 may result in the court ordering an adjudication of
141 guilt; defining the term "conviction"; amending s.
142 316.1937, F.S.; requiring a court that imposes the use
143 of an ignition interlock device to provide certain
144 discounts on the monthly leasing fee for the device,
145 if the person documents that he or she meets certain
146 income requirements; waiving costs associated with
147 installation and removal of the device in certain
148 circumstances; amending ss. 316.2397 and 316.2398,
149 F.S.;



743126

LEGISLATIVE ACTION

Senate

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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

11 And the title is amended as follows:
12 Delete line 16
13 and insert:
14 logging devices and hours of service support documents
15 for intrastate motor carriers;



838110

LEGISLATIVE ACTION

Senate

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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

11 required to use a vehicle that is larger than needed to
12 transport the number of persons being transported or that is
13 inconsistent with the medical condition of the individuals
14 receiving the nonemergency medical transportation services. A
15 licensed basic or advanced life support ambulance service may
16 provide nonemergency medical transportation in permitted
17 ambulances in any county notwithstanding any ordinances relating
18 to certificates of public convenience and necessity or s.
19 401.25. This section does not apply to the procurement,
20 contracting, or provision of paratransit transportation
21 services, directly or indirectly, by a county or an authority,
22 pursuant to the Americans with Disabilities Act of 1990, as
23 amended.

24
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete line 46

28 and insert:

29 times while operating in autonomous mode; amending s.
30 316.87, F.S.; authorizing a licensed basic or advanced
31 life support ambulance service to provide nonemergency
32 medical transportation in permitted ambulances in any
33 county notwithstanding any ordinances relating to
34 certificates of public convenience and necessity or a
35 specified provision; amending s.



319724

LEGISLATIVE ACTION

Senate

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House

The Committee on Appropriations (Brandes) recommended the following:

1 **Senate Substitute for Amendment (838110) (with title**
2 **amendment)**

3
4 Between lines 555 and 556
5 insert:

6 Section 9. Section 316.87, Florida Statutes, is amended to
7 read:

8 316.87 Nonemergency medical transportation services.—

9 (1) To ensure the availability of nonemergency medical
10 transportation services throughout the state, a provider



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11 licensed by the county or operating under a permit issued by the
12 county may not be required to use a vehicle that is larger than
13 needed to transport the number of persons being transported or
14 that is inconsistent with the medical condition of the
15 individuals receiving the nonemergency medical transportation
16 services.

17 (2) A licensed basic or advanced life support ambulance
18 service may provide nonemergency medical transportation in
19 permitted ambulances in any county notwithstanding any
20 ordinances relating to certificates of public convenience and
21 necessity or s. 401.25. This subsection does not apply to a
22 county located entirely within a designated rural area of
23 opportunity or a county that has a population of more than 2.5
24 million residents according to the latest state or federal
25 census.

26 (3) This section does not apply to the procurement,
27 contracting, or provision of paratransit transportation
28 services, directly or indirectly, by a county or an authority,
29 pursuant to the Americans with Disabilities Act of 1990, as
30 amended.

31
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete line 46

35 and insert:

36 times while operating in autonomous mode; amending s.
37 316.87, F.S.; authorizing a licensed basic or advanced
38 life support ambulance service to provide nonemergency
39 medical transportation in permitted ambulances in any



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40 county notwithstanding any ordinances relating to
41 certificates of public convenience and necessity or a
42 specified provision; providing applicability; amending
43 s.



670990

LEGISLATIVE ACTION

Senate

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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

11 specialty plate registrations falls below 3,000 ~~1,000~~ plates for
12 at least 12 consecutive months. A warning letter shall be mailed
13 to the sponsoring organization following the first month in
14 which the total number of valid specialty plate registrations is
15 below 3,000 ~~1,000~~ plates. This paragraph does not apply to
16 collegiate license plates established under s. 320.08058(3),
17 license plates of institutions in and entities of the State
18 University System, specialty license plates that have statutory
19 eligibility limitations for purchase, or Florida Professional
20 Sports Team License plates established under s. 320.08058(9).

21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete line 101

25 and insert:

26 320.08056, F.S.; revising provisions for discontinuing
27 issuance of a specialty plate; providing
28 applicability; deleting the American Red Cross,



254818

LEGISLATIVE ACTION

Senate

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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



254818

11 to the owner or lessee of any motor vehicle or a dealer under s.
12 320.13, except a vehicle registered under the International
13 Registration Plan, a commercial truck required to display two
14 license plates pursuant to s. 320.0706, or a truck tractor, upon
15 request and payment of the appropriate license tax and fees.

16 (b) A dealer license plate under s. 320.13 may be a
17 specialty license plate. The plate shall be differentiated from
18 other specialty license plates by a decal, developed by the
19 department, located on the upper left corner of the plate which
20 identifies the specialty license plate as a dealer license
21 plate.

22 (4) The following license plate annual use fees shall be
23 collected for the appropriate specialty license plates:

24 ~~(cc) American Red Cross license plate, \$25.~~

25 ~~(ccc) Donate Organs-Pass It On license plate, \$25.~~

26 ~~(qqq) St. Johns River license plate, \$25.~~

27 ~~(rrr) Hispanic Achievers license plate, \$25.~~

28 (10) (a) A specialty license plate annual use fee collected
29 and distributed under this chapter, or any interest earned from
30 those fees, may not be used for commercial or for-profit
31 activities nor for general or administrative expenses, except as
32 authorized by s. 320.08058 or to pay the cost of the audit or
33 report required by s. 320.08062(1). The fees and any interest
34 earned from the fees may be expended only for use in this state
35 unless the annual use fee is derived from the sale of United
36 States Armed Forces and veterans-related specialty license
37 plates pursuant to paragraphs (4) (d), (bb), (kk), (iii), and
38 (uuu) ~~(ll)~~, ~~(kkk)~~, and ~~(yyy)~~ and s. 320.0891.

39 Section 20. Subsections (31), (57), (69), and (70) of



254818

40 section 320.08058, Florida Statutes, are repealed.

41 Section 21. Paragraph (b) of subsection (4) of section
42 320.08068, Florida Statutes, is amended to read:

43 320.08068 Motorcycle specialty license plates.—

44 (4) A license plate annual use fee of \$20 shall be
45 collected for each motorcycle specialty license plate. Annual
46 use fees shall be distributed to The Able Trust as custodial
47 agent. The Able Trust may retain a maximum of 10 percent of the
48 proceeds from the sale of the license plate for administrative
49 costs. The Able Trust shall distribute the remaining funds as
50 follows:

51 (b) Twenty percent to Preserve Vision ~~Prevent Blindness~~
52 Florida.

53 Section 22. Subsection (7) is added to section 320.086,
54 Florida Statutes, to read:

55 320.086 Ancient or antique motor vehicles; horseless
56 carriage, antique, or historical license plates; former military
57 vehicles.—

58 (7) For purposes of this section, a trailer is considered a
59 motor vehicle.

60 Section 23. Section 320.0875, Florida Statutes, is created
61 to read:

62 320.0875 Purple Heart motorcycle special license plate.—

63 (1) Upon application to the department and payment of the
64 license tax for the motorcycle as provided in s. 320.08, a
65 resident of this state who owns or leases a motorcycle that is
66 not used for hire or commercial use shall be issued a Purple
67 Heart motorcycle special license plate if he or she provides
68 documentation acceptable to the department that he or she is a



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69 recipient of the Purple Heart medal.

70 (2) The Purple Heart motorcycle special license plate shall
71 be stamped with the words "Combat-wounded Veteran" followed by
72 the serial number of the license plate. The Purple Heart
73 motorcycle special license plate may have the term "Purple
74 Heart" stamped on the plate and the likeness of the Purple Heart
75 medal appearing on the plate.

76 Section 24. Paragraph (a) of subsection (1) of section
77 320.089, Florida Statutes, is amended to read:

78 ~~320.089 Veterans of the United States Armed Forces; members~~
79 ~~of National Guard; survivors of Pearl Harbor; Purple Heart medal~~
80 ~~recipients; active or retired United States Armed Forces~~
81 ~~reservists; Combat Infantry Badge, Combat Medical Badge, or~~
82 ~~Combat Action Badge recipients; Combat Action Ribbon recipients;~~
83 ~~Air Force Combat Action Medal recipients; Distinguished Flying~~
84 ~~Cross recipients; former prisoners of war; Korean War Veterans;~~
85 ~~Vietnam War Veterans; Operation Desert Shield Veterans;~~
86 ~~Operation Desert Storm Veterans; Operation Enduring Freedom~~
87 ~~Veterans; Operation Iraqi Freedom Veterans; Women Veterans;~~
88 ~~World War II Veterans; and Navy Submariners; Special license~~
89 ~~plates for military servicemembers, veterans, and Pearl Harbor~~
90 ~~survivors; fee.-~~

91 (1) (a) Upon application to the department and payment of
92 the license tax for the vehicle as provided in s. 320.08, a
93 resident of this state who owns or leases ~~Each owner or lessee~~
94 ~~of~~ an automobile or truck for private use or recreational
95 vehicle as specified in s. 320.08(9)(c) or (d), which is not
96 used for hire or commercial use, shall be issued a license plate
97 pursuant to the following if the applicant provides the



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98 department with proof he or she meets the qualifications listed
99 in this section for the applicable license plate:

100 1. A person released or discharged from any branch ~~who is a~~
101 ~~resident of the state and a veteran~~ of the United States Armed
102 Forces shall be issued a license plate stamped with the words
103 "Veteran" or "Woman Veteran" followed by the serial number of
104 the license plate. ~~a Woman Veteran,~~

105 2. A World War II Veteran shall be issued a license plate
106 stamped with the words "WWII Veteran" followed by the serial
107 number of the license plate.

108 3. A Navy Submariner shall be issued a license plate
109 stamped with the words "Navy Submariner" followed by the serial
110 number of the license plate.

111 4. An active or retired member of the Florida National
112 Guard shall be issued a license plate stamped with the words
113 "National Guard" followed by the serial number of the license
114 plate.

115 5. A member of the Pearl Harbor Survivors Association or
116 other person on active military duty in Pearl Harbor on December
117 7, 1941, shall be issued a license plate stamped with the words
118 "Pearl Harbor Survivor" followed by the serial number of the
119 license plate. ~~a survivor of the attack on Pearl Harbor,~~

120 6. A recipient of the Purple Heart medal shall be issued a
121 license plate stamped with the words "Combat-wounded Veteran"
122 followed by the serial number of the license plate. The Purple
123 Heart plate may have the words "Purple Heart" stamped on the
124 plate and the likeness of the Purple Heart medal appearing on
125 the plate.

126 7. An active or retired member of any branch of the United



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127 States Armed Forces Reserve shall be issued a license plate
128 stamped with the words "U.S. Reserve" followed by the serial
129 number of the license plate.

130 8. A member of the Combat Infantrymen's Association, Inc.,
131 or a recipient of the Combat Infantry Badge, Combat Medical
132 Badge, Combat Action Badge, Combat Action Ribbon, or Air Force
133 Combat Action Medal shall be issued a license plate stamped with
134 the words "Combat Infantry Badge," "Combat Medical Badge,"
135 "Combat Action Badge," "Combat Action Ribbon," or "Air Force
136 Combat Action Medal," as appropriate, and a likeness of the
137 related campaign badge, ribbon, or medal, followed by the serial
138 number of the license plate.

139 9. A recipient of the, ~~or~~ Distinguished Flying Cross shall
140 be issued a license plate stamped with the words "Distinguished
141 Flying Cross" and a likeness of the Distinguished Flying Cross
142 followed by the serial number of the license plate.

143 10. A recipient of the Bronze Star shall be issued a
144 license plate stamped with the words "Bronze Star" and a
145 likeness of the Bronze Star followed by the serial number of the
146 license plate, ~~upon application to the department, accompanied~~
147 ~~by proof of release or discharge from any branch of the United~~
148 ~~States Armed Forces, proof of active membership or retired~~
149 ~~status in the Florida National Guard, proof of membership in the~~
150 ~~Pearl Harbor Survivors Association or proof of active military~~
151 ~~duty in Pearl Harbor on December 7, 1941, proof of being a~~
152 ~~Purple Heart medal recipient, proof of active or retired~~
153 ~~membership in any branch of the United States Armed Forces~~
154 ~~Reserve, or proof of membership in the Combat Infantrymen's~~
155 ~~Association, Inc., proof of being a recipient of the Combat~~



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156 ~~Infantry Badge, Combat Medical Badge, Combat Action Badge,~~
157 ~~Combat Action Ribbon, Air Force Combat Action Medal, or~~
158 ~~Distinguished Flying Cross, and upon payment of the license tax~~
159 ~~for the vehicle as provided in s. 320.08, shall be issued a~~
160 ~~license plate as provided by s. 320.06 which, in lieu of the~~
161 ~~serial numbers prescribed by s. 320.06, is stamped with the~~
162 ~~words "Veteran," "Woman Veteran," "WWII Veteran," "Navy~~
163 ~~Submariner," "National Guard," "Pearl Harbor Survivor," "Combat-~~
164 ~~wounded veteran," "U.S. Reserve," "Combat Infantry Badge,"~~
165 ~~"Combat Medical Badge," "Combat Action Badge," "Combat Action~~
166 ~~Ribbon," "Air Force Combat Action Medal," or "Distinguished~~
167 ~~Flying Cross," as appropriate, and a likeness of the related~~
168 ~~campaign medal or badge, followed by the serial number of the~~
169 ~~license plate. Additionally, the Purple Heart plate may have the~~
170 ~~words "Purple Heart" stamped on the plate and the likeness of~~
171 ~~the Purple Heart medal appearing on the plate.~~

172 Section 25. Subsection (4) is added to section 320.13,
173 Florida Statutes, to read:

174 320.13 Dealer and manufacturer license plates and
175 alternative method of registration.—

176 (4) A dealer license plate under this section may be a
177 specialty license plate pursuant to s. 320.08056(2). The plate
178 shall be differentiated from other specialty license plates by a
179 decals, developed by the department, located on the upper left
180 corner of the plate which identifies the specialty license plate
181 as a dealer license plate.

182
183 ===== T I T L E A M E N D M E N T =====

184 And the title is amended as follows:



254818

185 Delete lines 101 - 120
186 and insert:
187 320.08056, F.S.; requiring the department to issue a
188 specialty license plate to a certain dealer;
189 authorizing a dealer license plate to be a specialty
190 license plate; requiring the plate to be
191 differentiated from other specialty license plates by
192 a decal, subject to certain requirements; deleting the
193 American Red Cross, Donate Organs-Pass It On, St.
194 Johns River, and Hispanic Achievers license plates;
195 conforming cross-references; repealing s.
196 320.08058(31), (57), (69), and (70), F.S., relating to
197 the American Red Cross, Donate Organs-Pass It On, St.
198 Johns River, and Hispanic Achievers license plates,
199 respectively; amending s. 320.08068, F.S.; requiring
200 The Able Trust to distribute a specified percentage of
201 annual use fees from motorcycle specialty license
202 plates to Preserve Vision Florida, rather than to
203 Prevent Blindness Florida; amending s. 320.086, F.S.;
204 providing that, for purposes of this section, a
205 trailer is considered a motor vehicle; creating s.
206 320.0875, F.S.; providing for a motorcycle special
207 license plate to be issued to a recipient of the
208 Purple Heart; providing requirements for the plate;
209 amending s. 320.089, F.S.; providing for a special
210 license plate to be issued to a recipient of the
211 Bronze Star; making technical changes; amending s.
212 320.13, F.S.; authorizing a dealer license plate to be
213 a specialty license plate; requiring the plate to be



214
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differentiated from other specialty license plates by
a decal, subject to certain requirements; amending s.



213662

LEGISLATIVE ACTION

Senate

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House

The Committee on Appropriations (Braynon) recommended the following:

1 **Senate Substitute for Amendment (254818) (with title**
2 **amendment)**

3
4 Between lines 2069 and 2070
5 insert:

6 Section 47. Paragraph (a) of subsection (3) of section
7 320.06, Florida Statutes, is amended to read:

8 320.06 Registration certificates, license plates, and
9 validation stickers generally.—

10 (3) (a) Registration license plates must be made of metal



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11 specially treated with a retroreflection material, as specified
12 by the department. The registration license plate is designed to
13 increase nighttime visibility and legibility and must be at
14 least 6 inches wide and not less than 12 inches in length,
15 unless a plate with reduced dimensions is deemed necessary by
16 the department to accommodate motorcycles, mopeds, or similar
17 smaller vehicles. Validation stickers must also be treated with
18 a retroreflection material, must be of such size as specified by
19 the department, and must adhere to the license plate. The
20 registration license plate must be imprinted with a combination
21 of bold letters and numerals or numerals, not to exceed seven
22 digits, to identify the registration license plate number. The
23 license plate must be imprinted with the word "Florida" at the
24 top and the name of the county in which it is sold, the state
25 motto, or the words "Sunshine State" at the bottom. Apportioned
26 license plates must have the word "Apportioned" at the bottom
27 and license plates issued for vehicles taxed under s.
28 320.08(3)(d), (4)(m) or (n), (5)(b) or (c), or (14) must have
29 the word "Restricted" at the bottom. License plates issued for
30 vehicles taxed under s. 320.08(12) must be imprinted with the
31 word "Florida" at the top and the word "Dealer" at the bottom
32 unless the license plate is a specialty license plate as
33 authorized in s. 320.08056. Manufacturer license plates issued
34 for vehicles taxed under s. 320.08(12) must be imprinted with
35 the word "Florida" at the top and the word "Manufacturer" at the
36 bottom. License plates issued for vehicles taxed under s.
37 320.08(5)(d) or (e) must be imprinted with the word "Wrecker" at
38 the bottom. Any county may, upon majority vote of the county
39 commission, elect to have the county name removed from the



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40 license plates sold in that county. The state motto or the words
41 "Sunshine State" shall be printed in lieu thereof. A license
42 plate issued for a vehicle taxed under s. 320.08(6) may not be
43 assigned a registration license number, or be issued with any
44 other distinctive character or designation, that distinguishes
45 the motor vehicle as a for-hire motor vehicle.

46 Section 48. Paragraph (b) of subsection (2) of section
47 320.0657, Florida Statutes, is amended to read:

48 320.0657 Permanent registration; fleet license plates.—

49 (2)

50 (b) The plates, which shall be of a distinctive color,
51 shall have the word "Fleet" appearing at the bottom and the word
52 "Florida" appearing at the top unless the license plate is a
53 specialty license plate as authorized in s. 320.08056. The
54 plates shall conform in all respects to the provisions of this
55 chapter, except as specified herein. For additional fees as set
56 forth in s. 320.08056, fleet companies may purchase specialty
57 license plates in lieu of the standard fleet license plates.
58 Fleet companies shall be responsible for all costs associated
59 with the specialty license plate, including all annual use fees,
60 processing fees, fees associated with switching license plate
61 types, and any other applicable fees.

62 Section 49. Subsection (12) of section 320.08, Florida
63 Statutes, is amended to read:

64 320.08 License taxes.—Except as otherwise provided herein,
65 there are hereby levied and imposed annual license taxes for the
66 operation of motor vehicles, mopeds, motorized bicycles as
67 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,
68 and mobile homes as defined in s. 320.01, which shall be paid to



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69 and collected by the department or its agent upon the
70 registration or renewal of registration of the following:

71 (12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised
72 motor vehicle dealer, independent motor vehicle dealer, marine
73 boat trailer dealer, or mobile home dealer and manufacturer
74 license plate: \$17 flat, of which \$4.50 shall be deposited into
75 the General Revenue Fund. For additional fees as set forth in s.
76 320.08056, dealers may purchase specialty license plates in lieu
77 of the standard graphic dealer license plates. Dealers shall be
78 responsible for all costs associated with the specialty license
79 plate, including all annual use fees, processing fees, fees
80 associated with switching license plate types, and any other
81 applicable fees.

82 Section 50. Subsection (2) of section 320.08056, Florida
83 Statutes, is amended to read:

84 320.08056 Specialty license plates.—

85 (2)(a) The department shall issue a specialty license plate
86 to the owner or lessee of any motor vehicle, except a vehicle
87 registered under the International Registration Plan, a
88 commercial truck required to display two license plates pursuant
89 to s. 320.0706, or a truck tractor, upon request and payment of
90 the appropriate license tax and fees.

91 (b) The department may authorize dealer and fleet specialty
92 license plates. With the permission of the sponsoring specialty
93 license plate organization, a dealer or fleet company may
94 purchase specialty license plates to be used on dealer and fleet
95 vehicles.

96 (c) Notwithstanding s. 320.08058, a dealer or fleet
97 specialty license plate shall include the letters "DLR" or "FLT"



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98 on the right side of the license plate. Dealer and fleet
99 specialty license plates must be ordered directly through the
100 department.

101
102 ===== T I T L E A M E N D M E N T =====

103 And the title is amended as follows:

104 Delete line 253

105 and insert:

106 of certain changes made by the act; amending s.
107 320.06, F.S.; providing an exception to the design of
108 dealer license plates for specialty license plates;
109 amending s. 320.0657, F.S.; providing an exception to
110 the design of fleet license plates for specialty
111 license plates; authorizing fleet companies to
112 purchase specialty license plates in lieu of the
113 standard fleet license plates for additional specified
114 fees; requiring fleet companies to be responsible for
115 all costs associated with the specialty license plate;
116 amending s. 320.08, F.S.; authorizing dealers to
117 purchase specialty license plates in lieu of the
118 standard graphic dealer license plates for additional
119 specified fees; requiring dealers to be responsible
120 for all costs associated with the specialty license
121 plate; amending s. 320.08056, F.S.; allowing the
122 department to authorize dealer and fleet specialty
123 license plates; authorizing a dealer or fleet company
124 to purchase specialty license plates to be used on
125 dealer and fleet vehicles with the permission of the
126 sponsoring specialty license plate organization;



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127 requiring a dealer or fleet specialty license plate to
128 include specified letters on the right side of the
129 license plate; requiring dealer and fleet specialty
130 license plates to be ordered directly through the
131 department; providing



934212

LEGISLATIVE ACTION

Senate

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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.—



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11 (4) The following license plate annual use fees shall be
12 collected for the appropriate specialty license plates:

13 ~~(cc) American Red Cross license plate, \$25.~~

14 ~~(ccc) Donate Organs Pass It On license plate, \$25.~~

15 ~~(qqq) St. Johns River license plate, \$25.~~

16 ~~(rrr) Hispanic Achievers license plate, \$25.~~

17 (bbbb) Ducks Unlimited license plate, \$25.

18 (10) (a) A specialty license plate annual use fee collected
19 and distributed under this chapter, or any interest earned from
20 those fees, may not be used for commercial or for-profit
21 activities nor for general or administrative expenses, except as
22 authorized by s. 320.08058 or to pay the cost of the audit or
23 report required by s. 320.08062(1). The fees and any interest
24 earned from the fees may be expended only for use in this state
25 unless the annual use fee is derived from the sale of United
26 States Armed Forces and veterans-related specialty license
27 plates pursuant to paragraphs (4) (d), (bb), (kk), (iii), and
28 (uuu) ~~(ll), (kkk), and (yyy)~~ and s. 320.0891.

29 Section 20. Subsections (31), (57), (69), (70), and
30 paragraph (b) of present subsection (80) of section 320.08058,
31 Florida Statutes, are amended, and a new subsection (80) is
32 added to that section, to read:

33 320.08058 Specialty license plates.—

34 ~~(31) AMERICAN RED CROSS LICENSE PLATES.—~~

35 ~~(a) Notwithstanding the provisions of s. 320.08053, the~~
36 ~~department shall develop an American Red Cross license plate as~~
37 ~~provided in this section. The word "Florida" must appear at the~~
38 ~~top of the plate, and the words "American Red Cross" must appear~~
39 ~~at the bottom of the plate.~~



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40 ~~(b) The department shall retain all revenues from the sale~~
41 ~~of such plates until all startup costs for developing and~~
42 ~~issuing the plates have been recovered. Thereafter, 50 percent~~
43 ~~of the annual use fees shall be distributed to the American Red~~
44 ~~Cross Chapter of Central Florida, with statistics on sales of~~
45 ~~license plates, which are tabulated by county. The American Red~~
46 ~~Cross Chapter of Central Florida must distribute to each of the~~
47 ~~chapters in this state the moneys received from sales in the~~
48 ~~counties covered by the respective chapters, which moneys must~~
49 ~~be used for education and disaster relief in Florida. Fifty~~
50 ~~percent of the annual use fees shall be distributed~~
51 ~~proportionately to the three statewide approved poison control~~
52 ~~centers for purposes of combating bioterrorism and other poison-~~
53 ~~related purposes.~~

54 ~~(57) DONATE ORGANS-PASS IT ON LICENSE PLATES.—~~

55 ~~(a) The department shall develop a Donate Organs-Pass It On~~
56 ~~license plate as provided in this section. The word "Florida"~~
57 ~~must appear at the top of the plate, and the words "Donate~~
58 ~~Organs-Pass It On" must appear at the bottom of the plate.~~

59 ~~(b) The annual use fees shall be distributed to Transplant~~
60 ~~Foundation, Inc., and shall use up to 10 percent of the proceeds~~
61 ~~from the annual use fee for marketing and administrative costs~~
62 ~~that are directly associated with the management and~~
63 ~~distribution of the proceeds. The remaining proceeds shall be~~
64 ~~used to provide statewide grants for patient services, including~~
65 ~~preoperative, rehabilitative, and housing assistance; organ~~
66 ~~donor education and awareness programs; and statewide medical~~
67 ~~research.~~

68 ~~(69) ST. JOHNS RIVER LICENSE PLATES.—~~



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69 ~~(a) The department shall develop a St. Johns River license~~
70 ~~plate as provided in this section. The St. Johns River license~~
71 ~~plates must bear the colors and design approved by the~~
72 ~~department. The word "Florida" must appear at the top of the~~
73 ~~plate, and the words "St. Johns River" must appear at the bottom~~
74 ~~of the plate.~~

75 ~~(b) The requirements of s. 320.08053 must be met prior to~~
76 ~~the issuance of the plate. Thereafter, the license plate annual~~
77 ~~use fees shall be distributed to the St. Johns River Alliance,~~
78 ~~Inc., a s. 501(c)(3) nonprofit organization, which shall~~
79 ~~administer the fees as follows:~~

80 ~~1. The St. Johns River Alliance, Inc., shall retain the~~
81 ~~first \$60,000 of the annual use fees as direct reimbursement for~~
82 ~~administrative costs, startup costs, and costs incurred in the~~
83 ~~development and approval process. Thereafter, up to 10 percent~~
84 ~~of the annual use fee revenue may be used for administrative~~
85 ~~costs directly associated with education programs, conservation,~~
86 ~~research, and grant administration of the organization, and up~~
87 ~~to 10 percent may be used for promotion and marketing of the~~
88 ~~specialty license plate.~~

89 ~~2. At least 30 percent of the fees shall be available for~~
90 ~~competitive grants for targeted community-based or county-based~~
91 ~~research or projects for which state funding is limited or not~~
92 ~~currently available. The remaining 50 percent shall be directed~~
93 ~~toward community outreach and access programs. The competitive~~
94 ~~grants shall be administered and approved by the board of~~
95 ~~directors of the St. Johns River Alliance, Inc. A grant advisory~~
96 ~~committee shall be composed of six members chosen by the St.~~
97 ~~Johns River Alliance board members.~~



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98 ~~3. Any remaining funds shall be distributed with the~~
99 ~~approval of and accountability to the board of directors of the~~
100 ~~St. Johns River Alliance, Inc., and shall be used to support~~
101 ~~activities contributing to education, outreach, and springs~~
102 ~~conservation.~~

103 ~~4. Effective July 1, 2014, the St. Johns River license~~
104 ~~plate will shift into the presale voucher phase, as provided in~~
105 ~~s. 320.08053(2)(b). The St. Johns River Alliance, Inc., shall~~
106 ~~have 24 months to record a minimum of 1,000 sales of the license~~
107 ~~plates. Sales include existing active plates and vouchers sold~~
108 ~~subsequent to July 1, 2014. During the voucher period, new~~
109 ~~plates may not be issued, but existing plates may be renewed.~~
110 ~~If, at the conclusion of the 24-month presale period, the~~
111 ~~requirement of a minimum of 1,000 sales has been met, the~~
112 ~~department shall resume normal distribution of the St. Johns~~
113 ~~River specialty plate. If, after 24 months, the minimum of 1,000~~
114 ~~sales has not been met, the department shall discontinue the~~
115 ~~development and issuance of the plate. This subparagraph is~~
116 ~~repealed June 30, 2016.~~

117 ~~(70) HISPANIC ACHIEVERS LICENSE PLATES.—~~

118 ~~(a) Notwithstanding the requirements of s. 320.08053, the~~
119 ~~department shall develop a Hispanic Achievers license plate as~~
120 ~~provided in this section. The plate must bear the colors and~~
121 ~~design approved by the department. The word "Florida" must~~
122 ~~appear at the top of the plate, and the words "Hispanic~~
123 ~~Achievers" must appear at the bottom of the plate.~~

124 ~~(b) The proceeds from the license plate annual use fee~~
125 ~~shall be distributed to National Hispanic Corporate Achievers,~~
126 ~~Inc., a nonprofit corporation under s. 501(c)(3) of the Internal~~



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127 ~~Revenue Code, to fund grants to nonprofit organizations to~~
128 ~~operate programs and provide scholarships and for marketing the~~
129 ~~Hispanic Achievers license plate. National Hispanic Corporate~~
130 ~~Achievers, Inc., shall establish a Hispanic Achievers Grant~~
131 ~~Council that shall provide recommendations for statewide grants~~
132 ~~from available Hispanic Achievers license plate proceeds to~~
133 ~~nonprofit organizations for programs and scholarships for~~
134 ~~Hispanic and minority Floridians. National Hispanic Corporate~~
135 ~~Achievers, Inc., shall also establish a Hispanic Achievers~~
136 ~~License Plate Fund. Moneys in the fund shall be used by the~~
137 ~~grant council as provided in this paragraph. All funds received~~
138 ~~under this subsection must be used in this state.~~

139 ~~(c) National Hispanic Corporate Achievers, Inc., may retain~~
140 ~~all proceeds from the annual use fee until documented startup~~
141 ~~costs for developing and establishing the plate have been~~
142 ~~recovered. Thereafter, the proceeds from the annual use fee~~
143 ~~shall be used as follows:~~

144 ~~1. Up to 5 percent of the proceeds may be used for the cost~~
145 ~~of administration of the Hispanic Achievers License Plate Fund,~~
146 ~~the Hispanic Achievers Grant Council, and related matters.~~

147 ~~2. Funds may be used as necessary for annual audit or~~
148 ~~compliance affidavit costs.~~

149 ~~3. Up to 20 percent of the proceeds may be used to market~~
150 ~~and promote the Hispanic Achievers license plate.~~

151 ~~4. Twenty five percent of the proceeds shall be used by the~~
152 ~~Hispanic Corporate Achievers, Inc., located in Seminole County,~~
153 ~~for grants.~~

154 ~~5. The remaining proceeds shall be available to the~~
155 ~~Hispanic Achievers Grant Council to award grants for services,~~



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156 ~~programs, or scholarships for Hispanic and minority individuals~~
157 ~~and organizations throughout Florida. All grant recipients must~~
158 ~~provide to the Hispanic Achievers Grant Council an annual~~
159 ~~program and financial report regarding the use of grant funds.~~
160 ~~Such reports must be available to the public.~~

161 ~~(d) Effective July 1, 2014, the Hispanic Achievers license~~
162 ~~plate will shift into the presale voucher phase, as provided in~~
163 ~~s. 320.08053(2)(b). National Hispanic Corporate Achievers, Inc.,~~
164 ~~shall have 24 months to record a minimum of 1,000 sales. Sales~~
165 ~~include existing active plates and vouchers sold subsequent to~~
166 ~~July 1, 2014. During the voucher period, new plates may not be~~
167 ~~issued, but existing plates may be renewed. If, at the~~
168 ~~conclusion of the 24-month presale period, the requirement of a~~
169 ~~minimum of 1,000 sales has been met, the department shall resume~~
170 ~~normal distribution of the Hispanic Achievers license plate. If,~~
171 ~~after 24 months, the minimum of 1,000 sales has not been met,~~
172 ~~the department shall discontinue the Hispanic Achievers license~~
173 ~~plate. This subsection is repealed June 30, 2016.~~

174 ~~(76)(80) FALLEN LAW ENFORCEMENT OFFICERS LICENSE PLATES.-~~

175 ~~(b) The annual use fees shall be distributed to the Police~~
176 ~~and Kids Foundation, Inc., which may use up to a maximum of 10~~
177 ~~percent of the proceeds for marketing to promote and market the~~
178 ~~plate. All remaining proceeds shall be distributed to and used~~
179 ~~by the Police and Kids Foundation, Inc., for its operations,~~
180 ~~activities, programs, and projects The remainder of the proceeds~~
181 ~~shall be used by the Police and Kids Foundation, Inc., to invest~~
182 ~~and reinvest, and the interest earnings shall be used for the~~
183 ~~operation of the Police and Kids Foundation, Inc.~~

184 ~~(80) DUCKS UNLIMITED LICENSE PLATES.-~~



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185 (a) The department shall develop a Ducks Unlimited license
186 plate as provided in this section and s. 320.08053. Ducks
187 Unlimited license plates must bear the colors and design
188 approved by the department. The word "Florida" must appear at
189 the top of the plate, and the words "Conserving Florida
190 Wetlands" must appear at the bottom of the plate.

191 (b) The annual use fees from the sale of the plate shall be
192 distributed to Ducks Unlimited, Inc., a nonprofit corporation
193 under s. 501(c)(3) of the Internal Revenue Code, to be used as
194 follows:

195 1. Up to 5 percent may be used for administrative costs and
196 marketing of the plate.

197 2. A minimum of 95 percent shall be used in this state to
198 support the mission and efforts of Ducks Unlimited, Inc., for
199 the conservation, restoration, and management of Florida
200 wetlands and associated habitats for the benefit of waterfowl,
201 other wildlife, and people.

202
203 ===== T I T L E A M E N D M E N T =====

204 And the title is amended as follows:

205 Delete lines 101 - 107

206 and insert:

207 320.08056, F.S.; deleting the American Red Cross,
208 Donate Organs-Pass It On, St. Johns River, and
209 Hispanic Achievers license plates; establishing an
210 annual use fee for the Ducks Unlimited license plate;
211 conforming cross-references; amending s. 320.08058,
212 F.S.; deleting the American Red Cross, Donate Organs-
213 Pass It On, St. Johns River, and Hispanic Achievers



934212

214 license plates; revising the distribution of proceeds
215 for the Fallen Law Enforcement Officers License Plate;
216 requiring the Department of Highway Safety and Motor
217 Vehicles to develop a Ducks Unlimited license plate;
218 providing for distribution and use of fees collected
219 from the sale of the plates;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Appropriations (Bean) recommended the following:

1 **Senate Substitute for Amendment (934212) (with title**
2 **amendment)**

3
4 Delete lines 1081 - 1103
5 and insert:

6 Section 19. Paragraphs (ee), (eee), (qqq), and (rrr) of
7 subsection (4) of section 320.08056, Florida Statutes, are
8 amended, paragraphs (bbbb) through (gggg) are added to that
9 subsection, and paragraph (a) of subsection (10) of that section
10 is amended, to read:



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11 320.08056 Specialty license plates.-
12 (4) The following license plate annual use fees shall be
13 collected for the appropriate specialty license plates:
14 ~~(ee) American Red Cross license plate, \$25.~~
15 ~~(eee) Donate Organs-Pass It On license plate, \$25.~~
16 ~~(ggg) St. Johns River license plate, \$25.~~
17 ~~(rrr) Hispanic Achievers license plate, \$25.~~
18 (bbbb) Ducks Unlimited license plate, \$25.
19 (cccc) Play Ball license plate, \$25.
20 (dddd) America the Beautiful license plate, \$25.
21 (eeee) Protect Pollinators plate, \$25.
22 (ffff) Florida Native license plate, \$25.
23 (gggg) Donate Life Florida license plate, \$25.
24 (10) (a) A specialty license plate annual use fee collected
25 and distributed under this chapter, or any interest earned from
26 those fees, may not be used for commercial or for-profit
27 activities nor for general or administrative expenses, except as
28 authorized by s. 320.08058 or to pay the cost of the audit or
29 report required by s. 320.08062(1). The fees and any interest
30 earned from the fees may be expended only for use in this state
31 unless the annual use fee is derived from the sale of United
32 States Armed Forces and veterans-related specialty license
33 plates pursuant to paragraphs (4) (d), (bb), (kk), (iii), and
34 (uuu) ~~(ll), (kkk), and (yyy)~~ and s. 320.0891.
35 Section 20. Subsections (31), (57), (69), (70), and
36 paragraph (b) of present subsection (80) of section 320.08058,
37 Florida Statutes, are amended, and new subsections (80) through
38 (85) are added to that section, to read:
39 320.08058 Specialty license plates.-



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40 ~~(31) AMERICAN RED CROSS LICENSE PLATES.—~~

41 ~~(a) Notwithstanding the provisions of s. 320.08053, the~~
42 ~~department shall develop an American Red Cross license plate as~~
43 ~~provided in this section. The word "Florida" must appear at the~~
44 ~~top of the plate, and the words "American Red Cross" must appear~~
45 ~~at the bottom of the plate.~~

46 ~~(b) The department shall retain all revenues from the sale~~
47 ~~of such plates until all startup costs for developing and~~
48 ~~issuing the plates have been recovered. Thereafter, 50 percent~~
49 ~~of the annual use fees shall be distributed to the American Red~~
50 ~~Cross Chapter of Central Florida, with statistics on sales of~~
51 ~~license plates, which are tabulated by county. The American Red~~
52 ~~Cross Chapter of Central Florida must distribute to each of the~~
53 ~~chapters in this state the moneys received from sales in the~~
54 ~~counties covered by the respective chapters, which moneys must~~
55 ~~be used for education and disaster relief in Florida. Fifty~~
56 ~~percent of the annual use fees shall be distributed~~
57 ~~proportionately to the three statewide approved poison control~~
58 ~~centers for purposes of combating bioterrorism and other poison-~~
59 ~~related purposes.~~

60 ~~(57) DONATE ORGANS-PASS IT ON LICENSE PLATES.—~~

61 ~~(a) The department shall develop a Donate Organs-Pass It On~~
62 ~~license plate as provided in this section. The word "Florida"~~
63 ~~must appear at the top of the plate, and the words "Donate~~
64 ~~Organs-Pass It On" must appear at the bottom of the plate.~~

65 ~~(b) The annual use fees shall be distributed to Transplant~~
66 ~~Foundation, Inc., and shall use up to 10 percent of the proceeds~~
67 ~~from the annual use fee for marketing and administrative costs~~
68 ~~that are directly associated with the management and~~



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69 ~~distribution of the proceeds. The remaining proceeds shall be~~
70 ~~used to provide statewide grants for patient services, including~~
71 ~~preoperative, rehabilitative, and housing assistance; organ~~
72 ~~donor education and awareness programs; and statewide medical~~
73 ~~research.~~

74 ~~(69) ST. JOHNS RIVER LICENSE PLATES.—~~

75 ~~(a) The department shall develop a St. Johns River license~~
76 ~~plate as provided in this section. The St. Johns River license~~
77 ~~plates must bear the colors and design approved by the~~
78 ~~department. The word "Florida" must appear at the top of the~~
79 ~~plate, and the words "St. Johns River" must appear at the bottom~~
80 ~~of the plate.~~

81 ~~(b) The requirements of s. 320.08053 must be met prior to~~
82 ~~the issuance of the plate. Thereafter, the license plate annual~~
83 ~~use fees shall be distributed to the St. Johns River Alliance,~~
84 ~~Inc., a s. 501(c)(3) nonprofit organization, which shall~~
85 ~~administer the fees as follows:~~

86 ~~1. The St. Johns River Alliance, Inc., shall retain the~~
87 ~~first \$60,000 of the annual use fees as direct reimbursement for~~
88 ~~administrative costs, startup costs, and costs incurred in the~~
89 ~~development and approval process. Thereafter, up to 10 percent~~
90 ~~of the annual use fee revenue may be used for administrative~~
91 ~~costs directly associated with education programs, conservation,~~
92 ~~research, and grant administration of the organization, and up~~
93 ~~to 10 percent may be used for promotion and marketing of the~~
94 ~~specialty license plate.~~

95 ~~2. At least 30 percent of the fees shall be available for~~
96 ~~competitive grants for targeted community based or county based~~
97 ~~research or projects for which state funding is limited or not~~



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98 ~~currently available. The remaining 50 percent shall be directed~~
99 ~~toward community outreach and access programs. The competitive~~
100 ~~grants shall be administered and approved by the board of~~
101 ~~directors of the St. Johns River Alliance, Inc. A grant advisory~~
102 ~~committee shall be composed of six members chosen by the St.~~
103 ~~Johns River Alliance board members.~~

104 ~~3. Any remaining funds shall be distributed with the~~
105 ~~approval of and accountability to the board of directors of the~~
106 ~~St. Johns River Alliance, Inc., and shall be used to support~~
107 ~~activities contributing to education, outreach, and springs~~
108 ~~conservation.~~

109 ~~4. Effective July 1, 2014, the St. Johns River license~~
110 ~~plate will shift into the presale voucher phase, as provided in~~
111 ~~s. 320.08053(2)(b). The St. Johns River Alliance, Inc., shall~~
112 ~~have 24 months to record a minimum of 1,000 sales of the license~~
113 ~~plates. Sales include existing active plates and vouchers sold~~
114 ~~subsequent to July 1, 2014. During the voucher period, new~~
115 ~~plates may not be issued, but existing plates may be renewed.~~
116 ~~If, at the conclusion of the 24-month presale period, the~~
117 ~~requirement of a minimum of 1,000 sales has been met, the~~
118 ~~department shall resume normal distribution of the St. Johns~~
119 ~~River specialty plate. If, after 24 months, the minimum of 1,000~~
120 ~~sales has not been met, the department shall discontinue the~~
121 ~~development and issuance of the plate. This subparagraph is~~
122 ~~repealed June 30, 2016.~~

123 ~~(70) HISPANIC ACHIEVERS LICENSE PLATES.—~~

124 ~~(a) Notwithstanding the requirements of s. 320.08053, the~~
125 ~~department shall develop a Hispanic Achievers license plate as~~
126 ~~provided in this section. The plate must bear the colors and~~



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127 ~~design approved by the department. The word "Florida" must~~
128 ~~appear at the top of the plate, and the words "Hispanic~~
129 ~~Achievers" must appear at the bottom of the plate.~~

130 ~~(b) The proceeds from the license plate annual use fee~~
131 ~~shall be distributed to National Hispanic Corporate Achievers,~~
132 ~~Inc., a nonprofit corporation under s. 501(c)(3) of the Internal~~
133 ~~Revenue Code, to fund grants to nonprofit organizations to~~
134 ~~operate programs and provide scholarships and for marketing the~~
135 ~~Hispanic Achievers license plate. National Hispanic Corporate~~
136 ~~Achievers, Inc., shall establish a Hispanic Achievers Grant~~
137 ~~Council that shall provide recommendations for statewide grants~~
138 ~~from available Hispanic Achievers license plate proceeds to~~
139 ~~nonprofit organizations for programs and scholarships for~~
140 ~~Hispanic and minority Floridians. National Hispanic Corporate~~
141 ~~Achievers, Inc., shall also establish a Hispanic Achievers~~
142 ~~License Plate Fund. Moneys in the fund shall be used by the~~
143 ~~grant council as provided in this paragraph. All funds received~~
144 ~~under this subsection must be used in this state.~~

145 ~~(c) National Hispanic Corporate Achievers, Inc., may retain~~
146 ~~all proceeds from the annual use fee until documented startup~~
147 ~~costs for developing and establishing the plate have been~~
148 ~~recovered. Thereafter, the proceeds from the annual use fee~~
149 ~~shall be used as follows:~~

150 ~~1. Up to 5 percent of the proceeds may be used for the cost~~
151 ~~of administration of the Hispanic Achievers License Plate Fund,~~
152 ~~the Hispanic Achievers Grant Council, and related matters.~~

153 ~~2. Funds may be used as necessary for annual audit or~~
154 ~~compliance affidavit costs.~~

155 ~~3. Up to 20 percent of the proceeds may be used to market~~



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156 ~~and promote the Hispanic Achievers license plate.~~

157 ~~4. Twenty-five percent of the proceeds shall be used by the~~
158 ~~Hispanic Corporate Achievers, Inc., located in Seminole County,~~
159 ~~for grants.~~

160 ~~5. The remaining proceeds shall be available to the~~
161 ~~Hispanic Achievers Grant Council to award grants for services,~~
162 ~~programs, or scholarships for Hispanic and minority individuals~~
163 ~~and organizations throughout Florida. All grant recipients must~~
164 ~~provide to the Hispanic Achievers Grant Council an annual~~
165 ~~program and financial report regarding the use of grant funds.~~
166 ~~Such reports must be available to the public.~~

167 ~~(d) Effective July 1, 2014, the Hispanic Achievers license~~
168 ~~plate will shift into the presale voucher phase, as provided in~~
169 ~~s. 320.08053(2)(b). National Hispanic Corporate Achievers, Inc.,~~
170 ~~shall have 24 months to record a minimum of 1,000 sales. Sales~~
171 ~~include existing active plates and vouchers sold subsequent to~~
172 ~~July 1, 2014. During the voucher period, new plates may not be~~
173 ~~issued, but existing plates may be renewed. If, at the~~
174 ~~conclusion of the 24-month presale period, the requirement of a~~
175 ~~minimum of 1,000 sales has been met, the department shall resume~~
176 ~~normal distribution of the Hispanic Achievers license plate. If,~~
177 ~~after 24 months, the minimum of 1,000 sales has not been met,~~
178 ~~the department shall discontinue the Hispanic Achievers license~~
179 ~~plate. This subsection is repealed June 30, 2016.~~

180 ~~(76)-(80) FALLEN LAW ENFORCEMENT OFFICERS LICENSE PLATES.-~~

181 (b) The annual use fees shall be distributed to the Police
182 and Kids Foundation, Inc., which may use up to a maximum of 10
183 percent of the proceeds for marketing to promote and market the
184 plate. All remaining proceeds shall be distributed to and used



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185 by the Police and Kids Foundation, Inc., for its operations,
186 activities, programs, and projects ~~The remainder of the proceeds~~
187 ~~shall be used by the Police and Kids Foundation, Inc., to invest~~
188 ~~and reinvest, and the interest earnings shall be used for the~~
189 ~~operation of the Police and Kids Foundation, Inc.~~

190 (80) DUCKS UNLIMITED LICENSE PLATES.-

191 (a) The department shall develop a Ducks Unlimited license
192 plate as provided in this section and s. 320.08053. Ducks
193 Unlimited license plates must bear the colors and design
194 approved by the department. The word "Florida" must appear at
195 the top of the plate, and the words "Conserving Florida
196 Wetlands" must appear at the bottom of the plate.

197 (b) The annual use fees from the sale of the plate shall be
198 distributed to Ducks Unlimited, Inc., a nonprofit corporation
199 under s. 501(c)(3) of the Internal Revenue Code, to be used as
200 follows:

201 1. Up to 5 percent may be used for administrative costs and
202 marketing of the plate.

203 2. A minimum of 95 percent shall be used in this state to
204 support the mission and efforts of Ducks Unlimited, Inc., for
205 the conservation, restoration, and management of Florida
206 wetlands and associated habitats for the benefit of waterfowl,
207 other wildlife, and people.

208 (81) PLAY BALL LICENSE PLATES.-

209 (a) The department shall develop a Play Ball license plate
210 as provided in this section and s. 320.08053. Play Ball license
211 plates must bear the colors and design approved by the
212 department. The word "Florida" must appear at the top of the
213 plate, and the words "Play Ball" must appear at the bottom of



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214 the plate.

215 (b) The license plate annual use fees shall be distributed
216 to American Dream Baseball, Inc., which may retain all proceeds
217 from the annual use fees until the startup costs for developing
218 and issuing the license plates have been recovered. Thereafter,
219 American Dream Baseball, Inc., may use the proceeds as follows:

220 1. A maximum of 15 percent may be used for administrative
221 costs of the organization associated with implementing the
222 programs funded by proceeds derived from sales of the specialty
223 license plate.

224 2. A maximum of 10 percent may be used for promotion and
225 marketing costs of the license plate.

226 3. The remainder shall be used to fund the activities,
227 programs, and projects of American Dream Baseball, Inc.

228 (82) AMERICA THE BEAUTIFUL LICENSE PLATES.—

229 (a) The department shall develop an America The Beautiful
230 license plate as provided in this section and s. 320.08053. The
231 word "Florida" must appear at the top of the plate, and the
232 words "America The Beautiful" must appear on the plate.

233 (b) The annual use fees from the plate shall be distributed
234 to the America the Beautiful Fund as follows: 10 percent to
235 offset its administrative, marketing and promotion costs, and
236 the remaining 85 percent for projects and programs teaching
237 character, leadership, and service to Florida youth; provision
238 of wellbeing and assistance in the military community; outdoor
239 education advancing self-sufficiency; wildlife conservation
240 including imperiled and managed species; the maintenance of
241 historic or culturally important sites, buildings, structures,
242 or objects, and the development and modification of playgrounds,



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243 recreational areas, or other outdoor amenities, including
244 disability access.

245 (83) PROTECT POLLINATORS PLATES.—

246 (a) The department shall develop a Protect Pollinators
247 license plate as provided in this section and s. 320.08053. The
248 word "Florida" must appear at the top of the plate, and the
249 words "Protect Pollinators" must appear at the bottom of the
250 plate.

251 (b) The annual use fees from the sale of the plate shall be
252 distributed to the Florida Wildflower Foundation Inc., which:

253 1. May use a maximum of 10 percent of the proceeds to
254 market, promote, and administer the Protect Pollinators plate.

255 2. Shall use the remainder of the proceeds to establish
256 pollinator wildflower habitats, fund pollinator education and
257 research programs, and promote awareness of pollinators,
258 including butterflies, native bees and honeybees, hummingbirds,
259 bats, and hundreds of other insects and animal pollinator
260 species, and their importance to Florida agricultural success
261 and the security of the food supply.

262 (84) FLORIDA NATIVE LICENSE PLATES.—

263 (a) The department shall develop a Florida Native license
264 plate as provided in this section and s. 320.08053. The word
265 "Florida" must appear at the top of the plate, and the word
266 "Native" must appear at the bottom of the plate. The plate must
267 contain a camouflage background including leaves, flowers, or
268 fronds of a minimum of 12 different Florida native plants.

269 (b)1. The department shall retain all annual use fees from
270 the sale of the plate until all startup costs for developing and
271 issuing the plate have been recovered.



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272 2. Thereafter, the annual use fees from the sale of the
273 plate shall be distributed to Florida Native Plant Society, a
274 Florida nonprofit corporation, which may use a maximum of 10
275 percent of such fees for administrative costs and a maximum of
276 20 percent to market and promote the plate. The balance of the
277 fees shall be used by Florida Native Plant Society, to fulfill
278 the mission of the Florida Native Plant Society, where a minimum
279 of 25 percent is dedicated to maintaining, improving, and
280 restoring public native species, hunting and fishing habitats,
281 and 25 percent is used to promote the cultivation of Florida's
282 agricultural products through the preservation of native noncrop
283 plants to provide habitats for pollinators and natural enemies
284 to plant pests, and to provide pollen and nectar and undisturbed
285 habitats for bee nesting throughout the growing season.

286 (85) DONATE LIFE FLORIDA LICENSE PLATES.—

287 (a) The department shall develop a Donate Life Florida
288 license plate as provided in this section and s. 320.08053. The
289 plate must bear the colors and design approved by the
290 department. The word "Florida" must appear at the top of the
291 plate, and the words "Donors Saves Lives" must appear at the
292 bottom of the plate.

293 (b) The annual use fees from the sale of the plate shall be
294 distributed to Donate Life Florida, which may use up to 10
295 percent of the proceeds for marketing and administrative costs.
296 The remaining proceeds of the annual use fees shall be used by
297 the Donate Life Florida to educate Florida residents on the
298 importance of organ, tissue and eye donation and for the
299 continued maintenance of the Joshua Abbott Organ and Tissue
300 Donor Registry.



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===== 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 certain specialty 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 certain specialty license plates;
providing for distribution and use of fees collected
from the sale of the plates;



403134

LEGISLATIVE ACTION

Senate

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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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11 (4) The following license plate annual use fees shall be
12 collected for the appropriate specialty license plates:

13 ~~(cc) American Red Cross license plate, \$25.~~

14 ~~(ccc) Donate Organs Pass It On license plate, \$25.~~

15 ~~(qqq) St. Johns River license plate, \$25.~~

16 ~~(rrr) Hispanic Achievers license plate, \$25.~~

17 (bbbb) Florida State Beekeepers Association license plate,
18 \$25.

19 (10) (a) A specialty license plate annual use fee collected
20 and distributed under this chapter, or any interest earned from
21 those fees, may not be used for commercial or for-profit
22 activities nor for general or administrative expenses, except as
23 authorized by s. 320.08058 or to pay the cost of the audit or
24 report required by s. 320.08062(1). The fees and any interest
25 earned from the fees may be expended only for use in this state
26 unless the annual use fee is derived from the sale of United
27 States Armed Forces and veterans-related specialty license
28 plates pursuant to paragraphs (4) (d), (bb), (kk), (iii), and
29 (uuu) ~~(ll)~~, ~~(kkk)~~, and ~~(yyy)~~ and s. 320.0891.

30 Section 20. Subsections (31), (57), (69), (70) of section
31 320.08058, Florida Statutes, are amended, and a new subsection
32 (80) is added to that section, to read:

33 320.08058 Specialty license plates.—

34 ~~(31) AMERICAN RED CROSS LICENSE PLATES.—~~

35 ~~(a) Notwithstanding the provisions of s. 320.08053, the~~
36 ~~department shall develop an American Red Cross license plate as~~
37 ~~provided in this section. The word "Florida" must appear at the~~
38 ~~top of the plate, and the words "American Red Cross" must appear~~
39 ~~at the bottom of the plate.~~



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40 ~~(b) The department shall retain all revenues from the sale~~
41 ~~of such plates until all startup costs for developing and~~
42 ~~issuing the plates have been recovered. Thereafter, 50 percent~~
43 ~~of the annual use fees shall be distributed to the American Red~~
44 ~~Cross Chapter of Central Florida, with statistics on sales of~~
45 ~~license plates, which are tabulated by county. The American Red~~
46 ~~Cross Chapter of Central Florida must distribute to each of the~~
47 ~~chapters in this state the moneys received from sales in the~~
48 ~~counties covered by the respective chapters, which moneys must~~
49 ~~be used for education and disaster relief in Florida. Fifty~~
50 ~~percent of the annual use fees shall be distributed~~
51 ~~proportionately to the three statewide approved poison control~~
52 ~~centers for purposes of combating bioterrorism and other poison-~~
53 ~~related purposes.~~

54 ~~(57) DONATE ORGANS-PASS IT ON LICENSE PLATES.—~~

55 ~~(a) The department shall develop a Donate Organs-Pass It On~~
56 ~~license plate as provided in this section. The word "Florida"~~
57 ~~must appear at the top of the plate, and the words "Donate~~
58 ~~Organs-Pass It On" must appear at the bottom of the plate.~~

59 ~~(b) The annual use fees shall be distributed to Transplant~~
60 ~~Foundation, Inc., and shall use up to 10 percent of the proceeds~~
61 ~~from the annual use fee for marketing and administrative costs~~
62 ~~that are directly associated with the management and~~
63 ~~distribution of the proceeds. The remaining proceeds shall be~~
64 ~~used to provide statewide grants for patient services, including~~
65 ~~preoperative, rehabilitative, and housing assistance; organ~~
66 ~~donor education and awareness programs; and statewide medical~~
67 ~~research.~~

68 ~~(69) ST. JOHNS RIVER LICENSE PLATES.—~~



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69 ~~(a) The department shall develop a St. Johns River license~~
70 ~~plate as provided in this section. The St. Johns River license~~
71 ~~plates must bear the colors and design approved by the~~
72 ~~department. The word "Florida" must appear at the top of the~~
73 ~~plate, and the words "St. Johns River" must appear at the bottom~~
74 ~~of the plate.~~

75 ~~(b) The requirements of s. 320.08053 must be met prior to~~
76 ~~the issuance of the plate. Thereafter, the license plate annual~~
77 ~~use fees shall be distributed to the St. Johns River Alliance,~~
78 ~~Inc., a s. 501(c)(3) nonprofit organization, which shall~~
79 ~~administer the fees as follows:~~

80 ~~1. The St. Johns River Alliance, Inc., shall retain the~~
81 ~~first \$60,000 of the annual use fees as direct reimbursement for~~
82 ~~administrative costs, startup costs, and costs incurred in the~~
83 ~~development and approval process. Thereafter, up to 10 percent~~
84 ~~of the annual use fee revenue may be used for administrative~~
85 ~~costs directly associated with education programs, conservation,~~
86 ~~research, and grant administration of the organization, and up~~
87 ~~to 10 percent may be used for promotion and marketing of the~~
88 ~~specialty license plate.~~

89 ~~2. At least 30 percent of the fees shall be available for~~
90 ~~competitive grants for targeted community-based or county-based~~
91 ~~research or projects for which state funding is limited or not~~
92 ~~currently available. The remaining 50 percent shall be directed~~
93 ~~toward community outreach and access programs. The competitive~~
94 ~~grants shall be administered and approved by the board of~~
95 ~~directors of the St. Johns River Alliance, Inc. A grant advisory~~
96 ~~committee shall be composed of six members chosen by the St.~~
97 ~~Johns River Alliance board members.~~



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98 ~~3. Any remaining funds shall be distributed with the~~
99 ~~approval of and accountability to the board of directors of the~~
100 ~~St. Johns River Alliance, Inc., and shall be used to support~~
101 ~~activities contributing to education, outreach, and springs~~
102 ~~conservation.~~

103 ~~4. Effective July 1, 2014, the St. Johns River license~~
104 ~~plate will shift into the presale voucher phase, as provided in~~
105 ~~s. 320.08053(2)(b). The St. Johns River Alliance, Inc., shall~~
106 ~~have 24 months to record a minimum of 1,000 sales of the license~~
107 ~~plates. Sales include existing active plates and vouchers sold~~
108 ~~subsequent to July 1, 2014. During the voucher period, new~~
109 ~~plates may not be issued, but existing plates may be renewed.~~
110 ~~If, at the conclusion of the 24-month presale period, the~~
111 ~~requirement of a minimum of 1,000 sales has been met, the~~
112 ~~department shall resume normal distribution of the St. Johns~~
113 ~~River specialty plate. If, after 24 months, the minimum of 1,000~~
114 ~~sales has not been met, the department shall discontinue the~~
115 ~~development and issuance of the plate. This subparagraph is~~
116 ~~repealed June 30, 2016.~~

117 ~~(70) HISPANIC ACHIEVERS LICENSE PLATES.—~~

118 ~~(a) Notwithstanding the requirements of s. 320.08053, the~~
119 ~~department shall develop a Hispanic Achievers license plate as~~
120 ~~provided in this section. The plate must bear the colors and~~
121 ~~design approved by the department. The word "Florida" must~~
122 ~~appear at the top of the plate, and the words "Hispanic~~
123 ~~Achievers" must appear at the bottom of the plate.~~

124 ~~(b) The proceeds from the license plate annual use fee~~
125 ~~shall be distributed to National Hispanic Corporate Achievers,~~
126 ~~Inc., a nonprofit corporation under s. 501(c)(3) of the Internal~~



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127 ~~Revenue Code, to fund grants to nonprofit organizations to~~
128 ~~operate programs and provide scholarships and for marketing the~~
129 ~~Hispanic Achievers license plate. National Hispanic Corporate~~
130 ~~Achievers, Inc., shall establish a Hispanic Achievers Grant~~
131 ~~Council that shall provide recommendations for statewide grants~~
132 ~~from available Hispanic Achievers license plate proceeds to~~
133 ~~nonprofit organizations for programs and scholarships for~~
134 ~~Hispanic and minority Floridians. National Hispanic Corporate~~
135 ~~Achievers, Inc., shall also establish a Hispanic Achievers~~
136 ~~License Plate Fund. Moneys in the fund shall be used by the~~
137 ~~grant council as provided in this paragraph. All funds received~~
138 ~~under this subsection must be used in this state.~~

139 ~~(c) National Hispanic Corporate Achievers, Inc., may retain~~
140 ~~all proceeds from the annual use fee until documented startup~~
141 ~~costs for developing and establishing the plate have been~~
142 ~~recovered. Thereafter, the proceeds from the annual use fee~~
143 ~~shall be used as follows:~~

144 ~~1. Up to 5 percent of the proceeds may be used for the cost~~
145 ~~of administration of the Hispanic Achievers License Plate Fund,~~
146 ~~the Hispanic Achievers Grant Council, and related matters.~~

147 ~~2. Funds may be used as necessary for annual audit or~~
148 ~~compliance affidavit costs.~~

149 ~~3. Up to 20 percent of the proceeds may be used to market~~
150 ~~and promote the Hispanic Achievers license plate.~~

151 ~~4. Twenty five percent of the proceeds shall be used by the~~
152 ~~Hispanic Corporate Achievers, Inc., located in Seminole County,~~
153 ~~for grants.~~

154 ~~5. The remaining proceeds shall be available to the~~
155 ~~Hispanic Achievers Grant Council to award grants for services,~~



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156 ~~programs, or scholarships for Hispanic and minority individuals~~
157 ~~and organizations throughout Florida. All grant recipients must~~
158 ~~provide to the Hispanic Achievers Grant Council an annual~~
159 ~~program and financial report regarding the use of grant funds.~~
160 ~~Such reports must be available to the public.~~

161 ~~(d) Effective July 1, 2014, the Hispanic Achievers license~~
162 ~~plate will shift into the presale voucher phase, as provided in~~
163 ~~s. 320.08053(2)(b). National Hispanic Corporate Achievers, Inc.,~~
164 ~~shall have 24 months to record a minimum of 1,000 sales. Sales~~
165 ~~include existing active plates and vouchers sold subsequent to~~
166 ~~July 1, 2014. During the voucher period, new plates may not be~~
167 ~~issued, but existing plates may be renewed. If, at the~~
168 ~~conclusion of the 24-month presale period, the requirement of a~~
169 ~~minimum of 1,000 sales has been met, the department shall resume~~
170 ~~normal distribution of the Hispanic Achievers license plate. If,~~
171 ~~after 24 months, the minimum of 1,000 sales has not been met,~~
172 ~~the department shall discontinue the Hispanic Achievers license~~
173 ~~plate. This subsection is repealed June 30, 2016.~~

174 (80) FLORIDA STATE BEEKEEPERS ASSOCIATION LICENSE PLATES.-

175 (a) The department shall develop a Florida State Beekeepers
176 Association license plate as provided in this section and s.
177 320.08053. The plate must bear the colors and design approved by
178 the department. The word "Florida" must appear at the top of the
179 plate, and the words "Save the Bees" must appear at the bottom
180 of the plate.

181 (b) The annual use fees shall be distributed to the Florida
182 State Beekeepers Association, a Florida nonprofit corporation.
183 The Florida State Beekeepers Association may use up to 18
184 percent of the annual use fees for:



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185 1. Direct reimbursement for administrative costs, startup
186 costs, and costs incurred in the development and approval
187 process of the license plate. All vendors associated with the
188 administrative costs shall be selected by competitive bid.

189 2. Promotion and marketing costs of the license plate.

190 (c) The remaining funds shall be distributed to the Florida
191 State Beekeepers Association and shall be used to raise
192 awareness of the importance of beekeeping to Florida agriculture
193 by funding honeybee research, education, outreach, and
194 husbandry. The Florida State Beekeepers Association board of
195 managers must approve and is accountable for all such
196 expenditures.

197
198 ===== T I T L E A M E N D M E N T =====

199 And the title is amended as follows:

200 Delete lines 101 - 107

201 and insert:

202 320.08056, F.S.; deleting the American Red Cross,
203 Donate Organs-Pass It On, St. Johns River, and
204 Hispanic Achievers license plates; establishing an
205 annual use fee for the Florida State Beekeepers
206 Association license plate; conforming cross-
207 references; amending s. 320.08058, F.S.; deleting the
208 American Red Cross, Donate Organs-Pass It On, St.
209 Johns River, and Hispanic Achievers license plates;
210 requiring the Department of Highway Safety and Motor
211 Vehicles to develop a Florida State Beekeepers
212 Association license plate; providing for distribution
213 and use of fees collected from the sale of the plates;



407566

LEGISLATIVE ACTION

Senate

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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



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11 to allow them to operate fleet vehicles awaiting a permanent
12 registration and title.

13 (a) The department shall establish a memorandum of
14 understanding that allows a maximum of three companies to
15 participate in the pilot program to receive multiple temporary
16 tags for company fleet vehicles.

17 (b) To participate in the program a fleet company must have
18 a minimum of 3,500 fleet vehicles registered in this state that
19 qualify to be registered as fleet vehicles pursuant to s.
20 320.0657.

21 (c) The department may issue up to 50 temporary tags at a
22 time to an eligible fleet company, if requested by such company.

23 (d) The temporary tags are for exclusive use for a vehicle
24 purchased for the company's fleet, and may not be used on any
25 other vehicle.

26 (e) Each temporary plate may be used by only one vehicle
27 and each vehicle may only use one temporary plate.

28 (f) Upon issuance of the vehicle's permanent license plate
29 and registration, the temporary tag becomes invalid and must be
30 removed from the vehicle and destroyed.

31 (g) Upon a finding by the department that a temporary tag
32 has been misused by a fleet company under this program, the
33 department may terminate the memorandum of understanding with
34 the company, invalidate all temporary tags issued to the company
35 under this program, and require such company to return any
36 unused temporary tags.

37 (h) This subsection is repealed on October 1, 2019, unless
38 saved from repeal through reenactment by the Legislature.
39



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

41 And the title is amended as follows:

42 Between lines 120 and 121

43 insert:

44 320.131, F.S.; creating a Fleet Vehicle Temporary Tag

45 pilot program; amending s.



349606

LEGISLATIVE ACTION

Senate

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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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11 any Class E licensee who is age 15 through 17 and who has
12 accumulated six or more points pursuant to s. 318.14, excluding
13 parking violations, within an 18-month ~~a 12-month~~ period.

14 (b) Upon determination that any person has accumulated
15 seven ~~six~~ or more points, the department shall notify the
16 licensee and issue the licensee a restricted license for
17 business purposes only. The licensee must appear before the
18 department within 10 days after notification to have this
19 restriction applied. The period of restriction shall be for ~~a~~
20 ~~period of no less than 1 year~~ 30 days beginning on the date it
21 is applied by the department. During the period of restriction,
22 the licensee must complete a 12-hour approved advanced driver
23 improvement course and receive 4 hours of behind-the-wheel
24 training from a Florida licensed commercial driving school.
25 Successful completion of a behind-the-wheel examination is
26 required in order to receive completion credit for the course.

27 (c) The restriction shall be automatically withdrawn by the
28 department after 1 year if the licensee has completed such
29 driver improvement course approved by the department and does
30 not accumulate any additional points. If the licensee has not
31 completed the course requirement, the period of restriction
32 shall be extended until such time as the licensee completes the
33 course requirement. If the licensee accumulates any additional
34 points, ~~then~~ the period of restriction shall be extended for at
35 least 90 days and up to one year for each point. The restriction
36 shall also be automatically withdrawn upon the licensee's 18th
37 birthday if no other grounds for restriction exist. The licensee
38 must appear before the department to have the restriction
39 removed and a duplicate license issued.



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40 (3)~~(2)~~ Any action taken by the department pursuant to this
41 section shall not be subject to any formal or informal
42 administrative hearing or similar administrative procedure.
43

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

45 And the title is amended as follows:

46 Between lines 214 and 215

47 insert:

48 322.161; providing a short title; revising the period
49 of time in which certain licensees may accumulate
50 points before being issued a restricted driver license
51 by the department; requiring restricted licensees to
52 attend a driver improvement course approved by the
53 department; providing for extension of the restriction
54 period under certain circumstances;



292206

LEGISLATIVE ACTION

Senate

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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



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11 or all such instruments and devices, excluding taximeters,
12 transportation measurement systems, and those weights and
13 measures used for the purpose of inspecting the accuracy of
14 devices used in conjunction with aviation fuel.

15 Section 41. Subsection (1) of section 531.61, Florida
16 Statutes, is amended, and present subsections (2) and (3) of
17 that section are redesignated as subsections (1) and (2),
18 respectively, to read:

19 531.61 Exemptions from permit requirement.—Commercial
20 weights or measures instruments or devices are exempt from the
21 requirements of ss. 531.60-531.66 if:

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

27 Section 42. Paragraph (g) of subsection (2) of section
28 531.63, Florida Statutes, is amended, and present paragraphs (h)
29 and (i) of that subsection are redesignated as paragraphs (g)
30 and (h), respectively, to read:

31 531.63 Maximum permit fees.—The commercial use permit fees
32 established for weights or measures instruments or devices shall
33 be in an amount necessary to administer this chapter but may not
34 exceed the amounts provided in this section.

35 (2) For other measuring devices, the annual permit fees per
36 device may not exceed the following:

37 ~~(g) Taximeters.....\$50.~~

38

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



292206

40 And the title is amended as follows:

41 Delete line 246

42 and insert:

43 cash; amending s. 531.37, F.S.; revising the
44 definition of the term "weights and measures";
45 amending s. 531.61, F.S.; deleting a provision
46 exempting certain taximeters from specified permit
47 requirements; amending s. 531.63, F.S.; deleting a
48 provision prohibiting the annual permit fees for
49 taximeters from exceeding \$50; amending s. 877.27,
50 F.S.; prohibiting a person



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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 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



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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.;



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56 requiring an application form for motor vehicle
57 registration to include language authorizing a
58 voluntary contribution to be distributed to Preserve
59 Vision Florida, rather than to Prevent Blindness
60 Florida; amending s. 320.03, F.S.; requiring tax
61 collectors to provide motor vehicle registration
62 services to residents of other counties; providing
63 that jurisdiction over the electronic filing system
64 for use by authorized electronic filing system agents
65 to process title transactions, derelict motor vehicle
66 certificates, and certificates of destruction for
67 derelict and salvage motor vehicles is preempted to
68 the state; authorizing an entity that, in the normal
69 course of its business, processes title transactions,
70 derelict motor vehicle certificates, or certificates
71 of destruction for derelict or salvage motor vehicles
72 to be an authorized electronic filing system agent;
73 authorizing the department to adopt rules to
74 administer specified provisions; amending s. 320.06,
75 F.S.; providing for future repeal of issuance of a
76 certain annual license plate and cab card to a vehicle
77 that has an apportioned registration; providing
78 requirements, beginning on a specified date, for
79 license plates, cab cards, and validation stickers for
80 vehicles registered in accordance with the
81 International Registration Plan; authorizing a worn or
82 damaged license plate to be replaced at no charge
83 under certain circumstances; amending s. 320.0605,
84 F.S.; authorizing presentation of electronic



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85 documentation of certain information to a law
86 enforcement officer or agent of the department;
87 providing construction; providing liability; revising
88 information required in such documentation; amending
89 s. 320.0607, F.S.; providing an exemption, beginning
90 on a specified date, of a certain fee for vehicles
91 registered under the International Registration Plan;
92 amending s. 320.08, F.S.; requiring a truck tractor
93 used within this state to be eligible for a license
94 plate for a specified fee under certain circumstances;
95 requiring a truck tractor or heavy truck, not operated
96 as a for-hire vehicle, which is engaged exclusively in
97 transporting raw, unprocessed, and nonmanufactured
98 agricultural or horticultural products within this
99 state to be eligible for a restricted license for a
100 certain fee; conforming cross-references; amending s.
101 320.08056, F.S.; deleting the American Red Cross,
102 Donate Organs-Pass It On, St. Johns River, and
103 Hispanic Achievers license plates; conforming cross-
104 references; repealing s. 320.08058(31), (57), (69),
105 and (70), F.S., relating to the American Red Cross,
106 Donate Organs-Pass It On, St. Johns River, and
107 Hispanic Achievers license plates, respectively;
108 amending s. 320.08068, F.S.; requiring The Able Trust
109 to distribute a specified percentage of annual use
110 fees from motorcycle specialty license plates to
111 Preserve Vision Florida, rather than to Prevent
112 Blindness Florida; amending s. 320.086, F.S.;
113 providing that, for purposes of this section, a



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114 trailer is considered a motor vehicle; creating s.
115 320.0875, F.S.; providing for a motorcycle special
116 license plate to be issued to a recipient of the
117 Purple Heart; providing requirements for the plate;
118 amending s. 320.089, F.S.; providing for a special
119 license plate to be issued to a recipient of the
120 Bronze Star; making technical changes; amending s.
121 320.133, F.S.; defining the term "transporter license
122 plate eligible business"; providing that a person is
123 not eligible to purchase or renew a transporter
124 license plate unless he or she provides certain proof
125 that his or her business is a transporter license
126 plate eligible business; providing application and
127 insurance requirements for qualification as a
128 transporter license plate eligible business;
129 authorizing the department to issue a transporter
130 license plate to an applicant who is not a licensed
131 dealer and is qualified as a transporter license plate
132 eligible business, under certain circumstances;
133 providing that a transporter license plate is valid
134 only for use on an unregistered motor vehicle in the
135 possession of the transporter, subject to certain
136 requirements; providing a criminal penalty for a
137 person who sells or unlawfully possesses, distributes,
138 or brokers a transporter license plate to be attached
139 to any vehicle; providing that transporter license
140 plates are subject to cancellation by the department;
141 providing a criminal penalty and disqualification from
142 transporter license plate usage for a person who



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143 knowingly and willfully sells or unlawfully possesses,
144 distributes, or brokers a transporter license plate to
145 avoid registering a vehicle requiring registration,
146 subject to certain requirements; providing
147 recordkeeping requirements for a transporter license
148 plate eligible business; providing a criminal penalty,
149 cancellation of transporter license plates, and
150 disqualification from future issuance of the plates
151 for a violation of such recordkeeping requirements;
152 requiring a transporter license plate issued under
153 this section to be accompanied by registration and
154 proof of insurance when attached to a motor vehicle;
155 providing a criminal penalty and removal of the
156 license plate for a person who fails to provide such
157 documentation; providing an exemption to persons who
158 contract with dealers and auctions to transport motor
159 vehicles; conforming provisions to changes made by the
160 act; providing that an initial registration or renewal
161 issued under this section is valid for a specified
162 period; requiring a license plate attached to a motor
163 vehicle in violation of specified provision to be
164 removed by a law enforcement officer and surrendered
165 to the department by the law enforcement agency for
166 cancellation; amending s. 320.27, F.S.; revising the
167 definitions of "motor vehicle dealer" and "motor
168 vehicle broker"; requiring any person acting in
169 violation of specified licensing requirements to be
170 deemed to have committed an unfair and deceptive trade
171 practice in violation of specified provisions; making



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172 technical changes; amending s. 321.25, F.S.; providing
173 for reimbursement to the department of tuition and
174 other course expenses for certain training under
175 certain circumstances; defining the term "other course
176 expenses"; authorizing the department to institute a
177 civil action under certain circumstances; authorizing
178 the department to waive a person's requirement of
179 reimbursement when the person terminates employment
180 due to hardship or extenuating circumstances; amending
181 s. 322.01, F.S.; conforming provisions to changes made
182 by the act; amending s. 322.03, F.S.; authorizing a
183 person to operate an autocycle without a motorcycle
184 endorsement; amending s. 322.032, F.S.; requiring the
185 department, in collaboration with the Agency for State
186 Technology, to establish and implement certain
187 protocols and standards related to digital proofs of
188 driver licenses and to procure an application
189 programming interface for a specified purpose;
190 conforming a provision to changes made by the act;
191 providing construction relating to a person's
192 presentation of an electronic device displaying a
193 digital proof of driver license to a law enforcement
194 officer; amending s. 322.051, F.S.; revising
195 eligibility for a "D" designation on an identification
196 card to include posttraumatic stress disorder or
197 traumatic brain injury; amending s. 322.08, F.S.;
198 requiring an application form for an original,
199 renewal, or replacement driver license or
200 identification card to include language authorizing a



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201 voluntary contribution to Preserve Vision Florida,
202 rather than to Prevent Blindness Florida; amending s.
203 322.091, F.S.; requiring the department to make
204 available, upon request, a report to each school
205 district of certain information for each student whose
206 driving privileges have been suspended under this
207 section; amending s. 322.12, F.S.; requiring the tax
208 collector to retain specified fees if a subsequent
209 knowledge or skills test is administered by the tax
210 collector; exempting the operation of an autocycle
211 from certain examination requirements for licenses to
212 operate motorcycles; amending s. 322.135, F.S.;
213 requiring tax collectors to provide driver license
214 services to residents of all counties; amending s.
215 322.17, F.S.; providing for replacement of a stolen
216 identification card at no charge, subject to certain
217 requirements; amending s. 322.21, F.S.; deleting
218 obsolete provisions; deleting a fee for certain
219 specialty driver licenses or identification cards;
220 providing disposition of specified fees for
221 reinstatement of a driver license following a
222 suspension, revocation, or disqualification when the
223 reinstatement is processed by the department or the
224 tax collector; requiring an applicant who submits an
225 application for a renewal or replacement driver
226 license or identification card to the department using
227 a convenience service to be provided with an option
228 for expedited shipping, subject to certain
229 requirements; requiring a fee to be charged for the



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230 expedited shipping option, subject to certain
231 requirements; providing for disposition of such fee;
232 amending s. 322.61, F.S.; adding violations for
233 texting or using a handheld mobile telephone while
234 driving a commercial motor vehicle as specified
235 offenses that, in certain circumstances, result in
236 disqualification from operating a commercial motor
237 vehicle for a specified period; amending s. 324.031,
238 F.S.; revising insurer requirements for a motor
239 vehicle liability policy held by the owner or operator
240 of a taxicab, limousine, jitney, or any other for-hire
241 passenger transportation vehicle; revising certain
242 excess insurance minimum limits for an operator or
243 owner of any other vehicle proving his or her
244 financial responsibility by furnishing a certain
245 certificate of self-insurance showing a deposit of
246 cash; amending s. 877.27, F.S.; prohibiting a person
247 from using a device prohibited by the Federal
248 Communications Commission which would cause
249 interference with the legal use of a global
250 positioning system to track vehicles; amending ss.
251 212.05, 316.303, 316.545, 316.613, and 655.960, F.S.;
252 conforming cross-references; providing applicability
253 of certain changes made by the act; providing
254 effective dates, one of which is contingent.

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

257
258 Section 1. Present subsections (2) through (97) of section



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259 316.003, Florida Statutes, are redesignated as subsections (3)
260 through (98), respectively, a new subsection (2) is added to
261 that section, and present subsections (41) and (55) of that
262 section are amended, to read:

263 316.003 Definitions.—The following words and phrases, when
264 used in this chapter, shall have the meanings respectively
265 ascribed to them in this section, except where the context
266 otherwise requires:

267 (2) AUTOCYCLE.—A three-wheel motorcycle that has two wheels
268 in the front and one wheel in the back, is equipped with a roll
269 cage or roll hoops, safety belts for each occupant, antilock
270 brakes, a steering wheel, and seating that does not require the
271 operator to straddle or sit astride it and is manufactured by a
272 National Highway Traffic Safety Administration registered
273 manufacturer in accordance with the applicable federal
274 motorcycle safety standards under 49 C.F.R. part 571.

275 (42)(41) MOTORCYCLE.—Any motor vehicle that has having a
276 seat or saddle for the use of the rider which is and designed to
277 travel on not more than three wheels in contact with the ground,
278 including an autocycle. The term does not include a tractor, a
279 moped, or a vehicle in which the operator is enclosed by a cabin
280 unless the vehicle meets the requirements set forth by the
281 National Highway Traffic Safety Administration for a motorcycle
282 but excluding a tractor or a moped.

283 (56)(55) PRIVATE ROAD OR DRIVEWAY.—Except as otherwise
284 provided in paragraph (78)(b) (77)(b), any privately owned way
285 or place used for vehicular travel by the owner and those having
286 express or implied permission from the owner, but not by other
287 persons.



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288 Section 2. Subsections (1) and (3) of section 316.2397,
289 Florida Statutes, are amended to read:

290 316.2397 Certain lights prohibited; exceptions.-

291 (1) ~~A~~ ~~No~~ person ~~may not~~ ~~shall~~ drive or move or cause to be
292 moved any vehicle or equipment upon any highway within this
293 state with ~~a~~ ~~any~~ lamp or device thereon showing or displaying a
294 red, ~~red and white~~, or blue light visible from directly in front
295 thereof except for certain vehicles ~~hereinafter~~ provided in this
296 section.

297 (3) Vehicles of the fire department and fire patrol,
298 including vehicles of volunteer firefighters as permitted under
299 s. 316.2398, may show or display red, or red and white, lights.
300 Vehicles of medical staff physicians or technicians of medical
301 facilities licensed by the state as authorized under s.
302 316.2398, ambulances as authorized under this chapter, and buses
303 and taxicabs as authorized under s. 316.2399 may show or display
304 red lights. Vehicles of the fire department, fire patrol, police
305 vehicles, and such ambulances and emergency vehicles of
306 municipal and county departments, public service corporations
307 operated by private corporations, the Fish and Wildlife
308 Conservation Commission, the Department of Environmental
309 Protection, the Department of Transportation, the Department of
310 Agriculture and Consumer Services, and the Department of
311 Corrections as are designated or authorized by their respective
312 department or the chief of police of an incorporated city or any
313 sheriff of any county may operate emergency lights and sirens in
314 an emergency. Wreckers, mosquito control fog and spray vehicles,
315 and emergency vehicles of governmental departments or public
316 service corporations may show or display amber lights when in



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317 actual operation or when a hazard exists provided they are not
318 used going to and from the scene of operation or hazard without
319 specific authorization of a law enforcement officer or law
320 enforcement agency. Wreckers, flatbed, car carriers, or
321 rollbacks registered as wreckers pursuant to s. 320.08(5)(d) or
322 (e) must use amber rotating or flashing lights while performing
323 recoveries and loading on the roadside day or night, and may use
324 such lights while towing a vehicle on wheel lifts, slings, ~~or~~
325 under reach, flatbeds, car carriers, or rollbacks if the
326 operator of the wrecker deems such lights necessary. ~~A flatbed,~~
327 ~~car carrier, or rollback may not use amber rotating or flashing~~
328 ~~lights when hauling a vehicle on the bed unless it creates a~~
329 ~~hazard to other motorists because of protruding objects.~~
330 Further, escort vehicles may show or display amber lights when
331 in the actual process of escorting oversized equipment,
332 material, or buildings as authorized by law. Vehicles owned or
333 leased by private security agencies may show or display green
334 and amber lights, with either color being no greater than 50
335 percent of the lights displayed, while the security personnel
336 are engaged in security duties on private or public property.

337 Section 3. Section 316.2398, Florida Statutes, is amended
338 to read:

339 316.2398 Display or use of red, or red and white, warning
340 signals; motor vehicles of volunteer firefighters or medical
341 staff.-

342 (1) A privately owned vehicle belonging to an active
343 firefighter member of a regularly organized volunteer
344 firefighting company or association, while en route to the fire
345 station for the purpose of proceeding to the scene of a fire or



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346 other emergency or while en route to the scene of a fire or
347 other emergency in the line of duty as an active firefighter
348 member of a regularly organized firefighting company or
349 association, may display or use red, or red and white, warning
350 signals. ~~or~~ A privately owned vehicle belonging to a medical
351 staff physician or technician of a medical facility licensed by
352 the state, while responding to an emergency in the line of duty,
353 may display or use red warning signals. Warning signals must be
354 visible from the front and from the rear of such vehicle,
355 subject to the following restrictions and conditions:

356 (a) Red, or red and white, ~~No more than two red~~ warning
357 signals may be displayed as determined by the responding agency
358 in order to maintain public safety and the safety of the
359 responding vehicle occupants.

360 (b) No inscription of any kind may appear across the face
361 of the lens of the red, or red and white, warning signal.

362 (c) In order for an active volunteer firefighter to display
363 such red, or red and white, warning signals on his or her
364 vehicle, the volunteer firefighter must first secure a written
365 permit from the chief executive officers of the firefighting
366 organization to use the red, or red and white, warning signals,
367 and this permit must be carried by the volunteer firefighter at
368 all times while the red, or red and white, warning signals are
369 displayed.

370 (2) ~~A It is unlawful for any~~ person who is not an active
371 firefighter member of a regularly organized volunteer
372 firefighting company or association or a physician or technician
373 of the medical staff of a medical facility licensed by the state
374 may not ~~or~~ display on any motor vehicle owned by him or her, at



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375 any time, any red, or red and white, warning signals as
376 described in subsection (1).

377 (3) ~~It is unlawful for~~ An active volunteer firefighter may
378 not ~~to~~ operate any red, or red and white, warning signals as
379 authorized in subsection (1), except while en route to the fire
380 station for the purpose of proceeding to the scene of a fire or
381 other emergency, or while at or en route to the scene of a fire
382 or other emergency, in the line of duty.

383 (4) ~~It is unlawful for~~ a physician or technician of the
384 medical staff of a medical facility may not ~~to~~ operate any red
385 warning signals as authorized in subsection (1), except when
386 responding to an emergency in the line of duty.

387 (5) A violation of this section is a nonmoving violation,
388 punishable as provided in chapter 318. In addition, a any
389 volunteer firefighter who violates this section shall be
390 dismissed from membership in the firefighting organization by
391 the chief executive officers thereof.

392 Section 4. Subsection (1) and paragraphs (a), (c), (d), and
393 (f) of subsection (2) of section 316.302, Florida Statutes, are
394 amended to read:

395 316.302 Commercial motor vehicles; safety regulations;
396 transporters and shippers of hazardous materials; enforcement.—

397 (1) Except as otherwise provided in subsection (3):

398 (a) All owners and drivers of commercial motor vehicles
399 that are operated on the public highways of this state while
400 engaged in interstate commerce are subject to the rules and
401 regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

402 (b) Except as otherwise provided in this section, all
403 owners or drivers of commercial motor vehicles that are engaged



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404 in intrastate commerce are subject to the rules and regulations
405 contained in 49 C.F.R. parts 382, 383, 385, and 390-397, ~~with~~
406 ~~the exception of 49 C.F.R. s. 390.5 as it relates to the~~
407 ~~definition of bus,~~ as such rules and regulations existed on
408 December 31, ~~2016~~ 2012.

409 (c) The emergency exceptions provided by 49 C.F.R. s.
410 392.82 also apply to communications by utility drivers and
411 utility contractor drivers during a Level 1 activation of the
412 State Emergency Operations Center, as provided in the Florida
413 Comprehensive Emergency Management plan, or during a state of
414 emergency declared by executive order or proclamation of the
415 Governor.

416 (d) Except as provided in ~~s. 316.215(5), and except as~~
417 ~~provided in~~ s. 316.228 for rear overhang lighting and flagging
418 requirements for intrastate operations, the requirements of this
419 section supersede all other safety requirements of this chapter
420 for commercial motor vehicles.

421 (e) The requirement for electronic logging devices and
422 hours of service support documents will not go into effect for
423 motor carriers engaged in intrastate commerce, not carrying
424 hazardous materials in amounts that require placards, until
425 December 31, 2018.

426 (2) (a) A person who operates a commercial motor vehicle
427 solely in intrastate commerce not transporting any hazardous
428 material in amounts that require placarding pursuant to 49
429 C.F.R. part 172 need not comply with 49 C.F.R. ss. 391.11(b) (1)
430 and ~~395.3 395.3(a) and (b)~~.

431 (c) Except as provided in 49 C.F.R. s. 395.1, a person who
432 operates a commercial motor vehicle solely in intrastate



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433 commerce not transporting any hazardous material in amounts that
434 require placarding pursuant to 49 C.F.R. part 172 may not drive
435 after having been on duty more than 70 hours in any period of 7
436 consecutive days or more than 80 hours in any period of 8
437 consecutive days if the motor carrier operates every day of the
438 week. Thirty-four consecutive hours off duty shall constitute
439 the end of any such period of 7 or 8 consecutive days. This
440 weekly limit does not apply to a person who operates a
441 commercial motor vehicle solely within this state while
442 transporting, during harvest periods, any unprocessed
443 agricultural products or unprocessed food or fiber that is
444 subject to seasonal harvesting from place of harvest to the
445 first place of processing or storage or from place of harvest
446 directly to market or while transporting livestock, livestock
447 feed, or farm supplies directly related to growing or harvesting
448 agricultural products. Upon request of the Department of Highway
449 Safety and Motor Vehicles, motor carriers shall furnish time
450 records or other written verification to that department so that
451 the Department of Highway Safety and Motor Vehicles can
452 determine compliance with this subsection. These time records
453 must be furnished to the Department of Highway Safety and Motor
454 Vehicles within 2 days after receipt of that department's
455 request. Falsification of such information is subject to a civil
456 penalty ~~not to exceed \$100. The provisions of~~ This paragraph
457 does ~~de~~ not apply to operators of farm labor vehicles operated
458 during a state of emergency declared by the Governor or operated
459 pursuant to s. 570.07(21), ~~and~~ does ~~de~~ not apply to drivers of
460 utility service vehicles as defined in 49 C.F.R. s. 395.2.

461 (d) A person who operates a commercial motor vehicle solely



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462 in intrastate commerce not transporting any hazardous material
463 in amounts that require placarding pursuant to 49 C.F.R. part
464 172 within a 150 air-mile radius of the location where the
465 vehicle is based need not comply with 49 C.F.R. s. 395.87 if the
466 requirements of 49 C.F.R. s. 395.1(e) (1) (ii), (e) (1) (iii) (A) and
467 (C), 395.1(e) (1) (iii) and (e) (1) (v) are met. ~~If a driver is not~~
468 ~~released from duty within 12 hours after the driver arrives for~~
469 ~~duty, the motor carrier must maintain documentation of the~~
470 ~~driver's driving times throughout the duty period.~~

471 (f) A person who operates a commercial motor vehicle having
472 a ~~declared~~ gross vehicle weight, gross vehicle weight rating,
473 and gross combined weight rating of less than 26,001 pounds
474 solely in intrastate commerce and who is not transporting
475 hazardous materials in amounts that require placarding pursuant
476 to 49 C.F.R. part 172, ~~or who is transporting petroleum products~~
477 ~~as defined in s. 376.301,~~ is exempt from subsection (1).
478 However, such person must comply with 49 C.F.R. parts 382, 392,
479 and 3937 and with 49 C.F.R. ss. 396.3(a) (1) and 396.9.

480 Section 5. Paragraph (a) of subsection (6) of section
481 316.3025, Florida Statutes, is amended to read:

482 316.3025 Penalties.—

483 (6) (a) A driver who violates 49 C.F.R. s. 392.80, which
484 prohibits texting while operating a commercial motor vehicle, or
485 49 C.F.R. s. 392.82, which prohibits using a handheld mobile
486 telephone while operating a commercial motor vehicle, may be
487 assessed a civil penalty ~~and commercial driver license~~
488 ~~disqualification~~ as follows:

- 489 1. First violation: \$500.
490 2. Second violation: \$1,000 ~~and a 60-day commercial driver~~



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491 ~~license disqualification pursuant to 49 C.F.R. part 383.~~

492 3. Third and subsequent violations: \$2,750 ~~and a 120-day~~
493 ~~commercial driver license disqualification pursuant to 49 C.F.R.~~
494 ~~part 383.~~

495 Section 6. Paragraph (a) of subsection (3) and subsections
496 (4) and (5) of section 316.614, Florida Statutes, are amended to
497 read:

498 316.614 Safety belt usage.—

499 (3) As used in this section:

500 (a) "Motor vehicle" means a motor vehicle as defined in s.
501 316.003 which is operated on the roadways, streets, and highways
502 of this state. The term does not include:

503 1. A school bus.

504 2. A bus used for the transportation of persons for
505 compensation.

506 3. A farm tractor or implement of husbandry.

507 4. A truck having a gross vehicle weight rating of more
508 than 26,000 pounds.

509 5. A motorcycle, excluding an autocytle for purposes of
510 subsections (4) and (5), moped, or bicycle.

511 (4) It is unlawful for any person:

512 (a) To operate a motor vehicle or an autocytle in this
513 state unless each passenger and the operator of the vehicle
514 under the age of 18 years are restrained by a safety belt or by
515 a child restraint device pursuant to s. 316.613, if applicable;
516 or

517 (b) To operate a motor vehicle or an autocytle in this
518 state unless the person is restrained by a safety belt.

519 (5) It is unlawful for any person 18 years of age or older



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520 to be a passenger in the front seat of a motor vehicle or an
521 autocycle unless such person is restrained by a safety belt when
522 the vehicle is in motion.

523 Section 7. Subsection (1) of section 316.85, Florida
524 Statutes, is amended to read:

525 316.85 Autonomous vehicles; operation.—

526 (1) A person who possesses a valid driver license may
527 operate an autonomous vehicle, or may engage autonomous
528 technology to operate an autonomous vehicle, in autonomous mode
529 on roads in this state if the vehicle is equipped with
530 autonomous technology, as defined in s. 316.003. A person who
531 does not possess a valid driver license may engage autonomous
532 technology to operate an autonomous vehicle in autonomous mode
533 only if the vehicle is equipped with autonomous technology, as
534 defined in s. 316.003, and if the vehicle has no capability or
535 means by which the person inside the vehicle is able to take
536 control of the vehicle's operation or to disengage the
537 autonomous technology, regardless of where the person is seated
538 within the vehicle.

539 Section 8. Effective upon the same date that SB 340 or
540 similar legislation takes effect, if such legislation is adopted
541 in the 2017 Regular Session or any extension thereof and becomes
542 a law, section 316.851, Florida Statutes, is created to read:

543 316.851 Autonomous vehicles; providing prearranged rides.—

544 (1) An autonomous vehicle used by a transportation network
545 company to provide a prearranged ride must be covered by
546 automobile insurance as required by s. 627.748, regardless of
547 whether a human operator is physically present within the
548 vehicle when the ride occurs. When an autonomous vehicle is



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549 logged on to a digital network but is not engaged in a
550 prearranged ride, the autonomous vehicle must maintain insurance
551 coverage as defined in s. 627.748(7)(b).

552 (2) An autonomous vehicle used to provide a transportation
553 service shall carry in the vehicle proof of coverage satisfying
554 the requirements of this section at all times while operating in
555 autonomous mode.

556 Section 9. Section 318.1215, Florida Statutes, is amended
557 to read:

558 318.1215 Dori Slosberg Driver Education Safety Act.—
559 Notwithstanding the provisions of s. 318.121, a board of county
560 commissioners may require, by ordinance, that the clerk of the
561 court collect an additional \$5 with each criminal ~~civil~~ traffic
562 penalty, which shall be used to fund driver education programs
563 in public and nonpublic schools. The ordinance shall provide for
564 the board of county commissioners to administer the funds, which
565 shall be used for enhancement, and not replacement, of driver
566 education program funds. The funds shall be used for direct
567 educational expenses and shall not be used for administration.
568 Each driver education program receiving funds pursuant to this
569 section shall require that a minimum of 30 percent of a
570 student's time in the program be behind-the-wheel training. This
571 section may be cited as the "Dori Slosberg Driver Education
572 Safety Act."

573 Section 10. Paragraph (d) of subsection (3) of section
574 318.18, Florida Statutes, is amended to read:

575 318.18 Amount of penalties.—The penalties required for a
576 noncriminal disposition pursuant to s. 318.14 or a criminal
577 offense listed in s. 318.17 are as follows:



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578 (3)

579 (d) Notwithstanding paragraph (b), a person cited for
580 exceeding the speed limit in a posted work construction zone,
581 which posting must include notification of the speed limit and
582 the doubling of fines, shall pay a fine double the amount listed
583 in paragraph (b). The fine shall be doubled for work
584 ~~construction~~ zone violations only if work construction personnel
585 are present or operating equipment on the road or immediately
586 adjacent to the road ~~under construction~~.

587 Section 11. Subsections (24) and (26) of section 320.01,
588 Florida Statutes, are amended to read:

589 320.01 Definitions, general.—As used in the Florida
590 Statutes, except as otherwise provided, the term:

591 (24) "Apportionable vehicle" means any vehicle, except
592 recreational vehicles, vehicles displaying restricted plates,
593 city pickup and delivery vehicles, ~~buses used in transportation~~
594 ~~of chartered parties~~, and government-owned vehicles, which is
595 used or intended for use in two or more member jurisdictions
596 that allocate or proportionally register vehicles and which is
597 used for the transportation of persons for hire or is designed,
598 used, or maintained primarily for the transportation of property
599 and:

600 (a) Is a power unit having a gross vehicle weight in excess
601 of 26,000 pounds;

602 (b) Is a power unit having three or more axles, regardless
603 of weight; or

604 (c) Is used in combination, when the weight of such
605 combination exceeds 26,000 pounds gross vehicle weight.
606



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607 Vehicles, or combinations thereof, having a gross vehicle weight
608 of 26,000 pounds or less and two-axle vehicles may be
609 proportionally registered.

610 (26) "Motorcycle" means any motor vehicle having a seat or
611 saddle for the use of the rider and designed to travel on not
612 more than three wheels in contact with the ground, including an
613 autocycle. The term does not include a tractor, a moped, or
614 ~~excluding~~ a vehicle in which the operator is enclosed by a cabin
615 unless the vehicle ~~it~~ meets the requirements set forth by the
616 National Highway Traffic Safety Administration for a motorcycle.
617 ~~The term "motorcycle" does not include a tractor or a moped.~~

618 Section 12. Paragraph (a) of subsection (15) of section
619 320.02, Florida Statutes, is amended to read:

620 320.02 Registration required; application for registration;
621 forms.—

622 (15) (a) The application form for motor vehicle registration
623 ~~must shall~~ include language permitting the voluntary
624 contribution of \$1 per applicant, to be quarterly distributed by
625 the department to Preserve Vision Prevent Blindness Florida, a
626 not-for-profit organization, to prevent blindness and preserve
627 the sight of the residents of this state. A statement providing
628 an explanation of the purpose of the funds shall be included
629 with the application form. Prior to the department distributing
630 the funds collected pursuant to this paragraph, Preserve Vision
631 ~~Prevent Blindness~~ Florida must submit a report to the department
632 that identifies how such funds were used during the preceding
633 year.
634

635 For the purpose of applying the service charge provided in s.



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636 215.20, contributions received under this subsection are not
637 income of a revenue nature.

638 Section 13. Subsection (1) of section 320.03, Florida
639 Statutes, is amended to read:

640 320.03 Registration; duties of tax collectors;
641 International Registration Plan.—

642 (1)(a) The tax collectors in the several counties of the
643 state, as authorized agents of the department, shall issue
644 registration certificates, registration license plates,
645 validation stickers, and mobile home stickers to applicants, and
646 shall provide to applicants for each the option to register
647 emergency contact information and the option to be contacted
648 with information about state and federal benefits available as a
649 result of military service, subject to the requirements of law,
650 in accordance with rules of the department. Each tax collector
651 shall provide the same motor vehicle registration services in
652 office to residents of other counties that it provides for
653 residents of its home county.

654 (b) Any person, firm, or corporation representing itself,
655 through advertising or naming of the business, to be an
656 authorized agent of the department shall be deemed guilty of an
657 unfair and deceptive trade practice as defined in part II of
658 chapter 501. No such person, firm, or corporation shall use
659 either the state or county name as a part of their business name
660 when such use can reasonably be interpreted as an official state
661 or county office.

662 Section 14. Effective July 1, 2018, subsection (10) of
663 section 320.03, Florida Statutes, is amended to read:

664 320.03 Registration; duties of tax collectors;



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665 International Registration Plan.—

666 (10)(a) Jurisdiction over the electronic filing system for
667 use by authorized electronic filing system agents to
668 electronically title or register motor vehicles, vessels, mobile
669 homes, or off-highway vehicles; process title transactions,
670 derelict motor vehicle certificates, and certificates of
671 destruction for derelict and salvage motor vehicles pursuant to
672 s. 319.30(2), (3), (7), and (8); issue or transfer registration
673 license plates or decals; electronically transfer fees due for
674 the title and registration process; and perform inquiries for
675 title, registration, and lienholder verification and
676 certification of service providers is expressly preempted to the
677 state, and the department shall have regulatory authority over
678 the system. The electronic filing system shall be available for
679 use statewide and applied uniformly throughout the state. An
680 entity that, in the normal course of its business, sells
681 products that must be titled or registered; ~~provides title and~~
682 ~~registration services on behalf of its consumers; or processes~~
683 ~~title transactions, derelict motor vehicle certificates, or~~
684 ~~certificates of destruction for derelict or salvage motor~~
685 ~~vehicles pursuant to s. 319.30(2), (3), (7), and (8);~~ and meets
686 all established requirements may be an authorized electronic
687 filing system agent and shall not be precluded from
688 participating in the electronic filing system in any county.
689 Upon request from a qualified entity, the tax collector shall
690 appoint the entity as an authorized electronic filing system
691 agent for that county. ~~The department shall adopt rules in~~
692 ~~accordance with chapter 120 to replace the December 10, 2009,~~
693 ~~program standards and to administer the provisions of this~~



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694 ~~section, including, but not limited to, establishing~~
695 ~~participation requirements, certification of service providers,~~
696 ~~electronic filing system requirements, and enforcement authority~~
697 ~~for noncompliance. The December 10, 2009, program standards,~~
698 ~~excluding any standards which conflict with this subsection,~~
699 ~~shall remain in effect until the rules are adopted.~~ An
700 authorized electronic filing system agent may charge a fee to
701 the customer for use of the electronic filing system.

702 (b) The department shall adopt rules to administer this
703 subsection, including, but not limited to, rules establishing
704 participation requirements, certification of service providers,
705 electronic filing system requirements, disclosures, and
706 enforcement authority for noncompliance.

707 Section 15. Paragraph (b) of subsection (1) of section
708 320.06, Florida Statutes, is amended to read:

709 320.06 Registration certificates, license plates, and
710 validation stickers generally.—

711 (1)

712 (b)1. Registration license plates bearing a graphic symbol
713 and the alphanumeric system of identification shall be issued
714 for a 10-year period. At the end of the 10-year period, upon
715 renewal, the plate shall be replaced. The department shall
716 extend the scheduled license plate replacement date from a 6-
717 year period to a 10-year period. The fee for such replacement is
718 \$28, \$2.80 of which shall be paid each year before the plate is
719 replaced, to be credited toward the next \$28 replacement fee.
720 The fees shall be deposited into the Highway Safety Operating
721 Trust Fund. A credit or refund may not be given for any prior
722 years' payments of the prorated replacement fee if the plate is



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723 replaced or surrendered before the end of the 10-year period,
724 except that a credit may be given if a registrant is required by
725 the department to replace a license plate under s.
726 320.08056(8)(a). With each license plate, a validation sticker
727 shall be issued showing the owner's birth month, license plate
728 number, and the year of expiration or the appropriate renewal
729 period if the owner is not a natural person. The validation
730 sticker shall be placed on the upper right corner of the license
731 plate. The license plate and validation sticker shall be issued
732 based on the applicant's appropriate renewal period. The
733 registration period is 12 months, the extended registration
734 period is 24 months, and all expirations occur based on the
735 applicant's appropriate registration period.

736 2. A vehicle that has an apportioned registration shall be
737 issued an annual license plate and a cab card denoting that
738 denote the declared gross vehicle weight for each apportioned
739 jurisdiction in which the vehicle is authorized to operate. This
740 subparagraph expires October 1, 2018.

741 3. Beginning October 1, 2018, a vehicle registered in
742 accordance with the International Registration Plan which has an
743 apportioned registration shall be issued a license plate for a
744 5-year period, an annual cab card denoting the declared gross
745 vehicle weight, and an annual validation sticker showing the
746 month and year of expiration. The validation sticker shall be
747 placed in the center of the license plate. The license plate and
748 validation sticker shall be issued based on the applicant's
749 appropriate renewal period. The registration period is 12
750 months. The fee for an original and a renewed validation sticker
751 is \$28. This fee shall be deposited into the Highway Safety



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752 Operating Trust Fund. If the license plate is damaged or worn,
753 it may be replaced at no charge by applying to the department
754 and surrendering the current license plate.

755 ~~4.2-~~ In order to retain the efficient administration of the
756 taxes and fees imposed by this chapter, the 80-cent fee increase
757 in the replacement fee imposed by chapter 2009-71, Laws of
758 Florida, is negated as provided in s. 320.0804.

759 Section 16. Section 320.0605, Florida Statutes, is amended
760 to read:

761 320.0605 Certificate of registration; possession required;
762 exception.-

763 (1) (a) The registration certificate or an official copy
764 thereof, a true copy or electronic copy of rental or lease
765 documentation issued for a motor vehicle or issued for a
766 replacement vehicle in the same registration period, a temporary
767 receipt printed upon self-initiated electronic renewal of a
768 registration via the Internet, or a cab card issued for a
769 vehicle registered under the International Registration Plan
770 shall, at all times while the vehicle is being used or operated
771 on the roads of this state, be in the possession of the operator
772 thereof or be carried in the vehicle for which issued and shall
773 be exhibited upon demand of any authorized law enforcement
774 officer or any agent of the department, except for a vehicle
775 registered under s. 320.0657. ~~The provisions of~~ This section
776 does de not apply during the first 30 days after purchase of a
777 replacement vehicle. A violation of this section is a
778 noncriminal traffic infraction, punishable as a nonmoving
779 violation as provided in chapter 318.

780 (b)1. The act of presenting to a law enforcement officer or



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781 agent of the department an electronic device displaying an
782 electronic copy of rental or lease documentation does not
783 constitute consent for the officer or agent to access any
784 information on the device other than the displayed rental or
785 lease documentation.

786 2. The person who presents the device to the officer or
787 agent assumes the liability for any resulting damage to the
788 device.

789 (2) Rental or lease documentation that is sufficient to
790 satisfy the requirement in subsection (1) includes the
791 following:

- 792 (a) ~~Date of rental~~ and time of ~~exit from rental facility~~;
- 793 (b) Rental station identification;
- 794 (c) Rental agreement number;
- 795 (d) Rental vehicle identification number;
- 796 (e) Rental vehicle license plate number and state of
797 registration;
- 798 (f) Vehicle's make, model, and color;
- 799 (g) Vehicle's mileage; and
- 800 (h) Authorized renter's name.

801 Section 17. Subsection (5) of section 320.0607, Florida
802 Statutes, is amended to read:

803 320.0607 Replacement license plates, validation decal, or
804 mobile home sticker.-

805 (5) Upon the issuance of an original license plate, the
806 applicant shall pay a fee of \$28 to be deposited in the Highway
807 Safety Operating Trust Fund. Beginning October 1, 2018, this
808 subsection does not apply to a vehicle registered under the
809 International Registration Plan.



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810 Section 18. Section 320.08, Florida Statutes, is amended to
811 read:

812 320.08 License taxes.—Except as otherwise provided herein,
813 there are hereby levied and imposed annual license taxes for the
814 operation of motor vehicles, mopeds, motorized bicycles as
815 defined in s. 316.003(4) ~~s. 316.003(2)~~, tri-vehicles as defined
816 in s. 316.003, and mobile homes as defined in s. 320.01, which
817 shall be paid to and collected by the department or its agent
818 upon the registration or renewal of registration of the
819 following:

820 (1) MOTORCYCLES AND MOPEDES.—

821 (a) Any motorcycle: \$10 flat.

822 (b) Any moped: \$5 flat.

823 (c) Upon registration of a motorcycle, motor-driven cycle,
824 or moped, in addition to the license taxes specified in this
825 subsection, a nonrefundable motorcycle safety education fee in
826 the amount of \$2.50 shall be paid. The proceeds of such
827 additional fee shall be deposited in the Highway Safety
828 Operating Trust Fund to fund a motorcycle driver improvement
829 program implemented pursuant to s. 322.025, the Florida
830 Motorcycle Safety Education Program established in s. 322.0255,
831 or the general operations of the department.

832 (d) An ancient or antique motorcycle: \$7.50 flat, of which
833 \$2.50 shall be deposited into the General Revenue Fund.

834 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

835 (a) An ancient or antique automobile, as defined in s.
836 320.086, or a street rod, as defined in s. 320.0863: \$7.50 flat.

837 (b) Net weight of less than 2,500 pounds: \$14.50 flat.

838 (c) Net weight of 2,500 pounds or more, but less than 3,500



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839 pounds: \$22.50 flat.

840 (d) Net weight of 3,500 pounds or more: \$32.50 flat.

841 (3) TRUCKS.—

842 (a) Net weight of less than 2,000 pounds: \$14.50 flat.

843 (b) Net weight of 2,000 pounds or more, but not more than
844 3,000 pounds: \$22.50 flat.

845 (c) Net weight more than 3,000 pounds, but not more than
846 5,000 pounds: \$32.50 flat.

847 (d) A truck defined as a "goat," or other vehicle if used
848 in the field by a farmer or in the woods for the purpose of
849 harvesting a crop, including naval stores, during such
850 harvesting operations, and which is not principally operated
851 upon the roads of the state: \$7.50 flat. The term "goat" means a
852 motor vehicle designed, constructed, and used principally for
853 the transportation of citrus fruit within citrus groves or for
854 the transportation of crops on farms, and which can also be used
855 for hauling associated equipment or supplies, including required
856 sanitary equipment, and the towing of farm trailers.

857 (e) An ancient or antique truck, as defined in s. 320.086:
858 \$7.50 flat.

859 (4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS
860 VEHICLE WEIGHT.—

861 (a) Gross vehicle weight of 5,001 pounds or more, but less
862 than 6,000 pounds: \$60.75 flat, of which \$15.75 shall be
863 deposited into the General Revenue Fund.

864 (b) Gross vehicle weight of 6,000 pounds or more, but less
865 than 8,000 pounds: \$87.75 flat, of which \$22.75 shall be
866 deposited into the General Revenue Fund.

867 (c) Gross vehicle weight of 8,000 pounds or more, but less



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868 than 10,000 pounds: \$103 flat, of which \$27 shall be deposited
869 into the General Revenue Fund.
870 (d) Gross vehicle weight of 10,000 pounds or more, but less
871 than 15,000 pounds: \$118 flat, of which \$31 shall be deposited
872 into the General Revenue Fund.
873 (e) Gross vehicle weight of 15,000 pounds or more, but less
874 than 20,000 pounds: \$177 flat, of which \$46 shall be deposited
875 into the General Revenue Fund.
876 (f) Gross vehicle weight of 20,000 pounds or more, but less
877 than 26,001 pounds: \$251 flat, of which \$65 shall be deposited
878 into the General Revenue Fund.
879 (g) Gross vehicle weight of 26,001 pounds or more, but less
880 than 35,000: \$324 flat, of which \$84 shall be deposited into the
881 General Revenue Fund.
882 (h) Gross vehicle weight of 35,000 pounds or more, but less
883 than 44,000 pounds: \$405 flat, of which \$105 shall be deposited
884 into the General Revenue Fund.
885 (i) Gross vehicle weight of 44,000 pounds or more, but less
886 than 55,000 pounds: \$773 flat, of which \$201 shall be deposited
887 into the General Revenue Fund.
888 (j) Gross vehicle weight of 55,000 pounds or more, but less
889 than 62,000 pounds: \$916 flat, of which \$238 shall be deposited
890 into the General Revenue Fund.
891 (k) Gross vehicle weight of 62,000 pounds or more, but less
892 than 72,000 pounds: \$1,080 flat, of which \$280 shall be
893 deposited into the General Revenue Fund.
894 (l) Gross vehicle weight of 72,000 pounds or more: \$1,322
895 flat, of which \$343 shall be deposited into the General Revenue
896 Fund.



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897 (m) Notwithstanding the declared gross vehicle weight, a
898 truck tractor used within ~~this state a 150-mile radius of its~~
899 ~~home address~~ is eligible for a license plate for a fee of \$324
900 flat if:
901 1. The truck tractor is used exclusively for hauling
902 forestry products; or
903 2. The truck tractor is used primarily for the hauling of
904 forestry products, and is also used for the hauling of
905 associated forestry harvesting equipment used by the owner of
906 the truck tractor.
907
908 Of the fee imposed by this paragraph, \$84 shall be deposited
909 into the General Revenue Fund.
910 (n) A truck tractor or heavy truck, not operated as a for-
911 hire vehicle, which is engaged exclusively in transporting raw,
912 unprocessed, and nonmanufactured agricultural or horticultural
913 products within ~~this state a 150-mile radius of its home~~
914 ~~address~~, is eligible for a restricted license plate for a fee
915 of:
916 1. If such vehicle's declared gross vehicle weight is less
917 than 44,000 pounds, \$87.75 flat, of which \$22.75 shall be
918 deposited into the General Revenue Fund.
919 2. If such vehicle's declared gross vehicle weight is
920 44,000 pounds or more and such vehicle only transports from the
921 point of production to the point of primary manufacture; to the
922 point of assembling the same; or to a shipping point of a rail,
923 water, or motor transportation company, \$324 flat, of which \$84
924 shall be deposited into the General Revenue Fund.
925



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926 Such not-for-hire truck tractors and heavy trucks used
927 exclusively in transporting raw, unprocessed, and
928 nonmanufactured agricultural or horticultural products may be
929 incidentally used to haul farm implements and fertilizers
930 delivered direct to the growers. The department may require any
931 documentation deemed necessary to determine eligibility prior to
932 issuance of this license plate. For the purpose of this
933 paragraph, "not-for-hire" means the owner of the motor vehicle
934 must also be the owner of the raw, unprocessed, and
935 nonmanufactured agricultural or horticultural product, or the
936 user of the farm implements and fertilizer being delivered.

937 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
938 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

939 (a)1. A semitrailer drawn by a GVW truck tractor by means
940 of a fifth-wheel arrangement: \$13.50 flat per registration year
941 or any part thereof, of which \$3.50 shall be deposited into the
942 General Revenue Fund.

943 2. A semitrailer drawn by a GVW truck tractor by means of a
944 fifth-wheel arrangement: \$68 flat per permanent registration, of
945 which \$18 shall be deposited into the General Revenue Fund.

946 (b) A motor vehicle equipped with machinery and designed
947 for the exclusive purpose of well drilling, excavation,
948 construction, spraying, or similar activity, and which is not
949 designed or used to transport loads other than the machinery
950 described above over public roads: \$44 flat, of which \$11.50
951 shall be deposited into the General Revenue Fund.

952 (c) A school bus used exclusively to transport pupils to
953 and from school or school or church activities or functions
954 within their own county: \$41 flat, of which \$11 shall be



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955 deposited into the General Revenue Fund.

956 (d) A wrecker, as defined in s. 320.01, which is used to
957 tow a vessel as defined in s. 327.02, a disabled, abandoned,
958 stolen-recovered, or impounded motor vehicle as defined in s.
959 320.01, or a replacement motor vehicle as defined in s. 320.01:
960 \$41 flat, of which \$11 shall be deposited into the General
961 Revenue Fund.

962 (e) A wrecker that is used to tow any nondisabled motor
963 vehicle, a vessel, or any other cargo unless used as defined in
964 paragraph (d), as follows:

965 1. Gross vehicle weight of 10,000 pounds or more, but less
966 than 15,000 pounds: \$118 flat, of which \$31 shall be deposited
967 into the General Revenue Fund.

968 2. Gross vehicle weight of 15,000 pounds or more, but less
969 than 20,000 pounds: \$177 flat, of which \$46 shall be deposited
970 into the General Revenue Fund.

971 3. Gross vehicle weight of 20,000 pounds or more, but less
972 than 26,000 pounds: \$251 flat, of which \$65 shall be deposited
973 into the General Revenue Fund.

974 4. Gross vehicle weight of 26,000 pounds or more, but less
975 than 35,000 pounds: \$324 flat, of which \$84 shall be deposited
976 into the General Revenue Fund.

977 5. Gross vehicle weight of 35,000 pounds or more, but less
978 than 44,000 pounds: \$405 flat, of which \$105 shall be deposited
979 into the General Revenue Fund.

980 6. Gross vehicle weight of 44,000 pounds or more, but less
981 than 55,000 pounds: \$772 flat, of which \$200 shall be deposited
982 into the General Revenue Fund.

983 7. Gross vehicle weight of 55,000 pounds or more, but less



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984 than 62,000 pounds: \$915 flat, of which \$237 shall be deposited
985 into the General Revenue Fund.

986 8. Gross vehicle weight of 62,000 pounds or more, but less
987 than 72,000 pounds: \$1,080 flat, of which \$280 shall be
988 deposited into the General Revenue Fund.

989 9. Gross vehicle weight of 72,000 pounds or more: \$1,322
990 flat, of which \$343 shall be deposited into the General Revenue
991 Fund.

992 (f) A hearse or ambulance: \$40.50 flat, of which \$10.50
993 shall be deposited into the General Revenue Fund.

994 (6) MOTOR VEHICLES FOR HIRE.-

995 (a) Under nine passengers: \$17 flat, of which \$4.50 shall
996 be deposited into the General Revenue Fund; plus \$1.50 per cwt,
997 of which 50 cents shall be deposited into the General Revenue
998 Fund.

999 (b) Nine passengers and over: \$17 flat, of which \$4.50
1000 shall be deposited into the General Revenue Fund; plus \$2 per
1001 cwt, of which 50 cents shall be deposited into the General
1002 Revenue Fund.

1003 (7) TRAILERS FOR PRIVATE USE.-

1004 (a) Any trailer weighing 500 pounds or less: \$6.75 flat per
1005 year or any part thereof, of which \$1.75 shall be deposited into
1006 the General Revenue Fund.

1007 (b) Net weight over 500 pounds: \$3.50 flat, of which \$1
1008 shall be deposited into the General Revenue Fund; plus \$1 per
1009 cwt, of which 25 cents shall be deposited into the General
1010 Revenue Fund.

1011 (8) TRAILERS FOR HIRE.-

1012 (a) Net weight under 2,000 pounds: \$3.50 flat, of which \$1



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1013 shall be deposited into the General Revenue Fund; plus \$1.50 per
1014 cwt, of which 50 cents shall be deposited into the General
1015 Revenue Fund.

1016 (b) Net weight 2,000 pounds or more: \$13.50 flat, of which
1017 \$3.50 shall be deposited into the General Revenue Fund; plus
1018 \$1.50 per cwt, of which 50 cents shall be deposited into the
1019 General Revenue Fund.

1020 (9) RECREATIONAL VEHICLE-TYPE UNITS.-

1021 (a) A travel trailer or fifth-wheel trailer, as defined by
1022 s. 320.01(1)(b), that does not exceed 35 feet in length: \$27
1023 flat, of which \$7 shall be deposited into the General Revenue
1024 Fund.

1025 (b) A camping trailer, as defined by s. 320.01(1)(b)2.:
1026 \$13.50 flat, of which \$3.50 shall be deposited into the General
1027 Revenue Fund.

1028 (c) A motor home, as defined by s. 320.01(1)(b)4.:

1029 1. Net weight of less than 4,500 pounds: \$27 flat, of which
1030 \$7 shall be deposited into the General Revenue Fund.

1031 2. Net weight of 4,500 pounds or more: \$47.25 flat, of
1032 which \$12.25 shall be deposited into the General Revenue Fund.

1033 (d) A truck camper as defined by s. 320.01(1)(b)3.:

1034 1. Net weight of less than 4,500 pounds: \$27 flat, of which
1035 \$7 shall be deposited into the General Revenue Fund.

1036 2. Net weight of 4,500 pounds or more: \$47.25 flat, of
1037 which \$12.25 shall be deposited into the General Revenue Fund.

1038 (e) A private motor coach as defined by s. 320.01(1)(b)5.:

1039 1. Net weight of less than 4,500 pounds: \$27 flat, of which
1040 \$7 shall be deposited into the General Revenue Fund.

1041 2. Net weight of 4,500 pounds or more: \$47.25 flat, of



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1042 which \$12.25 shall be deposited into the General Revenue Fund.
1043 (10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS;
1044 35 FEET TO 40 FEET.—
1045 (a) Park trailers.—Any park trailer, as defined in s.
1046 320.01(1)(b)7.: \$25 flat.
1047 (b) A travel trailer or fifth-wheel trailer, as defined in
1048 s. 320.01(1)(b), that exceeds 35 feet: \$25 flat.
1049 (11) MOBILE HOMES.—
1050 (a) A mobile home not exceeding 35 feet in length: \$20
1051 flat.
1052 (b) A mobile home over 35 feet in length, but not exceeding
1053 40 feet: \$25 flat.
1054 (c) A mobile home over 40 feet in length, but not exceeding
1055 45 feet: \$30 flat.
1056 (d) A mobile home over 45 feet in length, but not exceeding
1057 50 feet: \$35 flat.
1058 (e) A mobile home over 50 feet in length, but not exceeding
1059 55 feet: \$40 flat.
1060 (f) A mobile home over 55 feet in length, but not exceeding
1061 60 feet: \$45 flat.
1062 (g) A mobile home over 60 feet in length, but not exceeding
1063 65 feet: \$50 flat.
1064 (h) A mobile home over 65 feet in length: \$80 flat.
1065 (12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised
1066 motor vehicle dealer, independent motor vehicle dealer, marine
1067 boat trailer dealer, or mobile home dealer and manufacturer
1068 license plate: \$17 flat, of which \$4.50 shall be deposited into
1069 the General Revenue Fund.
1070 (13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or



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1071 official license plate: \$4 flat, of which \$1 shall be deposited
1072 into the General Revenue Fund.
1073 (14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor
1074 vehicle for hire operated wholly within a city or within 25
1075 miles thereof: \$17 flat, of which \$4.50 shall be deposited into
1076 the General Revenue Fund; plus \$2 per cwt, of which 50 cents
1077 shall be deposited into the General Revenue Fund.
1078 (15) TRANSPORTER.—Any transporter license plate issued to a
1079 transporter pursuant to s. 320.133: \$101.25 flat, of which
1080 \$26.25 shall be deposited into the General Revenue Fund.
1081 Section 19. Paragraphs (ee), (eee), (qqq), and (rrr) of
1082 subsection (4) and paragraph (a) of subsection (10) of section
1083 320.08056, Florida Statutes, are amended to read:
1084 320.08056 Specialty license plates.—
1085 (4) The following license plate annual use fees shall be
1086 collected for the appropriate specialty license plates:
1087 ~~(ee) American Red Cross license plate, \$25.~~
1088 ~~(eee) Donate Organs Pass It On license plate, \$25.~~
1089 ~~(qqq) St. Johns River license plate, \$25.~~
1090 ~~(rrr) Hispanic Achievers license plate, \$25.~~
1091 (10) (a) A specialty license plate annual use fee collected
1092 and distributed under this chapter, or any interest earned from
1093 those fees, may not be used for commercial or for-profit
1094 activities nor for general or administrative expenses, except as
1095 authorized by s. 320.08058 or to pay the cost of the audit or
1096 report required by s. 320.08062(1). The fees and any interest
1097 earned from the fees may be expended only for use in this state
1098 unless the annual use fee is derived from the sale of United
1099 States Armed Forces and veterans-related specialty license



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1100 plates pursuant to paragraphs (4) (d), (bb), (kk), (iii), and
1101 (uuu) (ll), (kkk), and (yyy) and s. 320.0891.

1102 Section 20. Subsections (31), (57), (69), and (70) of
1103 section 320.08058, Florida Statutes, are repealed.

1104 Section 21. Paragraph (b) of subsection (4) of section
1105 320.08068, Florida Statutes, is amended to read:

1106 320.08068 Motorcycle specialty license plates.—

1107 (4) A license plate annual use fee of \$20 shall be
1108 collected for each motorcycle specialty license plate. Annual
1109 use fees shall be distributed to The Able Trust as custodial
1110 agent. The Able Trust may retain a maximum of 10 percent of the
1111 proceeds from the sale of the license plate for administrative
1112 costs. The Able Trust shall distribute the remaining funds as
1113 follows:

1114 (b) Twenty percent to Preserve Vision Prevent Blindness
1115 Florida.

1116 Section 22. Subsection (7) is added to section 320.086,
1117 Florida Statutes, to read:

1118 320.086 Ancient or antique motor vehicles; horseless
1119 carriage, antique, or historical license plates; former military
1120 vehicles.—

1121 (7) For purposes of this section, a trailer is considered a
1122 motor vehicle.

1123 Section 23. Section 320.0875, Florida Statutes, is created
1124 to read:

1125 320.0875 Purple Heart motorcycle special license plate.—

1126 (1) Upon application to the department and payment of the
1127 license tax for the motorcycle as provided in s. 320.08, a
1128 resident of this state who owns or leases a motorcycle that is



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1129 not used for hire or commercial use shall be issued a Purple
1130 Heart motorcycle special license plate if he or she provides
1131 documentation acceptable to the department that he or she is a
1132 recipient of the Purple Heart medal.

1133 (2) The Purple Heart motorcycle special license plate shall
1134 be stamped with the words "Combat-wounded Veteran" followed by
1135 the serial number of the license plate. The Purple Heart
1136 motorcycle special license plate may have the term "Purple
1137 Heart" stamped on the plate and the likeness of the Purple Heart
1138 medal appearing on the plate.

1139 Section 24. Paragraph (a) of subsection (1) of section
1140 320.089, Florida Statutes, is amended to read:

1141 ~~320.089 Veterans of the United States Armed Forces; members~~
1142 ~~of National Guard; survivors of Pearl Harbor; Purple Heart medal~~
1143 ~~recipients; active or retired United States Armed Forces~~
1144 ~~reservists; Combat Infantry Badge, Combat Medical Badge, or~~
1145 ~~Combat Action Badge recipients; Combat Action Ribbon recipients;~~
1146 ~~Air Force Combat Action Medal recipients; Distinguished Flying~~
1147 ~~Cross recipients; former prisoners of war; Korean War Veterans;~~
1148 ~~Vietnam War Veterans; Operation Desert Shield Veterans;~~
1149 ~~Operation Desert Storm Veterans; Operation Enduring Freedom~~
1150 ~~Veterans; Operation Iraqi Freedom Veterans; Women Veterans;~~
1151 ~~World War II Veterans; and Navy Submariners; Special license~~
1152 ~~plates for military servicemembers, veterans, and Pearl Harbor~~
1153 ~~survivors; fee.—~~

1154 (1) (a) Upon application to the department and payment of
1155 the license tax for the vehicle as provided in s. 320.08, a
1156 resident of this state who owns or leases Each owner or lessee
1157 of an automobile or truck for private use or recreational



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1158 vehicle as specified in s. 320.08(9)(c) or (d), which is not
1159 used for hire or commercial use, shall be issued a license plate
1160 pursuant to the following if the applicant provides the
1161 department with proof he or she meets the qualifications listed
1162 in this section for the applicable license plate:

1163 1. A person released or discharged from any branch ~~who is a~~
1164 ~~resident of the state and a veteran~~ of the United States Armed
1165 Forces shall be issued a license plate stamped with the words
1166 "Veteran" or "Woman Veteran" followed by the serial number of
1167 the license plate.~~, a Woman Veteran,~~

1168 2. A World War II Veteran shall be issued a license plate
1169 stamped with the words "WWII Veteran" followed by the serial
1170 number of the license plate.

1171 3. A Navy Submariner shall be issued a license plate
1172 stamped with the words "Navy Submariner" followed by the serial
1173 number of the license plate.

1174 4. An active or retired member of the Florida National
1175 Guard shall be issued a license plate stamped with the words
1176 "National Guard" followed by the serial number of the license
1177 plate.

1178 5. A member of the Pearl Harbor Survivors Association or
1179 other person on active military duty in Pearl Harbor on December
1180 7, 1941, shall be issued a license plate stamped with the words
1181 "Pearl Harbor Survivor" followed by the serial number of the
1182 license plate.~~, a survivor of the attack on Pearl Harbor,~~

1183 6. A recipient of the Purple Heart medal shall be issued a
1184 license plate stamped with the words "Combat-wounded Veteran"
1185 followed by the serial number of the license plate. The Purple
1186 Heart plate may have the words "Purple Heart" stamped on the



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1187 plate and the likeness of the Purple Heart medal appearing on
1188 the plate.

1189 7. An active or retired member of any branch of the United
1190 States Armed Forces Reserve shall be issued a license plate
1191 stamped with the words "U.S. Reserve" followed by the serial
1192 number of the license plate.

1193 8. A member of the Combat Infantrymen's Association, Inc.,
1194 or a recipient of the Combat Infantry Badge, Combat Medical
1195 Badge, Combat Action Badge, Combat Action Ribbon, or Air Force
1196 Combat Action Medal shall be issued a license plate stamped with
1197 the words "Combat Infantry Badge," "Combat Medical Badge,"
1198 "Combat Action Badge," "Combat Action Ribbon," or "Air Force
1199 Combat Action Medal," as appropriate, and a likeness of the
1200 related campaign badge, ribbon, or medal, followed by the serial
1201 number of the license plate.

1202 9. A recipient of the ~~or~~ Distinguished Flying Cross shall
1203 be issued a license plate stamped with the words "Distinguished
1204 Flying Cross" and a likeness of the Distinguished Flying Cross
1205 followed by the serial number of the license plate.

1206 10. A recipient of the Bronze Star shall be issued a
1207 license plate stamped with the words "Bronze Star" and a
1208 likeness of the Bronze Star followed by the serial number of the
1209 license plate. ~~upon application to the department, accompanied~~
1210 ~~by proof of release or discharge from any branch of the United~~
1211 ~~States Armed Forces, proof of active membership or retired~~
1212 ~~status in the Florida National Guard, proof of membership in the~~
1213 ~~Pearl Harbor Survivors Association or proof of active military~~
1214 ~~duty in Pearl Harbor on December 7, 1941, proof of being a~~
1215 ~~Purple Heart medal recipient, proof of active or retired~~



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1216 ~~membership in any branch of the United States Armed Forces~~
1217 ~~Reserve, or proof of membership in the Combat Infantrymen's~~
1218 ~~Association, Inc., proof of being a recipient of the Combat~~
1219 ~~Infantry Badge, Combat Medical Badge, Combat Action Badge,~~
1220 ~~Combat Action Ribbon, Air Force Combat Action Medal, or~~
1221 ~~Distinguished Flying Cross, and upon payment of the license tax~~
1222 ~~for the vehicle as provided in s. 320.08, shall be issued a~~
1223 ~~license plate as provided by s. 320.06 which, in lieu of the~~
1224 ~~serial numbers prescribed by s. 320.06, is stamped with the~~
1225 ~~words "Veteran," "Woman Veteran," "WWII Veteran," "Navy~~
1226 ~~Submariner," "National Guard," "Pearl Harbor Survivor," "Combat-~~
1227 ~~wounded veteran," "U.S. Reserve," "Combat Infantry Badge,"~~
1228 ~~"Combat Medical Badge," "Combat Action Badge," "Combat Action~~
1229 ~~Ribbon," "Air Force Combat Action Medal," or "Distinguished~~
1230 ~~Flying Cross," as appropriate, and a likeness of the related~~
1231 ~~campaign medal or badge, followed by the serial number of the~~
1232 ~~license plate. Additionally, the Purple Heart plate may have the~~
1233 ~~words "Purple Heart" stamped on the plate and the likeness of~~
1234 ~~the Purple Heart medal appearing on the plate.~~

1235 Section 25. Section 320.133, Florida Statutes, is amended
1236 to read:

1237 320.133 Transporter license plates.—

1238 (1) As used in this section, the term "transporter license
1239 plate eligible business" means a business that is engaged in the
1240 limited operation of an unregistered motor vehicle, or a
1241 repossessor that contracts with lending institutions to
1242 repossess or recover motor vehicles or mobile homes.

1243 (2) A person is not eligible to purchase or renew a
1244 transporter license plate unless he or she provides proof



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1245 satisfactory to the department that his or her business is a
1246 transporter license plate eligible business.

1247 (3) The application for qualification as a transporter
1248 license plate eligible business must be in such form as is
1249 prescribed by the department and must contain the legal name of
1250 the person or persons applying for the license plate, the name
1251 of the business, and the principal or principals of the
1252 business. The application must describe the exact physical
1253 location of the place of business within the state. This
1254 location must be available at all reasonable hours for
1255 inspection of the transporter license plate records by the
1256 department or any law enforcement agency. The application must
1257 contain proof of a garage liability insurance policy, or a
1258 business automobile policy, in the amount of at least \$100,000.
1259 The certificate of insurance must indicate the number of
1260 transporter license plates reported to the insurance company.
1261 Such coverage shall be maintained for the entire registration
1262 period. Upon seeking initial qualification, the applicant must
1263 provide documentation proving that the business is registered
1264 with the Division of Corporations of the Department of State to
1265 conduct business in this state. The business must indicate how
1266 it meets the qualification as a transporter license plate
1267 eligible business by describing in detail the business processes
1268 that require the use of a transporter license plate.

1269 (4) (a) ~~(1)~~ The department may ~~is authorized to~~ issue a
1270 transporter license plate to ~~an~~ any applicant who is not a
1271 licensed dealer and who is qualified as a transporter license
1272 plate eligible business, incidental to the conduct of his or her
1273 business, engages in the transporting of motor vehicles which



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1274 ~~are not currently registered to any owner and which do not have~~
1275 ~~license plates,~~ upon payment of the license tax imposed by s.
1276 320.08(15) for each ~~transporter such~~ license plate and upon
1277 proof of ~~liability insurance as described in subsection (3)~~
1278 ~~coverage in the amount of \$100,000 or more. The proof of~~
1279 ~~insurance must indicate the number of transporter license plates~~
1280 ~~reported to the insurance company, which shall be the maximum~~
1281 ~~number of transporter license plates issued to the applicant.~~
1282 ~~Such~~ A transporter license plate is valid only for use on an
1283 unregistered any motor vehicle in the possession of the
1284 transporter while the motor vehicle is being transported in the
1285 course of the transporter's business and must not be attached to
1286 any vehicle owned by the transporter or his or her business for
1287 which registration would otherwise be required. A person who
1288 sells or unlawfully possesses, distributes, or brokers a
1289 transporter license plate to be attached to any vehicle commits
1290 a misdemeanor of the second degree, punishable as provided in s.
1291 775.082 or s. 775.083. Any and all transporter license plates
1292 issued are subject to cancellation by the department.

1293 (b) A person who knowingly and willfully sells or
1294 unlawfully possesses, distributes, or brokers a transporter
1295 license plate to avoid registering a vehicle requiring
1296 registration pursuant to this chapter or chapter 319 commits a
1297 misdemeanor of the first degree, punishable as provided in s.
1298 775.082 or s. 775.083, and is disqualified from transporter
1299 license plate usage. All transporter license plates issued to
1300 the person's business shall be canceled and must be returned to
1301 the department immediately upon disqualification. The
1302 transporter license plate is subject to removal as provided in



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1303 subsection (9), and any and all transporter plates issued are
1304 subject to cancellation by the department.

1305 (5) A transporter license plate eligible business issued a
1306 transporter license plate must maintain for 2 years, at its
1307 location, records of each use of each transporter license plate
1308 and evidence that the plate was used as required by this
1309 chapter. Such records must be open to inspection by the
1310 department or its agents or any law enforcement officer during
1311 reasonable business hours. A person who fails to maintain true
1312 and accurate records of any transporter license plate usage or
1313 comply with this subsection commits a misdemeanor of the second
1314 degree, punishable as provided in s. 775.082 or s. 775.083, may
1315 be subject to cancellation of any and all transporter license
1316 plates issued, and is automatically disqualified from future
1317 transporter license plate issuance.

1318 (6) When attached to a motor vehicle, a transporter license
1319 plate issued under this section must be accompanied by the
1320 registration issued for the transporter license plate by the
1321 department and proof of insurance as described in subsection
1322 (3). A person who operates a motor vehicle with a transporter
1323 license plate attached who fails to provide the documentation
1324 listed in this subsection commits a misdemeanor of the second
1325 degree, punishable as provided in s. 775.082 or s. 775.083, and
1326 the transporter license plate is subject to removal as provided
1327 in subsection (9). This subsection does not apply to a person
1328 who contracts with dealers and auctions to transport motor
1329 vehicles.

1330 (7) ~~(2)~~ A transporter license plate issued pursuant to
1331 subsection (4) ~~(1)~~ must be in a distinctive color approved by



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1332 the department, and the word "transporter" must appear on the
1333 face of the license plate in place of the county name.

1334 ~~(8)(3) An initial registration or renewal A license plate~~
1335 issued under this section is valid for a period of 12 months,
1336 beginning January 1 and ending December 31. ~~A~~ ~~Ne~~ refund of the
1337 license tax imposed may not be provided for any unexpired
1338 portion of a license period.

1339 (9) A transporter license plate attached to a motor vehicle
1340 in violation of subsection (4) or subsection (6) must be
1341 immediately removed by a law enforcement officer from the motor
1342 vehicle to which it was attached and surrendered to the
1343 department by the law enforcement agency for cancellation.

1344 Section 26. Subsections (1) and (2) of section 320.27,
1345 Florida Statutes, are amended to read:

1346 320.27 Motor vehicle dealers.—

1347 (1) DEFINITIONS.—The following words, terms, and phrases
1348 when used in this section have the meanings respectively
1349 ascribed to them in this subsection, except where the context
1350 clearly indicates a different meaning:

1351 (a) "Department" means the Department of Highway Safety and
1352 Motor Vehicles.

1353 (b) "Motor vehicle" means any motor vehicle of the type and
1354 kind required to be registered and titled under chapter 319 and
1355 this chapter, except a recreational vehicle, moped, motorcycle
1356 powered by a motor with a displacement of 50 cubic centimeters
1357 or less, or mobile home.

1358 (c) "Motor vehicle dealer" means any person engaged in the
1359 business of buying, selling, or dealing in motor vehicles or
1360 offering or displaying motor vehicles for sale at wholesale or



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1361 retail, or who may service and repair motor vehicles pursuant to
1362 an agreement as defined in s. 320.60(1). Any person who buys,
1363 sells, or deals in three or more motor vehicles in any 12-month
1364 period or who offers or displays for sale three or more motor
1365 vehicles in any 12-month period shall be prima facie presumed to
1366 be a motor vehicle dealer. Any person who engages in possessing,
1367 storing, or displaying motor vehicles for retail sale;
1368 advertising motor vehicles for retail sale; negotiating with
1369 consumers regarding the terms of sale for a motor vehicle;
1370 providing test drives of motor vehicles offered for sale; or
1371 delivering or arranging for the delivery of a motor vehicle in
1372 conjunction with the sale of such motor vehicle is deemed to be
1373 dealing in motor vehicles engaged in such business. The terms
1374 "selling" and "sale" include lease-purchase transactions. A
1375 motor vehicle dealer may, at retail or wholesale, sell a
1376 recreational vehicle as described in s. 320.01(1)(b)1.-6. and
1377 8., acquired in exchange for the sale of a motor vehicle,
1378 provided such acquisition is incidental to the principal
1379 business of being a motor vehicle dealer. However, a motor
1380 vehicle dealer may not buy a recreational vehicle for the
1381 purpose of resale unless licensed as a recreational vehicle
1382 dealer pursuant to s. 320.771. A motor vehicle dealer may apply
1383 for a certificate of title to a motor vehicle required to be
1384 registered under s. 320.08(2)(b), (c), and (d), using a
1385 manufacturer's statement of origin as permitted by s. 319.23(1),
1386 only if such dealer is authorized by a franchised agreement as
1387 defined in s. 320.60(1), to buy, sell, or deal in such vehicle
1388 and is authorized by such agreement to perform delivery and
1389 preparation obligations and warranty defect adjustments on the



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1390 motor vehicle; provided this limitation shall not apply to
1391 recreational vehicles, van conversions, or any other motor
1392 vehicle manufactured on a truck chassis. The transfer of a motor
1393 vehicle by a dealer not meeting these qualifications shall be
1394 titled as a used vehicle. The classifications of motor vehicle
1395 dealers are defined as follows:

1396 1. "Franchised motor vehicle dealer" means any person who
1397 engages in the business of repairing, servicing, buying,
1398 selling, or dealing in motor vehicles pursuant to an agreement
1399 as defined in s. 320.60(1).

1400 2. "Independent motor vehicle dealer" means any person
1401 other than a franchised or wholesale motor vehicle dealer who
1402 engages in the business of buying, selling, or dealing in motor
1403 vehicles, and who may service and repair motor vehicles.

1404 3. "Wholesale motor vehicle dealer" means any person who
1405 engages exclusively in the business of buying, selling, or
1406 dealing in motor vehicles at wholesale or with motor vehicle
1407 auctions. Such person shall be licensed to do business in this
1408 state, shall not sell or auction a vehicle to any person who is
1409 not a licensed dealer, and shall not have the privilege of the
1410 use of dealer license plates. Any person who buys, sells, or
1411 deals in motor vehicles at wholesale or with motor vehicle
1412 auctions on behalf of a licensed motor vehicle dealer and as a
1413 bona fide employee of such licensed motor vehicle dealer is not
1414 required to be licensed as a wholesale motor vehicle dealer. In
1415 such cases it shall be prima facie presumed that a bona fide
1416 employer-employee relationship exists. A wholesale motor vehicle
1417 dealer shall be exempt from the display provisions of this
1418 section but shall maintain an office wherein records are kept in



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1419 order that those records may be inspected.

1420 4. "Motor vehicle auction" means any person offering motor
1421 vehicles or recreational vehicles for sale to the highest bidder
1422 where buyers are licensed motor vehicle dealers. Such person
1423 shall not sell a vehicle to anyone other than a licensed motor
1424 vehicle dealer.

1425 5. "Salvage motor vehicle dealer" means any person who
1426 engages in the business of acquiring salvaged or wrecked motor
1427 vehicles for the purpose of reselling them and their parts.

1428

1429 Notwithstanding anything in this subsection to the contrary, the
1430 term "motor vehicle dealer" does not include persons not engaged
1431 in the purchase or sale of motor vehicles as a business who are
1432 disposing of vehicles acquired for their own use or for use in
1433 their business or acquired by foreclosure or by operation of
1434 law, provided such vehicles are acquired and sold in good faith
1435 and not for the purpose of avoiding the provisions of this law;
1436 persons engaged in the business of manufacturing, selling, or
1437 offering or displaying for sale at wholesale or retail no more
1438 than 25 trailers in a 12-month period; public officers while
1439 performing their official duties; receivers; trustees,
1440 administrators, executors, guardians, or other persons appointed
1441 by, or acting under the judgment or order of, any court; banks,
1442 finance companies, or other loan agencies that acquire motor
1443 vehicles as an incident to their regular business; motor vehicle
1444 brokers; persons whose sole dealing in motor vehicles is owning
1445 a publication in which, or hosting a website on which, licensed
1446 motor vehicle dealers display vehicles for sale; and motor
1447 vehicle rental and leasing companies that sell motor vehicles to



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1448 motor vehicle dealers licensed under this section. Vehicles
1449 owned under circumstances described in this paragraph may be
1450 disposed of at retail, wholesale, or auction, unless otherwise
1451 restricted. A manufacturer of fire trucks, ambulances, or school
1452 buses may sell such vehicles directly to governmental agencies
1453 or to persons who contract to perform or provide firefighting,
1454 ambulance, or school transportation services exclusively to
1455 governmental agencies without processing such sales through
1456 dealers if such fire trucks, ambulances, school buses, or
1457 similar vehicles are not presently available through motor
1458 vehicle dealers licensed by the department.

1459 (d) "Motor vehicle broker" means any person engaged in the
1460 business of, or who holds himself or herself out through
1461 solicitation, advertisement, or who otherwise holds himself or
1462 herself out as being in the business of, ~~offering to procure or~~
1463 ~~procuring motor vehicles for~~ assisting the general public in
1464 purchasing or leasing a motor vehicle from a licensed motor
1465 vehicle dealer, or who holds himself or herself out through
1466 solicitation, advertisement, or otherwise as one who offers to
1467 procure or procures motor vehicles for the general public, and
1468 who does not deal in motor vehicles as provided in paragraph
1469 (1) (c) ~~store, display, or take ownership of any vehicles for the~~
1470 ~~purpose of selling such vehicles. Any advertisement or~~
1471 solicitation by a motor vehicle broker must include a statement
1472 that the broker is receiving a fee and must clearly state that
1473 the person is not a licensed motor vehicle dealer.

1474 (e) "Person" means any natural person, firm, partnership,
1475 association, or corporation.

1476 (f) "Bona fide employee" means a person who is employed by



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1477 a licensed motor vehicle dealer and receives annually an
1478 Internal Revenue Service Form W-2, or an independent contractor
1479 who has a written contract with a licensed motor vehicle dealer
1480 and receives annually an Internal Revenue Service Form 1099, for
1481 the purpose of acting in the capacity of or conducting motor
1482 vehicle sales transactions as a motor vehicle dealer.

1483 (2) LICENSE REQUIRED.—No person shall engage in business
1484 as, serve in the capacity of, or act as a motor vehicle dealer
1485 in this state without first obtaining a license therefor in the
1486 appropriate classification as provided in this section. With the
1487 exception of transactions with motor vehicle auctions, no person
1488 other than a licensed motor vehicle dealer may advertise for
1489 sale any motor vehicle belonging to another party unless as a
1490 direct result of a bona fide legal proceeding, court order,
1491 settlement of an estate, or by operation of law. However, owners
1492 of motor vehicles titled in their names may advertise and offer
1493 vehicles for sale on their own behalf. It shall be unlawful for
1494 a licensed motor vehicle dealer to allow any person other than a
1495 bona fide employee to use the motor vehicle dealer license for
1496 the purpose of acting in the capacity of or conducting motor
1497 vehicle sales transactions as a motor vehicle dealer. Any person
1498 acting selling or offering a motor vehicle for sale in violation
1499 of the licensing requirements of this subsection, or who
1500 misrepresents to any person its relationship with any
1501 manufacturer, importer, or distributor, in addition to the
1502 penalties provided herein, is shall be deemed to have committed
1503 guilty of an unfair and deceptive trade practice in violation of
1504 as defined in part II of chapter 501 and is shall be subject to
1505 the provisions of subsections (8) and (9).



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1506 Section 27. Section 321.25, Florida Statutes, is amended to
1507 read:

1508 321.25 Training provided at patrol schools; reimbursement
1509 of tuition and other course expenses.-

1510 (1) The Department of Highway Safety and Motor Vehicles may
1511 is authorized to provide for the training of law enforcement
1512 officials and individuals in matters relating to the duties,
1513 functions, and powers of the Florida Highway Patrol in the
1514 schools established by the department for the training of
1515 highway patrol candidates and officers. The Department of
1516 Highway Safety and Motor Vehicles may is authorized to charge a
1517 fee for providing the training authorized by this section. The
1518 fee shall be charged to persons attending the training. The fee
1519 shall be based on the Department of Highway Safety and Motor
1520 Vehicles' costs for providing the training, and such costs may
1521 include, but are not limited to, tuition, lodging, and meals.
1522 Revenues from the fees shall be used to offset the Department of
1523 Highway Safety and Motor Vehicles' costs for providing the
1524 training. The cost of training local enforcement officers shall
1525 be paid for by their respective offices, counties, or
1526 municipalities, as the case may be. Such cost shall be deemed a
1527 proper county or municipal expense or a proper expenditure of
1528 the office of sheriff.

1529 (2) Notwithstanding s. 943.16, a person who attends
1530 training under subsection (1) at the expense of the Department
1531 of Highway Safety and Motor Vehicles must remain in the
1532 employment or appointment of the Florida Highway Patrol for at
1533 least 3 years. Once employed, if the person fails to remain
1534 employed by the Florida Highway Patrol for at least 3 years from



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1535 the first date of employment, the person must pay the cost of
1536 tuition and other course expenses to the Department of Highway
1537 Safety and Motor Vehicles. As used in this section, the term
1538 "other course expenses" may include the cost of meals and
1539 lodging.

1540 (3) The Department of Highway Safety and Motor Vehicles may
1541 institute a civil action to collect the cost of tuition and
1542 other course expenses if it is not reimbursed pursuant to
1543 subsection (2), provided that the Florida Highway Patrol gave
1544 written notification to the person of the 3-year employment
1545 commitment during the employment screening process and the
1546 person returned signed acknowledgment of receipt of such
1547 notification.

1548 (4) Notwithstanding any other provision of this section,
1549 the Department of Highway Safety and Motor Vehicles may waive a
1550 person's requirement of reimbursement in part or in full when
1551 the person terminates employment due to hardship or extenuating
1552 circumstances.

1553 Section 28. Subsection (4) of section 322.01, Florida
1554 Statutes, is amended to read:

1555 322.01 Definitions.-As used in this chapter:

1556 (4) "Authorized emergency vehicle" means a vehicle that is
1557 equipped with extraordinary audible and visual warning devices,
1558 that is authorized by s. 316.2397 to display red, red and white,
1559 or blue lights, and that is on call to respond to emergencies.
1560 The term includes, but is not limited to, ambulances, law
1561 enforcement vehicles, fire trucks, and other rescue vehicles.
1562 The term does not include wreckers, utility trucks, or other
1563 vehicles that are used only incidentally for emergency purposes.



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1564 Section 29. Subsection (4) of section 322.03, Florida
1565 Statutes, is amended to read:
1566 322.03 Drivers must be licensed; penalties.-
1567 (4) A person may not operate a motorcycle unless he or she
1568 holds a driver license that authorizes such operation, subject
1569 to the appropriate restrictions and endorsements. A person may
1570 operate an auticycle without a motorcycle endorsement.
1571 Section 30. Subsections (1) and (2) of section 322.032,
1572 Florida Statutes, are amended to read
1573 322.032 Digital proof of driver license.-
1574 (1) The department, in collaboration with the Agency for
1575 State Technology, shall establish and implement ~~begin to review~~
1576 ~~and prepare for the development of~~ a secure and uniform
1577 protocols and standards system for issuing an optional digital
1578 proof of driver license and shall procure any application
1579 programming interface necessary to enable a private entity to
1580 securely manufacture a digital proof of driver license. The
1581 department may contract with one or more private entities to
1582 develop a digital proof of driver license system.
1583 (2) ~~(a) A~~ The digital proof of driver license ~~developed by~~
1584 ~~the department or by an entity contracted by the department~~ must
1585 be in such a format as to allow law enforcement to verify the
1586 authenticity of the digital proof of driver license. The
1587 department may adopt rules to ensure valid authentication of a
1588 digital proof of driver license ~~licenses~~ by law enforcement.
1589 (b) The act of presenting to a law enforcement officer an
1590 electronic device displaying a digital proof of driver license
1591 does not constitute consent for the officer to access any
1592 information on the device other than the digital proof of driver



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1593 license.
1594 (c) A person who presents such device to the officer
1595 assumes liability for any resulting damage to the device.
1596 Section 31. Paragraph (e) of subsection (8) of section
1597 322.051, Florida Statutes, is amended to read:
1598 322.051 Identification cards.-
1599 (8)
1600 (e)1. Upon request by a person who has posttraumatic stress
1601 disorder, a traumatic brain injury, or a developmental
1602 disability, or by a parent or guardian of a child or ward who
1603 has posttraumatic stress disorder, a traumatic brain injury, or
1604 a developmental disability, the department shall issue an
1605 identification card exhibiting a capital "D" for the person,
1606 child, or ward if the person or the parent or guardian of the
1607 child or ward submits:
1608 a. Payment of an additional \$1 fee; and
1609 b. Proof acceptable to the department of a diagnosis by a
1610 licensed physician of a developmental disability as defined in
1611 s. 393.063, posttraumatic stress disorder, or traumatic brain
1612 injury.
1613 2. The department shall deposit the additional \$1 fee into
1614 the Agency for Persons with Disabilities Operations and
1615 Maintenance Trust Fund under s. 20.1971(2).
1616 3. A replacement identification card that includes the
1617 designation may be issued without payment of the fee required
1618 under s. 322.21(1)(f).
1619 4. The department shall develop rules to facilitate the
1620 issuance, requirements, and oversight of posttraumatic stress
1621 disorder, traumatic brain injury, and developmental disability



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1622 identification cards under this section.

1623 Section 32. Paragraph (m) of subsection (8) of section
1624 322.08, Florida Statutes, is amended to read:

1625 322.08 Application for license; requirements for license
1626 and identification card forms.—

1627 (8) The application form for an original, renewal, or
1628 replacement driver license or identification card must include
1629 language permitting the following:

1630 (m) A voluntary contribution of \$1 per applicant, which
1631 shall be distributed to Preserve Vision ~~Prevent Blindness~~
1632 Florida, a not-for-profit organization, to prevent blindness and
1633 preserve the sight of the residents of this state.

1634
1635 A statement providing an explanation of the purpose of the trust
1636 funds shall also be included. For the purpose of applying the
1637 service charge provided under s. 215.20, contributions received
1638 under paragraphs (b)-(t) are not income of a revenue nature.

1639 Section 33. Subsection (5) of section 322.091, Florida
1640 Statutes, is amended to read:

1641 322.091 Attendance requirements.—

1642 (5) REPORTING AND ACCOUNTABILITY.—The department shall make
1643 available, upon request, a report quarterly to each school
1644 district of the legal name, sex, date of birth, and social
1645 security number of each student whose driving privileges have
1646 been suspended under this section.

1647 Section 34. Subsections (1) and (5) of section 322.12,
1648 Florida Statutes, are amended to read:

1649 322.12 Examination of applicants.—

1650 (1) It is the intent of the Legislature that every



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1651 applicant for an original driver license in this state be
1652 required to pass an examination pursuant to this section.

1653 However, the department may waive the knowledge, endorsement,
1654 and skills tests for an applicant who is otherwise qualified and
1655 who surrenders a valid driver license from another state or a
1656 province of Canada, or a valid driver license issued by the
1657 United States Armed Forces, if the driver applies for a Florida
1658 license of an equal or lesser classification. An ~~Any~~ applicant
1659 who fails to pass the initial knowledge test incurs a \$10 fee
1660 for each subsequent test, to be deposited into the Highway
1661 Safety Operating Trust Fund; however, if a subsequent test is
1662 administered by the tax collector, the tax collector shall
1663 retain the \$10 fee, less the General Revenue Service Charge set
1664 forth in s. 215.20(1). An ~~Any~~ applicant who fails to pass the
1665 initial skills test incurs a \$20 fee for each subsequent test,
1666 to be deposited into the Highway Safety Operating Trust Fund;
1667 however, if a subsequent test is administered by the tax
1668 collector, the tax collector shall retain the \$20 fee, less the
1669 General Revenue Service Charge set forth in s. 215.20(1). A
1670 person who seeks to retain a hazardous-materials endorsement,
1671 pursuant to s. 322.57(1)(e), must pass the hazardous-materials
1672 test, upon surrendering his or her commercial driver license, if
1673 the person has not taken and passed the hazardous-materials test
1674 within 2 years before applying for a commercial driver license
1675 in this state.

1676 (5) (a) The department shall formulate a separate
1677 examination for applicants for licenses to operate motorcycles.
1678 Any applicant for a driver license who wishes to operate a
1679 motorcycle, and who is otherwise qualified, must successfully



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1680 complete such an examination, which is in addition to the
1681 examination administered under subsection (3). The examination
1682 must test the applicant's knowledge of the operation of a
1683 motorcycle and of any traffic laws specifically relating thereto
1684 and must include an actual demonstration of his or her ability
1685 to exercise ordinary and reasonable control in the operation of
1686 a motorcycle. Any applicant who fails to pass the initial
1687 knowledge examination will incur a \$5 fee for each subsequent
1688 examination, to be deposited into the Highway Safety Operating
1689 Trust Fund. Any applicant who fails to pass the initial skills
1690 examination will incur a \$10 fee for each subsequent
1691 examination, to be deposited into the Highway Safety Operating
1692 Trust Fund. In the formulation of the examination, the
1693 department shall consider the use of the Motorcycle Operator
1694 Skills Test and the Motorcycle in Traffic Test offered by the
1695 Motorcycle Safety Foundation. The department shall indicate on
1696 the license of any person who successfully completes the
1697 examination that the licensee is authorized to operate a
1698 motorcycle. If the applicant wishes to be licensed to operate a
1699 motorcycle only, he or she need not take the skill or road test
1700 required under subsection (3) for the operation of a motor
1701 vehicle, and the department shall indicate such a limitation on
1702 his or her license as a restriction. Every first-time applicant
1703 for licensure to operate a motorcycle must provide proof of
1704 completion of a motorcycle safety course, as provided for in s.
1705 322.0255, before the applicant may be licensed to operate a
1706 motorcycle.

1707 (b) The department may exempt any applicant from the
1708 examination provided in this subsection if the applicant



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1709 presents a certificate showing successful completion of a course
1710 approved by the department, which course includes a similar
1711 examination of the knowledge and skill of the applicant in the
1712 operation of a motorcycle.

1713 (c) This subsection does not apply to the operation of an
1714 autocycle.

1715 Section 35. Paragraph (d) is added to subsection (1) of
1716 section 322.135, Florida Statutes, to read:

1717 322.135 Driver license agents.—

1718 (1) The department shall, upon application, authorize by
1719 interagency agreement any or all of the tax collectors who are
1720 constitutional officers under s. 1(d), Art. VIII of the State
1721 Constitution in the several counties of the state, subject to
1722 the requirements of law, in accordance with rules of the
1723 department, to serve as its agent for the provision of specified
1724 driver license services.

1725 (d) Each tax collector shall provide the same driver
1726 license services in office to residents of other counties that
1727 it provides for residents of its home county.

1728 Section 36. Paragraph (b) of subsection (1) of section
1729 322.17, Florida Statutes, is amended to read:

1730 322.17 Replacement licenses, identification cards, and
1731 permits.—

1732 (1)

1733 (b) In the event that an instruction permit, ~~or~~ driver
1734 license, or identification card issued under ~~the provisions of~~
1735 this chapter is stolen, the person to whom the same was issued
1736 may, at no charge, obtain a replacement upon furnishing proof
1737 satisfactory to the department that such permit, ~~or~~ license, or



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1738 ~~identification card~~ was stolen and further furnishing the
1739 ~~person's~~ full name, date of birth, sex, residence and mailing
1740 address, proof of birth satisfactory to the department, and
1741 proof of identity satisfactory to the department.

1742 Section 37. Paragraphs (e) and (i) of subsection (1) and
1743 subsection (8) of section 322.21, Florida Statutes, are amended,
1744 and subsection (10) is added to that section, to read:

1745 322.21 License fees; procedure for handling and collecting
1746 fees.—

1747 (1) Except as otherwise provided herein, the fee for:

1748 (e) A replacement driver license issued pursuant to s.
1749 322.17 is \$25. Of this amount, \$7 shall be deposited into the
1750 Highway Safety Operating Trust Fund and \$18 shall be deposited
1751 into the General Revenue Fund. ~~Beginning July 1, 2015, or upon~~
1752 ~~completion of the transition of driver license issuance~~
1753 ~~services~~, If the replacement driver license is issued by the tax
1754 collector, the tax collector shall retain the \$7 that would
1755 otherwise be deposited into the Highway Safety Operating Trust
1756 Fund and the remaining revenues shall be deposited into the
1757 General Revenue Fund.

1758 ~~(i) The specialty driver license or identification card~~
1759 ~~issued pursuant to s. 322.1415 is \$25, which is in addition to~~
1760 ~~other fees required in this section. The fee shall be~~
1761 ~~distributed as follows:~~

1762 ~~1. Fifty percent shall be distributed as provided in s.~~
1763 ~~320.08058 to the appropriate state or independent university,~~
1764 ~~professional sports team, or branch of the United States Armed~~
1765 ~~Forces.~~

1766 ~~2. Fifty percent shall be distributed to the department for~~



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1767 ~~costs directly related to the specialty driver license and~~
1768 ~~identification card program and to defray the costs associated~~
1769 ~~with production enhancements and distribution.~~

1770 (8) ~~A~~ Any person who applies for reinstatement following
1771 the suspension or revocation of the person's driver license must
1772 pay a service fee of \$45 following a suspension, and \$75
1773 following a revocation, which is in addition to the fee for a
1774 license. ~~A~~ Any person who applies for reinstatement of a
1775 commercial driver license following the disqualification of the
1776 person's privilege to operate a commercial motor vehicle shall
1777 pay a service fee of \$75, which is in addition to the fee for a
1778 license. The department shall collect all of these fees at the
1779 time of reinstatement. The department shall issue proper
1780 receipts for such fees and shall promptly transmit all funds
1781 received by it as follows:

1782 (a) Of the \$45 fee received from a licensee for
1783 reinstatement following a suspension:

1784 1. If the reinstatement is processed by the department, the
1785 department shall deposit \$15 in the General Revenue Fund and \$30
1786 in the Highway Safety Operating Trust Fund.

1787 2. If the reinstatement is processed by the tax collector,
1788 \$15, less the General Revenue Service Charge set forth in s.
1789 215.20(1), shall be retained by the tax collector, \$15 shall be
1790 deposited into the Highway Safety Operating Trust Fund, and \$15
1791 shall be deposited into the General Revenue Fund.

1792 (b) Of the \$75 fee received from a licensee for
1793 reinstatement following a revocation or disqualification:

1794 1. If the reinstatement is processed by the department, the
1795 department shall deposit \$35 in the General Revenue Fund and \$40



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1796 in the Highway Safety Operating Trust Fund.

1797 2. If the reinstatement is processed by the tax collector,
1798 \$20, less the General Revenue Service Charge set forth in s.
1799 215.20(1), shall be retained by the tax collector, \$20 shall be
1800 deposited into the Highway Safety Operating Trust Fund, and \$35
1801 shall be deposited into the General Revenue Fund.

1802

1803 If the revocation or suspension of the driver license was for a
1804 violation of s. 316.193, or for refusal to submit to a lawful
1805 breath, blood, or urine test, an additional fee of \$130 must be
1806 charged. However, only one \$130 fee may be collected from one
1807 person convicted of violations arising out of the same incident.

1808 The department shall collect the \$130 fee and deposit the fee
1809 into the Highway Safety Operating Trust Fund at the time of
1810 reinstatement of the person's driver license, but the fee may
1811 not be collected if the suspension or revocation is overturned.

1812 If the revocation or suspension of the driver license was for a
1813 conviction for a violation of s. 817.234(8) or (9) or s.
1814 817.505, an additional fee of \$180 is imposed for each offense.
1815 The department shall collect and deposit the additional fee into
1816 the Highway Safety Operating Trust Fund at the time of
1817 reinstatement of the person's driver license.

1818 (10) An applicant who submits an application for a renewal
1819 or replacement driver license or identification card to the
1820 department using a convenience service shall be provided with an
1821 option for expedited shipping whereby the department, at the
1822 applicant's request, shall issue the license or identification
1823 card within 5 working days after receipt of the application and
1824 ship the license or card using an expedited mail service. A fee



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1825 shall be charged for the expedited shipping option, not to
1826 exceed the cost of the expedited mail service, which is in
1827 addition to fees imposed by s. 322.051, this section, or the
1828 convenience service. Fees collected for the expedited shipping
1829 option shall be deposited into the Highway Safety Operating
1830 Trust Fund.

1831

1831 Section 38. Subsection (1) of section 322.61, Florida
1832 Statutes, is amended, and subsection (2) of that section is
1833 reenacted, to read:

1834 322.61 Disqualification from operating a commercial motor
1835 vehicle.—

1836 (1) A person who, for offenses occurring within a 3-year
1837 period, is convicted of two of the following serious traffic
1838 violations, or any combination thereof, arising in separate
1839 incidents committed in a commercial motor vehicle shall, in
1840 addition to any other applicable penalties, be disqualified from
1841 operating a commercial motor vehicle for a period of 60 days. A
1842 holder of a commercial driver license or commercial learner's
1843 permit who, for offenses occurring within a 3-year period, is
1844 convicted of two of the following serious traffic violations, or
1845 any combination thereof, arising in separate incidents committed
1846 in a noncommercial motor vehicle shall, in addition to any other
1847 applicable penalties, be disqualified from operating a
1848 commercial motor vehicle for a period of 60 days if such
1849 convictions result in the suspension, revocation, or
1850 cancellation of the licenseholder's driving privilege:

1851 (a) A violation of any state or local law relating to motor
1852 vehicle traffic control, other than a parking violation, arising
1853 in connection with a crash resulting in death;



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- 1854 (b) Reckless driving, as defined in s. 316.192;
1855 (c) Unlawful speed of 15 miles per hour or more above the
1856 posted speed limit;
1857 (d) Improper lane change, as defined in s. 316.085;
1858 (e) Following too closely, as defined in s. 316.0895;
1859 (f) Texting while driving a commercial motor vehicle, as
1860 prohibited by 49 C.F.R. 392.80;
1861 (g) Using a handheld mobile telephone while driving a
1862 commercial motor vehicle, as prohibited by 49 C.F.R. 392.82;
1863 (h) ~~(f)~~ Driving a commercial vehicle without obtaining a
1864 commercial driver license;
1865 (i) ~~(g)~~ Driving a commercial vehicle without the proper
1866 class of commercial driver license or commercial learner's
1867 permit or without the proper endorsement; or
1868 (j) ~~(h)~~ Driving a commercial vehicle without a commercial
1869 driver license or commercial learner's permit in possession, as
1870 required by s. 322.03.
1871 (2) (a) Any person who, for offenses occurring within a 3-
1872 year period, is convicted of three serious traffic violations
1873 specified in subsection (1) or any combination thereof, arising
1874 in separate incidents committed in a commercial motor vehicle
1875 shall, in addition to any other applicable penalties, including
1876 but not limited to the penalty provided in subsection (1), be
1877 disqualified from operating a commercial motor vehicle for a
1878 period of 120 days.
1879 (b) A holder of a commercial driver license or commercial
1880 learner's permit who, for offenses occurring within a 3-year
1881 period, is convicted of three serious traffic violations
1882 specified in subsection (1) or any combination thereof arising



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- 1883 in separate incidents committed in a noncommercial motor vehicle
1884 shall, in addition to any other applicable penalties, including,
1885 but not limited to, the penalty provided in subsection (1), be
1886 disqualified from operating a commercial motor vehicle for a
1887 period of 120 days if such convictions result in the suspension,
1888 revocation, or cancellation of the licenseholder's driving
1889 privilege.
1890 Section 39. Section 324.031, Florida Statutes, is amended
1891 to read:
1892 324.031 Manner of proving financial responsibility.—The
1893 owner or operator of a taxicab, limousine, jitney, or any other
1894 for-hire passenger transportation vehicle may prove financial
1895 responsibility by providing satisfactory evidence of holding a
1896 motor vehicle liability policy as defined in s. 324.021(8) or s.
1897 324.151, which policy is provided by an insurer authorized to do
1898 business in this state issued by an insurance carrier which is a
1899 member of the Florida Insurance Guaranty Association or is an
1900 eligible surplus lines insurer that has a superior, excellent,
1901 exceptional, or equivalent financial strength rating by a rating
1902 agency acceptable to the Office of Insurance Regulation of the
1903 Financial Services Commission. The operator or owner of any
1904 other vehicle may prove his or her financial responsibility by:
1905 (1) Furnishing satisfactory evidence of holding a motor
1906 vehicle liability policy as defined in ss. 324.021(8) and
1907 324.151;
1908 (2) Furnishing a certificate of self-insurance showing a
1909 deposit of cash in accordance with s. 324.161; or
1910 (3) Furnishing a certificate of self-insurance issued by
1911 the department in accordance with s. 324.171.



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1912
1913 Any person, including any firm, partnership, association,
1914 corporation, or other person, other than a natural person,
1915 electing to use the method of proof specified in subsection (2)
1916 shall furnish a certificate of deposit equal to the number of
1917 vehicles owned times \$30,000, to a maximum of \$120,000; in
1918 addition, any such person, other than a natural person, shall
1919 maintain insurance providing coverage in excess of limits of
1920 \$10,000/20,000/10,000 or \$30,000 combined single limits, and
1921 such excess insurance shall provide minimum limits of
1922 \$100,000/\$300,000 ~~125,000/250,000~~ /50,000 or \$300,000 combined
1923 single limits. These increased limits shall not affect the
1924 requirements for proving financial responsibility under s.
1925 324.032(1).

1926 Section 40. Section 877.27, Florida Statutes, is amended to
1927 read:

1928 877.27 Unauthorized transmissions to, or interference with,
1929 a public or commercial radio station licensed by the Federal
1930 Communications Commission or global positioning system
1931 prohibited; penalties.-

1932 (1) A person may not:

1933 (a) Make, or cause to be made, a radio transmission in this
1934 state unless the person obtains a license or an exemption from
1935 licensure from the Federal Communications Commission under 47
1936 U.S.C. s. 301, or other applicable federal law or regulation; or

1937 (b) Do any act, whether direct or indirect, to cause an
1938 unlicensed radio transmission to, or interference with, a public
1939 or commercial radio station licensed by the Federal
1940 Communications Commission or to enable the radio transmission or



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1941 interference to occur.

1942 (c) Use a device prohibited by the Federal Communications
1943 Commission which would cause interference with the legal use of
1944 a global positioning system (GPS) to track vehicles.

1945 (2) A person who violates this section commits a felony of
1946 the third degree, punishable as provided in s. 775.082, s.
1947 775.083, or s. 775.084.

1948 Section 41. Paragraph (c) of subsection (1) of section
1949 212.05, Florida Statutes, is amended to read:

1950 212.05 Sales, storage, use tax.-It is hereby declared to be
1951 the legislative intent that every person is exercising a taxable
1952 privilege who engages in the business of selling tangible
1953 personal property at retail in this state, including the
1954 business of making mail order sales, or who rents or furnishes
1955 any of the things or services taxable under this chapter, or who
1956 stores for use or consumption in this state any item or article
1957 of tangible personal property as defined herein and who leases
1958 or rents such property within the state.

1959 (1) For the exercise of such privilege, a tax is levied on
1960 each taxable transaction or incident, which tax is due and
1961 payable as follows:

1962 (c) At the rate of 6 percent of the gross proceeds derived
1963 from the lease or rental of tangible personal property, as
1964 defined herein; however, the following special provisions apply
1965 to the lease or rental of motor vehicles:

1966 1. When a motor vehicle is leased or rented for a period of
1967 less than 12 months:

1968 a. If the motor vehicle is rented in Florida, the entire
1969 amount of such rental is taxable, even if the vehicle is dropped



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1970 off in another state.

1971 b. If the motor vehicle is rented in another state and
1972 dropped off in Florida, the rental is exempt from Florida tax.

1973 2. Except as provided in subparagraph 3., for the lease or
1974 rental of a motor vehicle for a period of not less than 12
1975 months, sales tax is due on the lease or rental payments if the
1976 vehicle is registered in this state; provided, however, that no
1977 tax shall be due if the taxpayer documents use of the motor
1978 vehicle outside this state and tax is being paid on the lease or
1979 rental payments in another state.

1980 3. The tax imposed by this chapter does not apply to the
1981 lease or rental of a commercial motor vehicle as defined in s.
1982 316.003(13)(a) ~~s. 316.003(12)(a)~~ to one lessee or rentee for a
1983 period of not less than 12 months when tax was paid on the
1984 purchase price of such vehicle by the lessor. To the extent tax
1985 was paid with respect to the purchase of such vehicle in another
1986 state, territory of the United States, or the District of
1987 Columbia, the Florida tax payable shall be reduced in accordance
1988 with the provisions of s. 212.06(7). This subparagraph shall
1989 only be available when the lease or rental of such property is
1990 an established business or part of an established business or
1991 the same is incidental or germane to such business.

1992 Section 42. Subsection (1) of section 316.303, Florida
1993 Statutes, is amended to read:

1994 316.303 Television receivers.-

1995 (1) No motor vehicle may be operated on the highways of
1996 this state if the vehicle is actively displaying moving
1997 television broadcast or pre-recorded video entertainment content
1998 that is visible from the driver's seat while the vehicle is in



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1999 motion, unless the vehicle is equipped with autonomous
2000 technology, as defined in s. 316.003(3) ~~s. 316.003(2)~~, and is
2001 being operated in autonomous mode, as provided in s. 316.85(2).

2002 Section 43. Paragraph (b) of subsection (2) of section
2003 316.545, Florida Statutes, is amended to read:

2004 316.545 Weight and load unlawful; special fuel and motor
2005 fuel tax enforcement; inspection; penalty; review.-

2006 (2)

2007 (b) The officer or inspector shall inspect the license
2008 plate or registration certificate of the commercial vehicle to
2009 determine whether its gross weight is in compliance with the
2010 declared gross vehicle weight. If its gross weight exceeds the
2011 declared weight, the penalty shall be 5 cents per pound on the
2012 difference between such weights. In those cases when the
2013 commercial vehicle is being operated over the highways of the
2014 state with an expired registration or with no registration from
2015 this or any other jurisdiction or is not registered under the
2016 applicable provisions of chapter 320, the penalty herein shall
2017 apply on the basis of 5 cents per pound on that scaled weight
2018 which exceeds 35,000 pounds on laden truck tractor-semitrailer
2019 combinations or tandem trailer truck combinations, 10,000 pounds
2020 on laden straight trucks or straight truck-trailer combinations,
2021 or 10,000 pounds on any unladen commercial motor vehicle. A
2022 driver of a commercial motor vehicle entering the state at a
2023 designated port-of-entry location, as defined in s. 316.003 ~~s.~~
2024 316.003(54), or operating on designated routes to a port-of-
2025 entry location, who obtains a temporary registration permit
2026 shall be assessed a penalty limited to the difference between
2027 its gross weight and the declared gross vehicle weight at 5



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2028 cents per pound. If the license plate or registration has not
2029 been expired for more than 90 days, the penalty imposed under
2030 this paragraph may not exceed \$1,000. In the case of special
2031 mobile equipment, which qualifies for the license tax provided
2032 for in s. 320.08(5)(b), being operated on the highways of the
2033 state with an expired registration or otherwise not properly
2034 registered under the applicable provisions of chapter 320, a
2035 penalty of \$75 shall apply in addition to any other penalty
2036 which may apply in accordance with this chapter. A vehicle found
2037 in violation of this section may be detained until the owner or
2038 operator produces evidence that the vehicle has been properly
2039 registered. Any costs incurred by the retention of the vehicle
2040 shall be the sole responsibility of the owner. A person who has
2041 been assessed a penalty pursuant to this paragraph for failure
2042 to have a valid vehicle registration certificate pursuant to the
2043 provisions of chapter 320 is not subject to the delinquent fee
2044 authorized in s. 320.07 if such person obtains a valid
2045 registration certificate within 10 working days after such
2046 penalty was assessed.

2047 Section 44. Paragraph (a) of subsection (2) of section
2048 316.613, Florida Statutes, is amended to read:

2049 316.613 Child restraint requirements.—

2050 (2) As used in this section, the term "motor vehicle" means
2051 a motor vehicle as defined in s. 316.003 that is operated on the
2052 roadways, streets, and highways of the state. The term does not
2053 include:

2054 (a) A school bus as defined in s. 316.003 ~~s. 316.003(68)~~.

2055 Section 45. Subsection (1) of section 655.960, Florida
2056 Statutes, is amended to read:



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2057 655.960 Definitions; ss. 655.960-655.965.—As used in this
2058 section and ss. 655.961-655.965, unless the context otherwise
2059 requires:

2060 (1) "Access area" means any paved walkway or sidewalk which
2061 is within 50 feet of any automated teller machine. The term does
2062 not include any street or highway open to the use of the public,
2063 as defined in s. 316.003(78)(a) or (b) ~~s. 316.003(77)(a) or (b)~~,
2064 including any adjacent sidewalk, as defined in s. 316.003.

2065 Section 46. The amendments made by this act to s. 318.18,
2066 Florida Statutes, shall apply upon the adoption by rule of
2067 uniform traffic citation forms. The Department of Highway Safety
2068 and Motor Vehicles shall notify the Division of Law Revision and
2069 Information upon the adoption of such forms.

2070 Section 47. Except as otherwise provided in this act, this
2071 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 insurance⁵ or wear safety belts⁶, 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 protection⁹;

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

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 CMVs¹⁷ 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 Regulations¹⁸:

- 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 placarding²⁶;
- 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 rules³¹, 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.

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 offenses³⁹:

- 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 business⁴³.

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.

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 Medal⁶² 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 tax⁶³; 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 repossessioners; 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 reposessor 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 misdemeanor⁷⁴, 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 misdemeanor⁷⁵, 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 misdemeanor⁷⁶, 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 misdemeanor⁷⁷, 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 permit⁸³ 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 she⁸⁹:

- 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 service⁹⁵, including the DHSMV's virtual office⁹⁶.

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 motorcycle 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

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1 A bill to be entitled
 2 An act relating to the Department of Highway Safety
 3 and Motor Vehicles; amending s. 316.003, F.S.;
 4 defining the term "autocycle"; redefining the term
 5 "motorcycle"; conforming a cross-reference; amending
 6 ss. 316.2397 and 316.2398, F.S.; prohibiting vehicles
 7 or equipment from showing or displaying red and white
 8 lights while being driven or moved; authorizing
 9 firefighters to use or display red and white lights
 10 under certain circumstances; authorizing active
 11 volunteer firefighters to display red and white
 12 warning signals under certain circumstances; amending
 13 s. 316.302, F.S.; revising provisions relating to
 14 federal regulations to which owners and drivers of
 15 commercial motor vehicles are subject; terminating the
 16 maximum amount of a civil penalty for falsification of
 17 information on certain time records; deleting the
 18 requirement that a motor carrier maintain
 19 documentation of a driver's driving times throughout a
 20 duty period if the driver is not released from duty
 21 within a specified period; providing an exemption from
 22 specified rules and regulations for a person who
 23 operates a commercial motor vehicle with a declared
 24 gross vehicle weight, gross vehicle weight rating, and
 25 gross combined weight rating of less than a specified
 26 amount under certain circumstances; amending s.
 27 316.3025, F.S.; conforming provisions to changes made
 28 by the act; amending s. 316.614, F.S.; redefining the
 29 term "motor vehicle"; prohibiting a person from

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30 operating an autocycle unless certain safety belt or
 31 child restraint device requirements are met; amending
 32 s. 320.01, F.S.; redefining the term "apportionable
 33 vehicle"; redefining the term "motorcycle"; amending
 34 s. 320.02, F.S.; requiring an application form for
 35 motor vehicle registration to include language
 36 authorizing a voluntary contribution to be distributed
 37 to Preserve Vision Florida, rather than to Prevent
 38 Blindness Florida; amending s. 320.06, F.S.; providing
 39 for future repeal of issuance of a certain annual
 40 license plate and cab card to a vehicle that has an
 41 apportioned registration; providing requirements,
 42 beginning on a specified date, for license plates, cab
 43 cards, and validation stickers for vehicles registered
 44 in accordance with the International Registration
 45 Plan; authorizing a worn or damaged license plate to
 46 be replaced at no charge under certain circumstances;
 47 amending s. 320.0605, F.S.; authorizing presentation
 48 of electronic documentation of certain information to
 49 a law enforcement officer or agent of the department;
 50 providing construction; providing liability; revising
 51 information required in such documentation; amending
 52 s. 320.0607, F.S.; providing an exemption, beginning
 53 on a specified date, of a certain fee for vehicles
 54 registered under the International Registration Plan;
 55 amending s. 320.08056, F.S.; deleting the American Red
 56 Cross, Donate Organs-Pass It On, St. Johns River, and
 57 Hispanic Achievers license plates; conforming cross-
 58 references; repealing s. 320.08058(31), (57), (69),

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59 and (70), F.S., relating to the American Red Cross,
 60 Donate Organs-Pass It On, St. Johns River, and
 61 Hispanic Achievers license plates, respectively;
 62 amending s. 320.08068, F.S.; requiring The Able Trust
 63 to distribute a specified percentage of annual use
 64 fees from motorcycle specialty license plates to
 65 Preserve Vision Florida, rather than to Prevent
 66 Blindness Florida; creating s. 320.0875, F.S.;

67 providing for a motorcycle special license plate to be
 68 issued to a recipient of the Purple Heart; providing
 69 requirements for the plate; amending s. 320.089, F.S.;

70 providing for a special license plate to be issued to
 71 a recipient of the Bronze Star; making technical
 72 changes; amending s. 320.133, F.S.; defining the term
 73 "transporter license plate eligible business";

74 providing that a person is not eligible to purchase or
 75 renew a transporter license plate unless he or she
 76 provides certain proof that his or her business is a
 77 transporter license plate eligible business; providing
 78 application and insurance requirements for
 79 qualification as a transporter license plate eligible
 80 business; authorizing the department to issue a
 81 transporter license plate to an applicant who is not a
 82 licensed dealer and is qualified as a transporter
 83 license plate eligible business, under certain
 84 circumstances; providing that a transporter license
 85 plate is valid only for use on an unregistered motor
 86 vehicle in the possession of the transporter, subject
 87 to certain requirements; providing a criminal penalty

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88 for a person who sells or unlawfully possesses,
 89 distributes, or brokers a transporter license plate to
 90 be attached to any vehicle; providing that transporter
 91 license plates are subject to cancellation by the
 92 department; providing a criminal penalty and
 93 disqualification from transporter license plate usage
 94 for a person who knowingly and willfully sells or
 95 unlawfully possesses, distributes, or brokers a
 96 transporter license plate to avoid registering a
 97 vehicle requiring registration, subject to certain
 98 requirements; providing recordkeeping requirements for
 99 a transporter license plate eligible business;

100 providing a criminal penalty, cancellation of
 101 transporter license plates, and disqualification from
 102 future issuance of the plates for a violation of such
 103 recordkeeping requirements; requiring a transporter
 104 license plate issued under this section to be
 105 accompanied by registration and proof of insurance
 106 when attached to a motor vehicle; providing a criminal
 107 penalty and removal of the license plate for a person
 108 who fails to provide such documentation; providing an
 109 exemption to persons who contract with dealers and
 110 auctions to transport motor vehicles; conforming
 111 provisions to changes made by the act; providing that
 112 an initial registration or renewal issued under this
 113 section is valid for a specified period; requiring a
 114 license plate attached to a motor vehicle in violation
 115 of specified provision to be removed by a law
 116 enforcement officer and surrendered to the department

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117 by the law enforcement agency for cancellation;
 118 amending s. 321.25, F.S.; providing for reimbursement
 119 to the department of tuition and other course expenses
 120 for certain training under certain circumstances;
 121 defining the term "other course expenses"; authorizing
 122 the department to institute a civil action under
 123 certain circumstances; authorizing the department to
 124 waive a person's requirement of reimbursement when the
 125 person terminates employment due to hardship or
 126 extenuating circumstances; amending s. 322.01, F.S.;
 127 conforming provisions to changes made by the act;
 128 amending s. 322.03, F.S.; authorizing a person to
 129 operate an autocycle without a motorcycle endorsement;
 130 amending s. 322.051, F.S.; revising eligibility for a
 131 "D" designation on an identification card to include
 132 posttraumatic stress disorder or traumatic brain
 133 injury; amending s. 322.08, F.S.; requiring an
 134 application form for an original, renewal, or
 135 replacement driver license or identification card to
 136 include language authorizing a voluntary contribution
 137 to Preserve Vision Florida, rather than to Prevent
 138 Blindness Florida; amending s. 322.091, F.S.;
 139 requiring the department to make available, upon
 140 request, a report to each school district of certain
 141 information for each student whose driving privileges
 142 have been suspended under this section; amending s.
 143 322.12, F.S.; requiring the tax collector to retain
 144 specified fees if a subsequent knowledge or skills
 145 test is administered by the tax collector; exempting

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146 the operation of an autocycle from certain examination
 147 requirements for licenses to operate motorcycles;
 148 amending s. 322.17, F.S.; providing for replacement of
 149 a stolen identification card at no charge, subject to
 150 certain requirements; amending s. 322.21, F.S.;
 151 deleting obsolete provisions; deleting a fee for
 152 certain specialty driver licenses or identification
 153 cards; providing disposition of specified fees for
 154 reinstatement of a driver license following a
 155 suspension, revocation, or disqualification when the
 156 reinstatement is processed by the department or the
 157 tax collector; requiring an applicant who submits an
 158 application for a renewal or replacement driver
 159 license or identification card to the department using
 160 a convenience service to be provided with an option
 161 for expedited shipping, subject to certain
 162 requirements; requiring a fee to be charged for the
 163 expedited shipping option, subject to certain
 164 requirements; providing for disposition of such fee;
 165 amending s. 322.61, F.S.; adding violations for
 166 texting or using a handheld mobile telephone while
 167 driving a commercial motor vehicle as specified
 168 offenses that, in certain circumstances, result in
 169 disqualification from operating a commercial motor
 170 vehicle for a specified period; amending ss. 212.05,
 171 316.303, 316.545, 316.613, 320.08, and 655.960, F.S.;
 172 conforming cross-references; providing an effective
 173 date.
 174

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

176

177 Section 1. Present subsections (2) through (97) of section
178 316.003, Florida Statutes, are redesignated as subsections (3)
179 through (98), respectively, a new subsection (2) is added to
180 that section, and present subsections (41) and (55) of that
181 section are amended, to read:

182 316.003 Definitions.—The following words and phrases, when
183 used in this chapter, shall have the meanings respectively
184 ascribed to them in this section, except where the context
185 otherwise requires:

186 (2) AUTOCYCLE.—A three-wheel motorcycle that has two wheels
187 in the front and one wheel in the back, is equipped with a roll
188 cage or roll hoops, safety belts for each occupant, antilock
189 brakes, a steering wheel, and seating that does not require the
190 operator to straddle or sit astride it and is manufactured by a
191 National Highway Traffic Safety Administration registered
192 manufacturer in accordance with the applicable federal
193 motorcycle safety standards under 49 C.F.R. part 571.

194 (42)(41) MOTORCYCLE.—Any motor vehicle that has ~~having~~ a
195 seat or saddle for the use of the rider which is ~~and~~ designed to
196 travel on not more than three wheels in contact with the ground,
197 including an autocycle. The term does not include a tractor, a
198 moped, or a vehicle in which the operator is enclosed by a cabin
199 unless the vehicle meets the requirements set forth by the
200 National Highway Traffic Safety Administration for a motorcycle
201 but excluding a tractor or a moped.

202 (56)(55) PRIVATE ROAD OR DRIVEWAY.—Except as otherwise
203 provided in paragraph (78)(b) ~~(77)(b)~~, any privately owned way

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204 or place used for vehicular travel by the owner and those having
205 express or implied permission from the owner, but not by other
206 persons.

207 Section 2. Subsections (1) and (3) of section 316.2397,
208 Florida Statutes, are amended to read:

209 316.2397 Certain lights prohibited; exceptions.—

210 (1) A ~~No~~ person may not ~~shall~~ drive or move or cause to be
211 moved any vehicle or equipment upon any highway within this
212 state with a a ~~any~~ lamp or device thereon showing or displaying a
213 red, red and white, or blue light visible from directly in front
214 thereof except for certain vehicles ~~hereinafter~~ provided in this
215 section.

216 (3) Vehicles of the fire department and fire patrol,
217 including vehicles of volunteer firefighters as permitted under
218 s. 316.2398, may show or display red, or red and white, lights.
219 Vehicles of medical staff physicians or technicians of medical
220 facilities licensed by the state as authorized under s.
221 316.2398, ambulances as authorized under this chapter, and buses
222 and taxicabs as authorized under s. 316.2399 may show or display
223 red lights. Vehicles of the fire department, fire patrol, police
224 vehicles, and such ambulances and emergency vehicles of
225 municipal and county departments, public service corporations
226 operated by private corporations, the Fish and Wildlife
227 Conservation Commission, the Department of Environmental
228 Protection, the Department of Transportation, the Department of
229 Agriculture and Consumer Services, and the Department of
230 Corrections as are designated or authorized by their respective
231 department or the chief of police of an incorporated city or any
232 sheriff of any county may operate emergency lights and sirens in

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233 an emergency. Wreckers, mosquito control fog and spray vehicles,
 234 and emergency vehicles of governmental departments or public
 235 service corporations may show or display amber lights when in
 236 actual operation or when a hazard exists provided they are not
 237 used going to and from the scene of operation or hazard without
 238 specific authorization of a law enforcement officer or law
 239 enforcement agency. Wreckers must use amber rotating or flashing
 240 lights while performing recoveries and loading on the roadside
 241 day or night, and may use such lights while towing a vehicle on
 242 wheel lifts, slings, or under reach if the operator of the
 243 wrecker deems such lights necessary. A flatbed, car carrier, or
 244 rollback may not use amber rotating or flashing lights when
 245 hauling a vehicle on the bed unless it creates a hazard to other
 246 motorists because of protruding objects. Further, escort
 247 vehicles may show or display amber lights when in the actual
 248 process of escorting overdimensioned equipment, material, or
 249 buildings as authorized by law. Vehicles owned or leased by
 250 private security agencies may show or display green and amber
 251 lights, with either color being no greater than 50 percent of
 252 the lights displayed, while the security personnel are engaged
 253 in security duties on private or public property.

254 Section 3. Section 316.2398, Florida Statutes, is amended
 255 to read:

256 316.2398 Display or use of red, or red and white, warning
 257 signals; motor vehicles of volunteer firefighters or medical
 258 staff.—

259 (1) A privately owned vehicle belonging to an active
 260 firefighter member of a regularly organized volunteer
 261 firefighting company or association, while en route to the fire

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262 station for the purpose of proceeding to the scene of a fire or
 263 other emergency or while en route to the scene of a fire or
 264 other emergency in the line of duty as an active firefighter
 265 member of a regularly organized firefighting company or
 266 association, may display or use red, or red and white, warning
 267 signals. ~~or~~ A privately owned vehicle belonging to a medical
 268 staff physician or technician of a medical facility licensed by
 269 the state, while responding to an emergency in the line of duty,
 270 may display or use red warning signals. Warning signals must be
 271 visible from the front and from the rear of such vehicle,
 272 subject to the following restrictions and conditions:

273 (a) No more than two red, or red and white, warning signals
 274 may be displayed.

275 (b) No inscription of any kind may appear across the face
 276 of the lens of the red, or red and white, warning signal.

277 (c) In order for an active volunteer firefighter to display
 278 such red, or red and white, warning signals on his or her
 279 vehicle, the volunteer firefighter must first secure a written
 280 permit from the chief executive officers of the firefighting
 281 organization to use the red, or red and white, warning signals,
 282 and this permit must be carried by the volunteer firefighter at
 283 all times while the red, or red and white, warning signals are
 284 displayed.

285 (2) ~~A~~ A ~~It is unlawful for any~~ person who is not an active
 286 firefighter member of a regularly organized volunteer
 287 firefighting company or association or a physician or technician
 288 of the medical staff of a medical facility licensed by the state
 289 may not ~~to~~ display on any motor vehicle owned by him or her, at
 290 any time, any red, or red and white, warning signals as

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291 described in subsection (1).

292 (3) ~~It is unlawful for~~ An active volunteer firefighter may
 293 ~~not to~~ operate any red, or red and white, warning signals as
 294 authorized in subsection (1), except while en route to the fire
 295 station for the purpose of proceeding to the scene of a fire or
 296 other emergency, or while at or en route to the scene of a fire
 297 or other emergency, in the line of duty.

298 (4) ~~It is unlawful for~~ A physician or technician of the
 299 medical staff of a medical facility may not ~~to~~ operate any red
 300 warning signals as authorized in subsection (1), except when
 301 responding to an emergency in the line of duty.

302 (5) A violation of this section is a nonmoving violation,
 303 punishable as provided in chapter 318. In addition, a any
 304 volunteer firefighter who violates this section shall be
 305 dismissed from membership in the firefighting organization by
 306 the chief executive officers thereof.

307 Section 4. Subsection (1) and paragraphs (a), (c), (d), and
 308 (f) of subsection (2) of section 316.302, Florida Statutes, are
 309 amended to read:

310 316.302 Commercial motor vehicles; safety regulations;
 311 transporters and shippers of hazardous materials; enforcement.—

312 (1) Except as otherwise provided in subsection (3):

313 (a) All owners and drivers of commercial motor vehicles
 314 that are operated on the public highways of this state while
 315 engaged in interstate commerce are subject to the rules and
 316 regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

317 (b) Except as otherwise provided in this section, all
 318 owners or drivers of commercial motor vehicles that are engaged
 319 in intrastate commerce are subject to the rules and regulations

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320 contained in 49 C.F.R. parts 382, 383, 385, and 390-397, ~~with~~
 321 ~~the exception of 49 C.F.R. s. 390.5 as it relates to the~~
 322 ~~definition of bus,~~ as such rules and regulations existed on
 323 December 31, 2016 ~~2012~~.

324 (c) The emergency exceptions provided by 49 C.F.R. s.
 325 392.82 also apply to communications by utility drivers and
 326 utility contractor drivers during a Level 1 activation of the
 327 State Emergency Operations Center, as provided in the Florida
 328 Comprehensive Emergency Management plan, or during a state of
 329 emergency declared by executive order or proclamation of the
 330 Governor.

331 (d) Except as provided in ~~s. 316.215(5), and except as~~
 332 ~~provided in~~ s. 316.228 for rear overhang lighting and flagging
 333 requirements for intrastate operations, the requirements of this
 334 section supersede all other safety requirements of this chapter
 335 for commercial motor vehicles.

336 (2) (a) A person who operates a commercial motor vehicle
 337 solely in intrastate commerce not transporting any hazardous
 338 material in amounts that require placarding pursuant to 49
 339 C.F.R. part 172 need not comply with 49 C.F.R. ss. 391.11(b) (1)
 340 and 395.3 ~~395.3(a) and (b)~~.

341 (c) Except as provided in 49 C.F.R. s. 395.1, a person who
 342 operates a commercial motor vehicle solely in intrastate
 343 commerce not transporting any hazardous material in amounts that
 344 require placarding pursuant to 49 C.F.R. part 172 may not drive
 345 after having been on duty more than 70 hours in any period of 7
 346 consecutive days or more than 80 hours in any period of 8
 347 consecutive days if the motor carrier operates every day of the
 348 week. Thirty-four consecutive hours off duty shall constitute

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349 the end of any such period of 7 or 8 consecutive days. This
 350 weekly limit does not apply to a person who operates a
 351 commercial motor vehicle solely within this state while
 352 transporting, during harvest periods, any unprocessed
 353 agricultural products or unprocessed food or fiber that is
 354 subject to seasonal harvesting from place of harvest to the
 355 first place of processing or storage or from place of harvest
 356 directly to market or while transporting livestock, livestock
 357 feed, or farm supplies directly related to growing or harvesting
 358 agricultural products. Upon request of the Department of Highway
 359 Safety and Motor Vehicles, motor carriers shall furnish time
 360 records or other written verification to that department so that
 361 the Department of Highway Safety and Motor Vehicles can
 362 determine compliance with this subsection. These time records
 363 must be furnished to the Department of Highway Safety and Motor
 364 Vehicles within 2 days after receipt of that department's
 365 request. Falsification of such information is subject to a civil
 366 penalty ~~not to exceed \$100. The provisions of~~ This paragraph
 367 does de not apply to operators of farm labor vehicles operated
 368 during a state of emergency declared by the Governor or operated
 369 pursuant to s. 570.07(21), and does de not apply to drivers of
 370 utility service vehicles as defined in 49 C.F.R. s. 395.2.

371 (d) A person who operates a commercial motor vehicle solely
 372 in intrastate commerce not transporting any hazardous material
 373 in amounts that require placarding pursuant to 49 C.F.R. part
 374 172 within a 150 air-mile radius of the location where the
 375 vehicle is based need not comply with 49 C.F.R. s. 395.8, if the
 376 requirements of 49 C.F.R. s. 395.1(e)(1)(ii), (e)(1)(iii)(A) and
 377 (C), 395.1(e)(1)(iii) and (e)(1)(v) are met. ~~If a driver is not~~

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378 ~~released from duty within 12 hours after the driver arrives for~~
 379 ~~duty, the motor carrier must maintain documentation of the~~
 380 ~~driver's driving times throughout the duty period.~~

381 (f) A person who operates a commercial motor vehicle having
 382 a ~~declared~~ gross vehicle weight, gross vehicle weight rating,
 383 and gross combined weight rating of less than 26,001 pounds
 384 solely in intrastate commerce and who is not transporting
 385 hazardous materials in amounts that require placarding pursuant
 386 to 49 C.F.R. part 172, ~~or who is transporting petroleum products~~
 387 ~~as defined in s. 376.301,~~ is exempt from subsection (1).
 388 However, such person must comply with 49 C.F.R. parts 382, 392,
 389 and 393, and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

390 Section 5. Paragraph (a) of subsection (6) of section
 391 316.3025, Florida Statutes, is amended to read:

392 316.3025 Penalties.—

393 (6)(a) A driver who violates 49 C.F.R. s. 392.80, which
 394 prohibits texting while operating a commercial motor vehicle, or
 395 49 C.F.R. s. 392.82, which prohibits using a handheld mobile
 396 telephone while operating a commercial motor vehicle, may be
 397 assessed a civil penalty ~~and commercial driver license~~
 398 ~~disqualification~~ as follows:

- 399 1. First violation: \$500.
- 400 2. Second violation: \$1,000 ~~and a 60-day commercial driver~~
 401 ~~license disqualification pursuant to 49 C.F.R. part 383.~~
- 402 3. Third and subsequent violations: \$2,750 ~~and a 120-day~~
 403 ~~commercial driver license disqualification pursuant to 49 C.F.R.~~
 404 ~~part 383.~~

405 Section 6. Paragraph (a) of subsection (3) and subsections
 406 (4) and (5) of section 316.614, Florida Statutes, are amended to

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407 read:

408 316.614 Safety belt usage.—

409 (3) As used in this section:

410 (a) "Motor vehicle" means a motor vehicle as defined in s.
411 316.003 which is operated on the roadways, streets, and highways
412 of this state. The term does not include:

413 1. A school bus.

414 2. A bus used for the transportation of persons for
415 compensation.

416 3. A farm tractor or implement of husbandry.

417 4. A truck having a gross vehicle weight rating of more
418 than 26,000 pounds.

419 5. A motorcycle, excluding an autocycle for purposes of
420 subsections (4) and (5), moped, or bicycle.

421 (4) It is unlawful for any person:

422 (a) To operate a motor vehicle or an autocycle in this
423 state unless each passenger and the operator of the vehicle
424 under the age of 18 years are restrained by a safety belt or by
425 a child restraint device pursuant to s. 316.613, if applicable;
426 or

427 (b) To operate a motor vehicle or an autocycle in this
428 state unless the person is restrained by a safety belt.

429 (5) It is unlawful for any person 18 years of age or older
430 to be a passenger in the front seat of a motor vehicle or an
431 autocycle unless such person is restrained by a safety belt when
432 the vehicle is in motion.

433 Section 7. Subsections (24) and (26) of section 320.01,
434 Florida Statutes, are amended to read:

435 320.01 Definitions, general.—As used in the Florida

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436 Statutes, except as otherwise provided, the term:

437 (24) "Apportionable vehicle" means any vehicle, except
438 recreational vehicles, vehicles displaying restricted plates,
439 city pickup and delivery vehicles, ~~buses used in transportation~~
440 ~~of chartered parties,~~ and government-owned vehicles, which is
441 used or intended for use in two or more member jurisdictions
442 that allocate or proportionally register vehicles and which is
443 used for the transportation of persons for hire or is designed,
444 used, or maintained primarily for the transportation of property
445 and:

446 (a) Is a power unit having a gross vehicle weight in excess
447 of 26,000 pounds;

448 (b) Is a power unit having three or more axles, regardless
449 of weight; or

450 (c) Is used in combination, when the weight of such
451 combination exceeds 26,000 pounds gross vehicle weight.

452 Vehicles, or combinations thereof, having a gross vehicle weight
453 of 26,000 pounds or less and two-axle vehicles may be
454 proportionally registered.

456 (26) "Motorcycle" means any motor vehicle having a seat or
457 saddle for the use of the rider and designed to travel on not
458 more than three wheels in contact with the ground, including an
459 autocycle. The term does not include a tractor, a moped, or
460 ~~excluding~~ a vehicle in which the operator is enclosed by a cabin
461 unless the vehicle ~~it~~ meets the requirements set forth by the
462 National Highway Traffic Safety Administration for a motorcycle.
463 ~~The term "motorcycle" does not include a tractor or a moped.~~

464 Section 8. Paragraph (a) of subsection (15) of section

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465 320.02, Florida Statutes, is amended to read:

466 320.02 Registration required; application for registration;
467 forms.-

468 (15) (a) The application form for motor vehicle registration
469 ~~must shall~~ include language permitting the voluntary
470 contribution of \$1 per applicant, to be quarterly distributed by
471 the department to Preserve Vision ~~Prevent Blindness~~ Florida, a
472 not-for-profit organization, to prevent blindness and preserve
473 the sight of the residents of this state. A statement providing
474 an explanation of the purpose of the funds shall be included
475 with the application form. Prior to the department distributing
476 the funds collected pursuant to this paragraph, Preserve Vision
477 ~~Prevent Blindness~~ Florida must submit a report to the department
478 that identifies how such funds were used during the preceding
479 year.

480
481 For the purpose of applying the service charge provided in s.
482 215.20, contributions received under this subsection are not
483 income of a revenue nature.

484 Section 9. Paragraph (b) of subsection (1) of section
485 320.06, Florida Statutes, is amended to read:

486 320.06 Registration certificates, license plates, and
487 validation stickers generally.-

488 (1)

489 (b)1. Registration license plates bearing a graphic symbol
490 and the alphanumeric system of identification shall be issued
491 for a 10-year period. At the end of the 10-year period, upon
492 renewal, the plate shall be replaced. The department shall
493 extend the scheduled license plate replacement date from a 6-

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494 year period to a 10-year period. The fee for such replacement is
495 \$28, \$2.80 of which shall be paid each year before the plate is
496 replaced, to be credited toward the next \$28 replacement fee.
497 The fees shall be deposited into the Highway Safety Operating
498 Trust Fund. A credit or refund may not be given for any prior
499 years' payments of the prorated replacement fee if the plate is
500 replaced or surrendered before the end of the 10-year period,
501 except that a credit may be given if a registrant is required by
502 the department to replace a license plate under s.

503 320.08056(8) (a). With each license plate, a validation sticker
504 shall be issued showing the owner's birth month, license plate
505 number, and the year of expiration or the appropriate renewal
506 period if the owner is not a natural person. The validation
507 sticker shall be placed on the upper right corner of the license
508 plate. The license plate and validation sticker shall be issued
509 based on the applicant's appropriate renewal period. The
510 registration period is 12 months, the extended registration
511 period is 24 months, and all expirations occur based on the
512 applicant's appropriate registration period.

513 2. A vehicle that has an apportioned registration shall be
514 issued an annual license plate and a cab card ~~denoting that~~
515 ~~denote~~ the declared gross vehicle weight for each apportioned
516 ~~jurisdiction in which the vehicle is authorized to operate. This~~
517 subparagraph expires October 1, 2018.

518 3. Beginning October 1, 2018, a vehicle registered in
519 accordance with the International Registration Plan which has an
520 apportioned registration shall be issued a license plate for a
521 5-year period, an annual cab card denoting the declared gross
522 vehicle weight, and an annual validation sticker showing the

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523 month and year of expiration. The validation sticker shall be
 524 placed in the center of the license plate. The license plate and
 525 validation sticker shall be issued based on the applicant's
 526 appropriate renewal period. The registration period is 12
 527 months. The fee for an original and a renewed validation sticker
 528 is \$28. This fee shall be deposited into the Highway Safety
 529 Operating Trust Fund. If the license plate is damaged or worn,
 530 it may be replaced at no charge by applying to the department
 531 and surrendering the current license plate.

532 4.2- In order to retain the efficient administration of the
 533 taxes and fees imposed by this chapter, the 80-cent fee increase
 534 in the replacement fee imposed by chapter 2009-71, Laws of
 535 Florida, is negated as provided in s. 320.0804.

536 Section 10. Section 320.0605, Florida Statutes, is amended
 537 to read:

538 320.0605 Certificate of registration; possession required;
 539 exception.-

540 (1) (a) The registration certificate or an official copy
 541 thereof, a true copy or electronic copy of rental or lease
 542 documentation issued for a motor vehicle or issued for a
 543 replacement vehicle in the same registration period, a temporary
 544 receipt printed upon self-initiated electronic renewal of a
 545 registration via the Internet, or a cab card issued for a
 546 vehicle registered under the International Registration Plan
 547 shall, at all times while the vehicle is being used or operated
 548 on the roads of this state, be in the possession of the operator
 549 thereof or be carried in the vehicle for which issued and shall
 550 be exhibited upon demand of any authorized law enforcement
 551 officer or any agent of the department, except for a vehicle

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552 registered under s. 320.0657. ~~The provisions of~~ This section
 553 ~~does de~~ not apply during the first 30 days after purchase of a
 554 replacement vehicle. A violation of this section is a
 555 noncriminal traffic infraction, punishable as a nonmoving
 556 violation as provided in chapter 318.

557 (b)1. The act of presenting to a law enforcement officer or
 558 agent of the department an electronic device displaying an
 559 electronic copy of rental or lease documentation does not
 560 constitute consent for the officer or agent to access any
 561 information on the device other than the displayed rental or
 562 lease documentation.

563 2. The person who presents the device to the officer or
 564 agent assumes the liability for any resulting damage to the
 565 device.

566 (2) Rental or lease documentation that is sufficient to
 567 satisfy the requirement in subsection (1) includes the
 568 following:

- 569 (a) ~~Date of rental and time of exit from rental facility;~~
- 570 (b) Rental station identification;
- 571 (c) Rental agreement number;
- 572 (d) Rental vehicle identification number;
- 573 (e) Rental vehicle license plate number and state of
- 574 registration;
- 575 (f) Vehicle's make, model, and color;
- 576 (g) Vehicle's mileage; and
- 577 (h) Authorized renter's name.

578 Section 11. Subsection (5) of section 320.0607, Florida
 579 Statutes, is amended to read:

580 320.0607 Replacement license plates, validation decal, or

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581 mobile home sticker.-

582 (5) Upon the issuance of an original license plate, the
583 applicant shall pay a fee of \$28 to be deposited in the Highway
584 Safety Operating Trust Fund. Beginning October 1, 2018, this
585 subsection does not apply to a vehicle registered under the
586 International Registration Plan.

587 Section 12. Paragraphs (ee), (eee), (qqq), and (rrr) of
588 subsection (4) and paragraph (a) of subsection (10) of section
589 320.08056, Florida Statutes, are amended to read:

590 320.08056 Specialty license plates.-

591 (4) The following license plate annual use fees shall be
592 collected for the appropriate specialty license plates:

593 ~~(ee) American Red Cross license plate, \$25.~~

594 ~~(eee) Donate Organs-Pass It On license plate, \$25.~~

595 ~~(qqq) St. Johns River license plate, \$25.~~

596 ~~(rrr) Hispanic Achievers license plate, \$25.~~

597 (10) (a) A specialty license plate annual use fee collected
598 and distributed under this chapter, or any interest earned from
599 those fees, may not be used for commercial or for-profit
600 activities nor for general or administrative expenses, except as
601 authorized by s. 320.08058 or to pay the cost of the audit or
602 report required by s. 320.08062(1). The fees and any interest
603 earned from the fees may be expended only for use in this state
604 unless the annual use fee is derived from the sale of United
605 States Armed Forces and veterans-related specialty license
606 plates pursuant to paragraphs (4) (d), (bb), (kk), (iii), and
607 (uuu) ~~(ll), (kkk), and (yyy)~~ and s. 320.0891.

608 Section 13. Subsections (31), (57), (69), and (70) of
609 section 320.08058, Florida Statutes, are repealed.

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610 Section 14. Paragraph (b) of subsection (4) of section
611 320.08068, Florida Statutes, is amended to read:

612 320.08068 Motorcycle specialty license plates.-

613 (4) A license plate annual use fee of \$20 shall be
614 collected for each motorcycle specialty license plate. Annual
615 use fees shall be distributed to The Able Trust as custodial
616 agent. The Able Trust may retain a maximum of 10 percent of the
617 proceeds from the sale of the license plate for administrative
618 costs. The Able Trust shall distribute the remaining funds as
619 follows:

620 (b) Twenty percent to Preserve Vision ~~Prevent Blindness~~
621 Florida.

622 Section 15. Section 320.0875, Florida Statutes, is created
623 to read:

624 320.0875 Purple Heart motorcycle special license plate.-

625 (1) Upon application to the department and payment of the
626 license tax for the motorcycle as provided in s. 320.08, a
627 resident of this state who owns or leases a motorcycle that is
628 not used for hire or commercial use shall be issued a Purple
629 Heart motorcycle special license plate if he or she provides
630 documentation acceptable to the department that he or she is a
631 recipient of the Purple Heart medal.

632 (2) The Purple Heart motorcycle special license plate shall
633 be stamped with the words "Combat-wounded Veteran" followed by
634 the serial number of the license plate. The Purple Heart
635 motorcycle special license plate may have the term "Purple
636 Heart" stamped on the plate and the likeness of the Purple Heart
637 medal appearing on the plate.

638 Section 16. Paragraph (a) of subsection (1) of section

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639 320.089, Florida Statutes, is amended to read:

640 320.089 ~~Veterans of the United States Armed Forces; members~~
 641 ~~of National Guard; survivors of Pearl Harbor; Purple Heart medal~~
 642 ~~recipients; active or retired United States Armed Forces~~
 643 ~~reservists; Combat Infantry Badge, Combat Medical Badge, or~~
 644 ~~Combat Action Badge recipients; Combat Action Ribbon recipients;~~
 645 ~~Air Force Combat Action Medal recipients; Distinguished Flying~~
 646 ~~Cross recipients; former prisoners of war; Korean War Veterans;~~
 647 ~~Vietnam War Veterans; Operation Desert Shield Veterans;~~
 648 ~~Operation Desert Storm Veterans; Operation Enduring Freedom~~
 649 ~~Veterans; Operation Iraqi Freedom Veterans; Women Veterans;~~
 650 ~~World War II Veterans; and Navy Submariners; Special license~~
 651 ~~plates for military servicemembers, veterans, and Pearl Harbor~~
 652 ~~survivors; fee.-~~

653 (1) (a) Upon application to the department and payment of
 654 the license tax for the vehicle as provided in s. 320.08, a
 655 resident of this state who owns or leases ~~Each owner or lessee~~
 656 ~~of~~ an automobile or truck for private use or recreational
 657 vehicle as specified in s. 320.08(9)(c) or (d), which is not
 658 used for hire or commercial use, shall be issued a license plate
 659 pursuant to the following if the applicant provides the
 660 department with proof he or she meets the qualifications listed
 661 in this section for the applicable license plate:

662 1. A person released or discharged from any branch ~~who is a~~
 663 ~~resident of the state and a veteran~~ of the United States Armed
 664 Forces shall be issued a license plate stamped with the words
 665 "Veteran" or "Woman Veteran" followed by the serial number of
 666 the license plate. ~~, a Woman Veteran,~~

667 2. A World War II Veteran shall be issued a license plate

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668 stamped with the words "WWII Veteran" followed by the serial
 669 number of the license plate. ~~r~~

670 3. A Navy Submariner shall be issued a license plate
 671 stamped with the words "Navy Submariner" followed by the serial
 672 number of the license plate. ~~r~~

673 4. An active or retired member of the Florida National
 674 Guard shall be issued a license plate stamped with the words
 675 "National Guard" followed by the serial number of the license
 676 plate.

677 5. A member of the Pearl Harbor Survivors Association or
 678 other person on active military duty in Pearl Harbor on December
 679 7, 1941, shall be issued a license plate stamped with the words
 680 "Pearl Harbor Survivor" followed by the serial number of the
 681 license plate. ~~, a survivor of the attack on Pearl Harbor,~~

682 6. A recipient of the Purple Heart medal shall be issued a
 683 license plate stamped with the words "Combat-wounded Veteran"
 684 followed by the serial number of the license plate. The Purple
 685 Heart plate may have the words "Purple Heart" stamped on the
 686 plate and the likeness of the Purple Heart medal appearing on
 687 the plate. ~~r~~

688 7. An active or retired member of any branch of the United
 689 States Armed Forces Reserve shall be issued a license plate
 690 stamped with the words "U.S. Reserve" followed by the serial
 691 number of the license plate.

692 8. A member of the Combat Infantrymen's Association, Inc.,
 693 or a recipient of the Combat Infantry Badge, Combat Medical
 694 Badge, Combat Action Badge, Combat Action Ribbon, or Air Force
 695 Combat Action Medal shall be issued a license plate stamped with
 696 the words "Combat Infantry Badge," "Combat Medical Badge,"

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697 ~~"Combat Action Badge," "Combat Action Ribbon," or "Air Force~~
 698 ~~Combat Action Medal," as appropriate, and a likeness of the~~
 699 ~~related campaign badge, ribbon, or medal, followed by the serial~~
 700 ~~number of the license plate.~~

701 9. A recipient of the, or Distinguished Flying Cross shall
 702 be issued a license plate stamped with the words "Distinguished
 703 Flying Cross" and a likeness of the Distinguished Flying Cross
 704 followed by the serial number of the license plate.

705 10. A recipient of the Bronze Star shall be issued a
 706 license plate stamped with the words "Bronze Star" and a
 707 likeness of the Bronze Star followed by the serial number of the
 708 license plate, upon application to the department, accompanied
 709 by proof of release or discharge from any branch of the United
 710 States Armed Forces, proof of active membership or retired
 711 status in the Florida National Guard, proof of membership in the
 712 Pearl Harbor Survivors Association or proof of active military
 713 duty in Pearl Harbor on December 7, 1941, proof of being a
 714 Purple Heart medal recipient, proof of active or retired
 715 membership in any branch of the United States Armed Forces
 716 Reserve, or proof of membership in the Combat Infantrymen's
 717 Association, Inc., proof of being a recipient of the Combat
 718 Infantry Badge, Combat Medical Badge, Combat Action Badge,
 719 Combat Action Ribbon, Air Force Combat Action Medal, or
 720 Distinguished Flying Cross, and upon payment of the license tax
 721 for the vehicle as provided in s. 320.08, shall be issued a
 722 license plate as provided by s. 320.06 which, in lieu of the
 723 serial numbers prescribed by s. 320.06, is stamped with the
 724 words "Veteran," "Woman Veteran," "WWII Veteran," "Navy
 725 Submariner," "National Guard," "Pearl Harbor Survivor," "Combat-

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726 ~~wounded veteran," "U.S. Reserve," "Combat Infantry Badge,"~~
 727 ~~"Combat Medical Badge," "Combat Action Badge," "Combat Action~~
 728 ~~Ribbon," "Air Force Combat Action Medal," or "Distinguished~~
 729 ~~Flying Cross," as appropriate, and a likeness of the related~~
 730 ~~campaign medal or badge, followed by the serial number of the~~
 731 ~~license plate. Additionally, the Purple Heart plate may have the~~
 732 ~~words "Purple Heart" stamped on the plate and the likeness of~~
 733 ~~the Purple Heart medal appearing on the plate.~~

734 Section 17. Section 320.133, Florida Statutes, is amended
 735 to read:

736 320.133 Transporter license plates.—

737 (1) As used in this section, the term "transporter license
 738 plate eligible business" means a business that is engaged in the
 739 limited operation of an unregistered motor vehicle, or a
 740 repossessor that contracts with lending institutions to
 741 repossess or recover motor vehicles or mobile homes.

742 (2) A person is not eligible to purchase or renew a
 743 transporter license plate unless he or she provides proof
 744 satisfactory to the department that his or her business is a
 745 transporter license plate eligible business.

746 (3) The application for qualification as a transporter
 747 license plate eligible business must be in such form as is
 748 prescribed by the department and must contain the legal name of
 749 the person or persons applying for the license plate, the name
 750 of the business, and the principal or principals of the
 751 business. The application must describe the exact physical
 752 location of the place of business within the state. This
 753 location must be available at all reasonable hours for
 754 inspection of the transporter license plate records by the

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755 department or any law enforcement agency. The application must
 756 contain proof of a garage liability insurance policy, or a
 757 business automobile policy, in the amount of at least \$100,000.
 758 The certificate of insurance must indicate the number of
 759 transporter license plates reported to the insurance company.
 760 Such coverage shall be maintained for the entire registration
 761 period. Upon seeking initial qualification, the applicant must
 762 provide documentation proving that the business is registered
 763 with the Division of Corporations of the Department of State to
 764 conduct business in this state. The business must indicate how
 765 it meets the qualification as a transporter license plate
 766 eligible business by describing in detail the business processes
 767 that require the use of a transporter license plate.

768 (4) (a) (1) The department may is authorized to issue a
 769 transporter license plate to an any applicant who is not a
 770 licensed dealer and who is qualified as a transporter license
 771 plate eligible business, incidental to the conduct of his or her
 772 business, engages in the transporting of motor vehicles which
 773 are not currently registered to any owner and which do not have
 774 license plates, upon payment of the license tax imposed by s.
 775 320.08(15) for each transporter such license plate and upon
 776 proof of liability insurance as described in subsection (3)
 777 coverage in the amount of \$100,000 or more. The proof of
 778 insurance must indicate the number of transporter license plates
 779 reported to the insurance company, which shall be the maximum
 780 number of transporter license plates issued to the applicant.
 781 Such A transporter license plate is valid only for use on an
 782 unregistered any motor vehicle in the possession of the
 783 transporter while the motor vehicle is being transported in the

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784 course of the transporter's business and must not be attached to
 785 any vehicle owned by the transporter or his or her business for
 786 which registration would otherwise be required. A person who
 787 sells or unlawfully possesses, distributes, or brokers a
 788 transporter license plate to be attached to any vehicle commits
 789 a misdemeanor of the second degree, punishable as provided in s.
 790 775.082 or s. 775.083. Any and all transporter license plates
 791 issued are subject to cancellation by the department.

792 (b) A person who knowingly and willfully sells or
 793 unlawfully possesses, distributes, or brokers a transporter
 794 license plate to avoid registering a vehicle requiring
 795 registration pursuant to this chapter or chapter 319 commits a
 796 misdemeanor of the first degree, punishable as provided in s.
 797 775.082 or s. 775.083, and is disqualified from transporter
 798 license plate usage. All transporter license plates issued to
 799 the person's business shall be canceled and must be returned to
 800 the department immediately upon disqualification. The
 801 transporter license plate is subject to removal as provided in
 802 subsection (9), and any and all transporter plates issued are
 803 subject to cancellation by the department.

804 (5) A transporter license plate eligible business issued a
 805 transporter license plate must maintain for 2 years, at its
 806 location, records of each use of each transporter license plate
 807 and evidence that the plate was used as required by this
 808 chapter. Such records must be open to inspection by the
 809 department or its agents or any law enforcement officer during
 810 reasonable business hours. A person who fails to maintain true
 811 and accurate records of any transporter license plate usage or
 812 comply with this subsection commits a misdemeanor of the second

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813 degree, punishable as provided in s. 775.082 or s. 775.083, may
 814 be subject to cancellation of any and all transporter license
 815 plates issued, and is automatically disqualified from future
 816 transporter license plate issuance.

817 (6) When attached to a motor vehicle, a transporter license
 818 plate issued under this section must be accompanied by the
 819 registration issued for the transporter license plate by the
 820 department and proof of insurance as described in subsection
 821 (3). A person who operates a motor vehicle with a transporter
 822 license plate attached who fails to provide the documentation
 823 listed in this subsection commits a misdemeanor of the second
 824 degree, punishable as provided in s. 775.082 or s. 775.083, and
 825 the transporter license plate is subject to removal as provided
 826 in subsection (9). This subsection does not apply to a person
 827 who contracts with dealers and auctions to transport motor
 828 vehicles.

829 (7) ~~(2)~~ A transporter license plate issued pursuant to
 830 subsection (4) ~~(1)~~ must be in a distinctive color approved by
 831 the department, and the word "transporter" must appear on the
 832 face of the license plate in place of the county name.

833 (8) ~~(3)~~ An initial registration or renewal A license plate
 834 issued under this section is valid for a period of 12 months,
 835 beginning January 1 and ending December 31. A ~~Ne~~ refund of the
 836 license tax imposed may not be provided for any unexpired
 837 portion of a license period.

838 (9) A transporter license plate attached to a motor vehicle
 839 in violation of subsection (4) or subsection (6) must be
 840 immediately removed by a law enforcement officer from the motor
 841 vehicle to which it was attached and surrendered to the

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842 department by the law enforcement agency for cancellation.

843 Section 18. Section 321.25, Florida Statutes, is amended to
 844 read:

845 321.25 Training provided at patrol schools; reimbursement
 846 of tuition and other course expenses.-

847 (1) The Department of Highway Safety and Motor Vehicles may
 848 is ~~authorized to~~ provide for the training of law enforcement
 849 officials and individuals in matters relating to the duties,
 850 functions, and powers of the Florida Highway Patrol in the
 851 schools established by the department for the training of
 852 highway patrol candidates and officers. The Department of
 853 Highway Safety and Motor Vehicles may is ~~authorized to~~ charge a
 854 fee for providing the training authorized by this section. The
 855 fee shall be charged to persons attending the training. The fee
 856 shall be based on the Department of Highway Safety and Motor
 857 Vehicles' costs for providing the training, and such costs may
 858 include, but are not limited to, tuition, lodging, and meals.
 859 Revenues from the fees shall be used to offset the Department of
 860 Highway Safety and Motor Vehicles' costs for providing the
 861 training. The cost of training local enforcement officers shall
 862 be paid for by their respective offices, counties, or
 863 municipalities, as the case may be. Such cost shall be deemed a
 864 proper county or municipal expense or a proper expenditure of
 865 the office of sheriff.

866 (2) Notwithstanding s. 943.16, a person who attends
 867 training under subsection (1) at the expense of the Department
 868 of Highway Safety and Motor Vehicles must remain in the
 869 employment or appointment of the Florida Highway Patrol for at
 870 least 3 years. Once employed, if the person fails to remain

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871 employed by the Florida Highway Patrol for at least 3 years from
 872 the first date of employment, the person must pay the cost of
 873 tuition and other course expenses to the Department of Highway
 874 Safety and Motor Vehicles. As used in this section, the term
 875 "other course expenses" may include the cost of meals and
 876 lodging.

877 (3) The Department of Highway Safety and Motor Vehicles may
 878 institute a civil action to collect the cost of tuition and
 879 other course expenses if it is not reimbursed pursuant to
 880 subsection (2), provided that the Florida Highway Patrol gave
 881 written notification to the person of the 3-year employment
 882 commitment during the employment screening process and the
 883 person returned signed acknowledgment of receipt of such
 884 notification.

885 (4) Notwithstanding any other provision of this section,
 886 the Department of Highway Safety and Motor Vehicles may waive a
 887 person's requirement of reimbursement in part or in full when
 888 the person terminates employment due to hardship or extenuating
 889 circumstances.

890 Section 19. Subsection (4) of section 322.01, Florida
 891 Statutes, is amended to read:

892 322.01 Definitions.—As used in this chapter:

893 (4) "Authorized emergency vehicle" means a vehicle that is
 894 equipped with extraordinary audible and visual warning devices,
 895 that is authorized by s. 316.2397 to display red, red and white,
 896 or blue lights, and that is on call to respond to emergencies.
 897 The term includes, but is not limited to, ambulances, law
 898 enforcement vehicles, fire trucks, and other rescue vehicles.
 899 The term does not include wreckers, utility trucks, or other

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900 vehicles that are used only incidentally for emergency purposes.

901 Section 20. Subsection (4) of section 322.03, Florida
 902 Statutes, is amended to read:

903 322.03 Drivers must be licensed; penalties.—

904 (4) A person may not operate a motorcycle unless he or she
 905 holds a driver license that authorizes such operation, subject
 906 to the appropriate restrictions and endorsements. A person may
 907 operate an auticycle without a motorcycle endorsement.

908 Section 21. Paragraph (e) of subsection (8) of section
 909 322.051, Florida Statutes, is amended to read:

910 322.051 Identification cards.—

911 (8)

912 (e)1. Upon request by a person who has posttraumatic stress
 913 disorder, a traumatic brain injury, or a developmental
 914 disability, or by a parent or guardian of a child or ward who
 915 has posttraumatic stress disorder, a traumatic brain injury, or
 916 a developmental disability, the department shall issue an
 917 identification card exhibiting a capital "D" for the person,
 918 child, or ward if the person or the parent or guardian of the
 919 child or ward submits:

920 a. Payment of an additional \$1 fee; and

921 b. Proof acceptable to the department of a diagnosis by a
 922 licensed physician of a developmental disability as defined in
 923 s. 393.063, posttraumatic stress disorder, or traumatic brain
 924 injury.

925 2. The department shall deposit the additional \$1 fee into
 926 the Agency for Persons with Disabilities Operations and
 927 Maintenance Trust Fund under s. 20.1971(2).

928 3. A replacement identification card that includes the

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929 designation may be issued without payment of the fee required
930 under s. 322.21(1)(f).

931 4. The department shall develop rules to facilitate the
932 issuance, requirements, and oversight of posttraumatic stress
933 disorder, traumatic brain injury, and developmental disability
934 identification cards under this section.

935 Section 22. Paragraph (m) of subsection (8) of section
936 322.08, Florida Statutes, is amended to read:

937 322.08 Application for license; requirements for license
938 and identification card forms.—

939 (8) The application form for an original, renewal, or
940 replacement driver license or identification card must include
941 language permitting the following:

942 (m) A voluntary contribution of \$1 per applicant, which
943 shall be distributed to Preserve Vision ~~Prevent Blindness~~
944 Florida, a not-for-profit organization, to prevent blindness and
945 preserve the sight of the residents of this state.

946
947 A statement providing an explanation of the purpose of the trust
948 funds shall also be included. For the purpose of applying the
949 service charge provided under s. 215.20, contributions received
950 under paragraphs (b)-(t) are not income of a revenue nature.

951 Section 23. Subsection (5) of section 322.091, Florida
952 Statutes, is amended to read:

953 322.091 Attendance requirements.—

954 (5) REPORTING AND ACCOUNTABILITY.—The department shall make
955 available, upon request, a report ~~quarterly~~ to each school
956 district of the legal name, sex, date of birth, and social
957 security number of each student whose driving privileges have

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958 been suspended under this section.

959 Section 24. Subsections (1) and (5) of section 322.12,
960 Florida Statutes, are amended to read:

961 322.12 Examination of applicants.—

962 (1) It is the intent of the Legislature that every
963 applicant for an original driver license in this state be
964 required to pass an examination pursuant to this section.
965 However, the department may waive the knowledge, endorsement,
966 and skills tests for an applicant who is otherwise qualified and
967 who surrenders a valid driver license from another state or a
968 province of Canada, or a valid driver license issued by the
969 United States Armed Forces, if the driver applies for a Florida
970 license of an equal or lesser classification. An ~~Any~~ applicant
971 who fails to pass the initial knowledge test incurs a \$10 fee
972 for each subsequent test, to be deposited into the Highway
973 Safety Operating Trust Fund; however, if a subsequent test is
974 administered by the tax collector, the tax collector shall
975 retain the \$10 fee. An ~~Any~~ applicant who fails to pass the
976 initial skills test incurs a \$20 fee for each subsequent test,
977 to be deposited into the Highway Safety Operating Trust Fund;
978 however, if a subsequent test is administered by the tax
979 collector, the tax collector shall retain the \$20 fee. A person
980 who seeks to retain a hazardous-materials endorsement, pursuant
981 to s. 322.57(1)(e), must pass the hazardous-materials test, upon
982 surrendering his or her commercial driver license, if the person
983 has not taken and passed the hazardous-materials test within 2
984 years before applying for a commercial driver license in this
985 state.

986 (5) (a) The department shall formulate a separate

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987 examination for applicants for licenses to operate motorcycles.
 988 Any applicant for a driver license who wishes to operate a
 989 motorcycle, and who is otherwise qualified, must successfully
 990 complete such an examination, which is in addition to the
 991 examination administered under subsection (3). The examination
 992 must test the applicant's knowledge of the operation of a
 993 motorcycle and of any traffic laws specifically relating thereto
 994 and must include an actual demonstration of his or her ability
 995 to exercise ordinary and reasonable control in the operation of
 996 a motorcycle. Any applicant who fails to pass the initial
 997 knowledge examination will incur a \$5 fee for each subsequent
 998 examination, to be deposited into the Highway Safety Operating
 999 Trust Fund. Any applicant who fails to pass the initial skills
 1000 examination will incur a \$10 fee for each subsequent
 1001 examination, to be deposited into the Highway Safety Operating
 1002 Trust Fund. In the formulation of the examination, the
 1003 department shall consider the use of the Motorcycle Operator
 1004 Skills Test and the Motorcycle in Traffic Test offered by the
 1005 Motorcycle Safety Foundation. The department shall indicate on
 1006 the license of any person who successfully completes the
 1007 examination that the licensee is authorized to operate a
 1008 motorcycle. If the applicant wishes to be licensed to operate a
 1009 motorcycle only, he or she need not take the skill or road test
 1010 required under subsection (3) for the operation of a motor
 1011 vehicle, and the department shall indicate such a limitation on
 1012 his or her license as a restriction. Every first-time applicant
 1013 for licensure to operate a motorcycle must provide proof of
 1014 completion of a motorcycle safety course, as provided for in s.
 1015 322.0255, before the applicant may be licensed to operate a

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1016 motorcycle.
 1017 (b) The department may exempt any applicant from the
 1018 examination provided in this subsection if the applicant
 1019 presents a certificate showing successful completion of a course
 1020 approved by the department, which course includes a similar
 1021 examination of the knowledge and skill of the applicant in the
 1022 operation of a motorcycle.
 1023 (c) This subsection does not apply to the operation of an
 1024 autocycle.
 1025 Section 25. Paragraph (b) of subsection (1) of section
 1026 322.17, Florida Statutes, is amended to read:
 1027 322.17 Replacement licenses, identification cards, and
 1028 permits.—
 1029 (1)
 1030 (b) In the event that an instruction permit, ~~or~~ driver
 1031 license, or identification card issued under ~~the provisions of~~
 1032 this chapter is stolen, the person to whom the same was issued
 1033 may, at no charge, obtain a replacement upon furnishing proof
 1034 satisfactory to the department that such permit, ~~or~~ license, or
 1035 identification card was stolen and further furnishing the
 1036 person's full name, date of birth, sex, residence and mailing
 1037 address, proof of birth satisfactory to the department, and
 1038 proof of identity satisfactory to the department.
 1039 Section 26. Paragraphs (e) and (i) of subsection (1) and
 1040 subsection (8) of section 322.21, Florida Statutes, are amended,
 1041 and subsection (10) is added to that section, to read:
 1042 322.21 License fees; procedure for handling and collecting
 1043 fees.—
 1044 (1) Except as otherwise provided herein, the fee for:

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1045 (e) A replacement driver license issued pursuant to s.
 1046 322.17 is \$25. Of this amount, \$7 shall be deposited into the
 1047 Highway Safety Operating Trust Fund and \$18 shall be deposited
 1048 into the General Revenue Fund. ~~Beginning July 1, 2015, or upon~~
 1049 ~~completion of the transition of driver license issuance~~
 1050 ~~services~~. If the replacement driver license is issued by the tax
 1051 collector, the tax collector shall retain the \$7 that would
 1052 otherwise be deposited into the Highway Safety Operating Trust
 1053 Fund and the remaining revenues shall be deposited into the
 1054 General Revenue Fund.

1055 ~~(i) The specialty driver license or identification card~~
 1056 ~~issued pursuant to s. 322.1415 is \$25, which is in addition to~~
 1057 ~~other fees required in this section. The fee shall be~~
 1058 ~~distributed as follows:~~

1059 ~~1. Fifty percent shall be distributed as provided in s.~~
 1060 ~~320.08058 to the appropriate state or independent university,~~
 1061 ~~professional sports team, or branch of the United States Armed~~
 1062 ~~Forces.~~

1063 ~~2. Fifty percent shall be distributed to the department for~~
 1064 ~~costs directly related to the specialty driver license and~~
 1065 ~~identification card program and to defray the costs associated~~
 1066 ~~with production enhancements and distribution.~~

1067 (8) A Any person who applies for reinstatement following
 1068 the suspension or revocation of the person's driver license must
 1069 pay a service fee of \$45 following a suspension, and \$75
 1070 following a revocation, which is in addition to the fee for a
 1071 license. A Any person who applies for reinstatement of a
 1072 commercial driver license following the disqualification of the
 1073 person's privilege to operate a commercial motor vehicle shall

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1074 pay a service fee of \$75, which is in addition to the fee for a
 1075 license. The department shall collect all of these fees at the
 1076 time of reinstatement. The department shall issue proper
 1077 receipts for such fees and shall promptly transmit all funds
 1078 received by it as follows:

1079 (a) Of the \$45 fee received from a licensee for
 1080 reinstatement following a suspension:

1081 1. If the reinstatement is processed by the department, the
 1082 department shall deposit \$15 in the General Revenue Fund and \$30
 1083 in the Highway Safety Operating Trust Fund.

1084 2. If the reinstatement is processed by the tax collector,
 1085 \$15 shall be retained by the tax collector, \$15 shall be
 1086 deposited into the Highway Safety Operating Trust Fund, and \$15
 1087 shall be deposited into the General Revenue Fund.

1088 (b) Of the \$75 fee received from a licensee for
 1089 reinstatement following a revocation or disqualification:

1090 1. If the reinstatement is processed by the department, the
 1091 department shall deposit \$35 in the General Revenue Fund and \$40
 1092 in the Highway Safety Operating Trust Fund.

1093 2. If the reinstatement is processed by the tax collector,
 1094 \$20 shall be retained by the tax collector, \$20 shall be
 1095 deposited into the Highway Safety Operating Trust Fund, and \$35
 1096 shall be deposited into the General Revenue Fund.

1097 If the revocation or suspension of the driver license was for a
 1098 violation of s. 316.193, or for refusal to submit to a lawful
 1099 breath, blood, or urine test, an additional fee of \$130 must be
 1100 charged. However, only one \$130 fee may be collected from one
 1101 person convicted of violations arising out of the same incident.
 1102

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1103 The department shall collect the \$130 fee and deposit the fee
 1104 into the Highway Safety Operating Trust Fund at the time of
 1105 reinstatement of the person's driver license, but the fee may
 1106 not be collected if the suspension or revocation is overturned.
 1107 If the revocation or suspension of the driver license was for a
 1108 conviction for a violation of s. 817.234(8) or (9) or s.
 1109 817.505, an additional fee of \$180 is imposed for each offense.
 1110 The department shall collect and deposit the additional fee into
 1111 the Highway Safety Operating Trust Fund at the time of
 1112 reinstatement of the person's driver license.

1113 (10) An applicant who submits an application for a renewal
 1114 or replacement driver license or identification card to the
 1115 department using a convenience service shall be provided with an
 1116 option for expedited shipping whereby the department, at the
 1117 applicant's request, shall issue the license or identification
 1118 card within 5 working days after receipt of the application and
 1119 ship the license or card using an expedited mail service. A fee
 1120 shall be charged for the expedited shipping option, not to
 1121 exceed the cost of the expedited mail service, which is in
 1122 addition to fees imposed by s. 322.051, this section, or the
 1123 convenience service. Fees collected for the expedited shipping
 1124 option shall be deposited into the Highway Safety Operating
 1125 Trust Fund.

1126 Section 27. Subsection (1) of section 322.61, Florida
 1127 Statutes, is amended, and subsection (2) of that section is
 1128 reenacted, to read:

1129 322.61 Disqualification from operating a commercial motor
 1130 vehicle.—

1131 (1) A person who, for offenses occurring within a 3-year

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1132 period, is convicted of two of the following serious traffic
 1133 violations, or any combination thereof, arising in separate
 1134 incidents committed in a commercial motor vehicle shall, in
 1135 addition to any other applicable penalties, be disqualified from
 1136 operating a commercial motor vehicle for a period of 60 days. A
 1137 holder of a commercial driver license or commercial learner's
 1138 permit who, for offenses occurring within a 3-year period, is
 1139 convicted of two of the following serious traffic violations, or
 1140 any combination thereof, arising in separate incidents committed
 1141 in a noncommercial motor vehicle shall, in addition to any other
 1142 applicable penalties, be disqualified from operating a
 1143 commercial motor vehicle for a period of 60 days if such
 1144 convictions result in the suspension, revocation, or
 1145 cancellation of the licenseholder's driving privilege:

1146 (a) A violation of any state or local law relating to motor
 1147 vehicle traffic control, other than a parking violation, arising
 1148 in connection with a crash resulting in death;

1149 (b) Reckless driving, as defined in s. 316.192;

1150 (c) Unlawful speed of 15 miles per hour or more above the
 1151 posted speed limit;

1152 (d) Improper lane change, as defined in s. 316.085;

1153 (e) Following too closely, as defined in s. 316.0895;

1154 (f) Texting while driving a commercial motor vehicle, as
 1155 prohibited by 49 C.F.R. 392.80;

1156 (g) Using a handheld mobile telephone while driving a
 1157 commercial motor vehicle, as prohibited by 49 C.F.R. 392.82;

1158 ~~(h)(f)~~ Driving a commercial vehicle without obtaining a
 1159 commercial driver license;

1160 ~~(i)(g)~~ Driving a commercial vehicle without the proper

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1161 class of commercial driver license or commercial learner's
1162 permit or without the proper endorsement; or

1163 (j)~~(h)~~ Driving a commercial vehicle without a commercial
1164 driver license or commercial learner's permit in possession, as
1165 required by s. 322.03.

1166 (2) (a) Any person who, for offenses occurring within a 3-
1167 year period, is convicted of three serious traffic violations
1168 specified in subsection (1) or any combination thereof, arising
1169 in separate incidents committed in a commercial motor vehicle
1170 shall, in addition to any other applicable penalties, including
1171 but not limited to the penalty provided in subsection (1), be
1172 disqualified from operating a commercial motor vehicle for a
1173 period of 120 days.

1174 (b) A holder of a commercial driver license or commercial
1175 learner's permit who, for offenses occurring within a 3-year
1176 period, is convicted of three serious traffic violations
1177 specified in subsection (1) or any combination thereof arising
1178 in separate incidents committed in a noncommercial motor vehicle
1179 shall, in addition to any other applicable penalties, including,
1180 but not limited to, the penalty provided in subsection (1), be
1181 disqualified from operating a commercial motor vehicle for a
1182 period of 120 days if such convictions result in the suspension,
1183 revocation, or cancellation of the licenseholder's driving
1184 privilege.

1185 Section 28. Paragraph (c) of subsection (1) of section
1186 212.05, Florida Statutes, is amended to read:

1187 212.05 Sales, storage, use tax.—It is hereby declared to be
1188 the legislative intent that every person is exercising a taxable
1189 privilege who engages in the business of selling tangible

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1190 personal property at retail in this state, including the
1191 business of making mail order sales, or who rents or furnishes
1192 any of the things or services taxable under this chapter, or who
1193 stores for use or consumption in this state any item or article
1194 of tangible personal property as defined herein and who leases
1195 or rents such property within the state.

1196 (1) For the exercise of such privilege, a tax is levied on
1197 each taxable transaction or incident, which tax is due and
1198 payable as follows:

1199 (c) At the rate of 6 percent of the gross proceeds derived
1200 from the lease or rental of tangible personal property, as
1201 defined herein; however, the following special provisions apply
1202 to the lease or rental of motor vehicles:

1203 1. When a motor vehicle is leased or rented for a period of
1204 less than 12 months:

1205 a. If the motor vehicle is rented in Florida, the entire
1206 amount of such rental is taxable, even if the vehicle is dropped
1207 off in another state.

1208 b. If the motor vehicle is rented in another state and
1209 dropped off in Florida, the rental is exempt from Florida tax.

1210 2. Except as provided in subparagraph 3., for the lease or
1211 rental of a motor vehicle for a period of not less than 12
1212 months, sales tax is due on the lease or rental payments if the
1213 vehicle is registered in this state; provided, however, that no
1214 tax shall be due if the taxpayer documents use of the motor
1215 vehicle outside this state and tax is being paid on the lease or
1216 rental payments in another state.

1217 3. The tax imposed by this chapter does not apply to the
1218 lease or rental of a commercial motor vehicle as defined in s.

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1219 316.003(13)(a) ~~316.003(12)(a)~~ to one lessee or rentee for a
 1220 period of not less than 12 months when tax was paid on the
 1221 purchase price of such vehicle by the lessor. To the extent tax
 1222 was paid with respect to the purchase of such vehicle in another
 1223 state, territory of the United States, or the District of
 1224 Columbia, the Florida tax payable shall be reduced in accordance
 1225 with the provisions of s. 212.06(7). This subparagraph shall
 1226 only be available when the lease or rental of such property is
 1227 an established business or part of an established business or
 1228 the same is incidental or germane to such business.

1229 Section 29. Subsection (1) of section 316.303, Florida
 1230 Statutes, is amended to read:

1231 316.303 Television receivers.—

1232 (1) No motor vehicle may be operated on the highways of
 1233 this state if the vehicle is actively displaying moving
 1234 television broadcast or pre-recorded video entertainment content
 1235 that is visible from the driver's seat while the vehicle is in
 1236 motion, unless the vehicle is equipped with autonomous
 1237 technology, as defined in s. 316.003(3) ~~316.003(2)~~, and is being
 1238 operated in autonomous mode, as provided in s. 316.85(2).

1239 Section 30. Paragraph (b) of subsection (2) of section
 1240 316.545, Florida Statutes, is amended to read:

1241 316.545 Weight and load unlawful; special fuel and motor
 1242 fuel tax enforcement; inspection; penalty; review.—

1243 (2)

1244 (b) The officer or inspector shall inspect the license
 1245 plate or registration certificate of the commercial vehicle to
 1246 determine whether its gross weight is in compliance with the
 1247 declared gross vehicle weight. If its gross weight exceeds the

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1248 declared weight, the penalty shall be 5 cents per pound on the
 1249 difference between such weights. In those cases when the
 1250 commercial vehicle is being operated over the highways of the
 1251 state with an expired registration or with no registration from
 1252 this or any other jurisdiction or is not registered under the
 1253 applicable provisions of chapter 320, the penalty herein shall
 1254 apply on the basis of 5 cents per pound on that scaled weight
 1255 which exceeds 35,000 pounds on laden truck tractor-semitrailer
 1256 combinations or tandem trailer truck combinations, 10,000 pounds
 1257 on laden straight trucks or straight truck-trailer combinations,
 1258 or 10,000 pounds on any unladen commercial motor vehicle. A
 1259 driver of a commercial motor vehicle entering the state at a
 1260 designated port-of-entry location, as defined in s. 316.003 ~~or~~
 1261 ~~316.003(54)~~, or operating on designated routes to a port-of-
 1262 entry location, who obtains a temporary registration permit
 1263 shall be assessed a penalty limited to the difference between
 1264 its gross weight and the declared gross vehicle weight at 5
 1265 cents per pound. If the license plate or registration has not
 1266 been expired for more than 90 days, the penalty imposed under
 1267 this paragraph may not exceed \$1,000. In the case of special
 1268 mobile equipment, which qualifies for the license tax provided
 1269 for in s. 320.08(5)(b), being operated on the highways of the
 1270 state with an expired registration or otherwise not properly
 1271 registered under the applicable provisions of chapter 320, a
 1272 penalty of \$75 shall apply in addition to any other penalty
 1273 which may apply in accordance with this chapter. A vehicle found
 1274 in violation of this section may be detained until the owner or
 1275 operator produces evidence that the vehicle has been properly
 1276 registered. Any costs incurred by the retention of the vehicle

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1277 shall be the sole responsibility of the owner. A person who has
 1278 been assessed a penalty pursuant to this paragraph for failure
 1279 to have a valid vehicle registration certificate pursuant to the
 1280 provisions of chapter 320 is not subject to the delinquent fee
 1281 authorized in s. 320.07 if such person obtains a valid
 1282 registration certificate within 10 working days after such
 1283 penalty was assessed.

1284 Section 31. Paragraph (a) of subsection (2) of section
 1285 316.613, Florida Statutes, is amended to read:

1286 316.613 Child restraint requirements.—

1287 (2) As used in this section, the term "motor vehicle" means
 1288 a motor vehicle as defined in s. 316.003 that is operated on the
 1289 roadways, streets, and highways of the state. The term does not
 1290 include:

1291 (a) A school bus as defined in s. 316.003 ~~s. 316.003(68)~~.

1292 Section 32. Section 320.08, Florida Statutes, is amended to
 1293 read:

1294 320.08 License taxes.—Except as otherwise provided herein,
 1295 there are hereby levied and imposed annual license taxes for the
 1296 operation of motor vehicles, mopeds, motorized bicycles as
 1297 defined in s. 316.003(4) ~~s. 316.003(2)~~, tri-vehicles as defined
 1298 in s. 316.003, and mobile homes as defined in s. 320.01, which
 1299 shall be paid to and collected by the department or its agent
 1300 upon the registration or renewal of registration of the
 1301 following:

1302 (1) MOTORCYCLES AND MOPEDS.—

1303 (a) Any motorcycle: \$10 flat.

1304 (b) Any moped: \$5 flat.

1305 (c) Upon registration of a motorcycle, motor-driven cycle,

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1306 or moped, in addition to the license taxes specified in this
 1307 subsection, a nonrefundable motorcycle safety education fee in
 1308 the amount of \$2.50 shall be paid. The proceeds of such
 1309 additional fee shall be deposited in the Highway Safety
 1310 Operating Trust Fund to fund a motorcycle driver improvement
 1311 program implemented pursuant to s. 322.025, the Florida
 1312 Motorcycle Safety Education Program established in s. 322.0255,
 1313 or the general operations of the department.

1314 (d) An ancient or antique motorcycle: \$7.50 flat, of which
 1315 \$2.50 shall be deposited into the General Revenue Fund.

1316 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

1317 (a) An ancient or antique automobile, as defined in s.

1318 320.086, or a street rod, as defined in s. 320.0863: \$7.50 flat.

1319 (b) Net weight of less than 2,500 pounds: \$14.50 flat.

1320 (c) Net weight of 2,500 pounds or more, but less than 3,500
 1321 pounds: \$22.50 flat.

1322 (d) Net weight of 3,500 pounds or more: \$32.50 flat.

1323 (3) TRUCKS.—

1324 (a) Net weight of less than 2,000 pounds: \$14.50 flat.

1325 (b) Net weight of 2,000 pounds or more, but not more than
 1326 3,000 pounds: \$22.50 flat.

1327 (c) Net weight more than 3,000 pounds, but not more than
 1328 5,000 pounds: \$32.50 flat.

1329 (d) A truck defined as a "goat," or other vehicle if used
 1330 in the field by a farmer or in the woods for the purpose of
 1331 harvesting a crop, including naval stores, during such
 1332 harvesting operations, and which is not principally operated
 1333 upon the roads of the state: \$7.50 flat. The term "goat" means a
 1334 motor vehicle designed, constructed, and used principally for

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1335 the transportation of citrus fruit within citrus groves or for
 1336 the transportation of crops on farms, and which can also be used
 1337 for hauling associated equipment or supplies, including required
 1338 sanitary equipment, and the towing of farm trailers.

1339 (e) An ancient or antique truck, as defined in s. 320.086:
 1340 \$7.50 flat.

1341 (4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS
 1342 VEHICLE WEIGHT.—

1343 (a) Gross vehicle weight of 5,001 pounds or more, but less
 1344 than 6,000 pounds: \$60.75 flat, of which \$15.75 shall be
 1345 deposited into the General Revenue Fund.

1346 (b) Gross vehicle weight of 6,000 pounds or more, but less
 1347 than 8,000 pounds: \$87.75 flat, of which \$22.75 shall be
 1348 deposited into the General Revenue Fund.

1349 (c) Gross vehicle weight of 8,000 pounds or more, but less
 1350 than 10,000 pounds: \$103 flat, of which \$27 shall be deposited
 1351 into the General Revenue Fund.

1352 (d) Gross vehicle weight of 10,000 pounds or more, but less
 1353 than 15,000 pounds: \$118 flat, of which \$31 shall be deposited
 1354 into the General Revenue Fund.

1355 (e) Gross vehicle weight of 15,000 pounds or more, but less
 1356 than 20,000 pounds: \$177 flat, of which \$46 shall be deposited
 1357 into the General Revenue Fund.

1358 (f) Gross vehicle weight of 20,000 pounds or more, but less
 1359 than 26,001 pounds: \$251 flat, of which \$65 shall be deposited
 1360 into the General Revenue Fund.

1361 (g) Gross vehicle weight of 26,001 pounds or more, but less
 1362 than 35,000: \$324 flat, of which \$84 shall be deposited into the
 1363 General Revenue Fund.

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1364 (h) Gross vehicle weight of 35,000 pounds or more, but less
 1365 than 44,000 pounds: \$405 flat, of which \$105 shall be deposited
 1366 into the General Revenue Fund.

1367 (i) Gross vehicle weight of 44,000 pounds or more, but less
 1368 than 55,000 pounds: \$773 flat, of which \$201 shall be deposited
 1369 into the General Revenue Fund.

1370 (j) Gross vehicle weight of 55,000 pounds or more, but less
 1371 than 62,000 pounds: \$916 flat, of which \$238 shall be deposited
 1372 into the General Revenue Fund.

1373 (k) Gross vehicle weight of 62,000 pounds or more, but less
 1374 than 72,000 pounds: \$1,080 flat, of which \$280 shall be
 1375 deposited into the General Revenue Fund.

1376 (l) Gross vehicle weight of 72,000 pounds or more: \$1,322
 1377 flat, of which \$343 shall be deposited into the General Revenue
 1378 Fund.

1379 (m) Notwithstanding the declared gross vehicle weight, a
 1380 truck tractor used within a 150-mile radius of its home address
 1381 is eligible for a license plate for a fee of \$324 flat if:

1382 1. The truck tractor is used exclusively for hauling
 1383 forestry products; or

1384 2. The truck tractor is used primarily for the hauling of
 1385 forestry products, and is also used for the hauling of
 1386 associated forestry harvesting equipment used by the owner of
 1387 the truck tractor.

1388
 1389 Of the fee imposed by this paragraph, \$84 shall be deposited
 1390 into the General Revenue Fund.

1391 (n) A truck tractor or heavy truck, not operated as a for-
 1392 hire vehicle, which is engaged exclusively in transporting raw,

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1393 unprocessed, and nonmanufactured agricultural or horticultural
 1394 products within a 150-mile radius of its home address, is
 1395 eligible for a restricted license plate for a fee of:

1396 1. If such vehicle's declared gross vehicle weight is less
 1397 than 44,000 pounds, \$87.75 flat, of which \$22.75 shall be
 1398 deposited into the General Revenue Fund.

1399 2. If such vehicle's declared gross vehicle weight is
 1400 44,000 pounds or more and such vehicle only transports from the
 1401 point of production to the point of primary manufacture; to the
 1402 point of assembling the same; or to a shipping point of a rail,
 1403 water, or motor transportation company, \$324 flat, of which \$84
 1404 shall be deposited into the General Revenue Fund.

1405

1406 Such not-for-hire truck tractors and heavy trucks used
 1407 exclusively in transporting raw, unprocessed, and
 1408 nonmanufactured agricultural or horticultural products may be
 1409 incidentally used to haul farm implements and fertilizers
 1410 delivered direct to the growers. The department may require any
 1411 documentation deemed necessary to determine eligibility prior to
 1412 issuance of this license plate. For the purpose of this
 1413 paragraph, "not-for-hire" means the owner of the motor vehicle
 1414 must also be the owner of the raw, unprocessed, and
 1415 nonmanufactured agricultural or horticultural product, or the
 1416 user of the farm implements and fertilizer being delivered.

1417 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
 1418 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

1419 (a)1. A semitrailer drawn by a GVW truck tractor by means
 1420 of a fifth-wheel arrangement: \$13.50 flat per registration year
 1421 or any part thereof, of which \$3.50 shall be deposited into the

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1422 General Revenue Fund.

1423 2. A semitrailer drawn by a GVW truck tractor by means of a
 1424 fifth-wheel arrangement: \$68 flat per permanent registration, of
 1425 which \$18 shall be deposited into the General Revenue Fund.

1426 (b) A motor vehicle equipped with machinery and designed
 1427 for the exclusive purpose of well drilling, excavation,
 1428 construction, spraying, or similar activity, and which is not
 1429 designed or used to transport loads other than the machinery
 1430 described above over public roads: \$44 flat, of which \$11.50
 1431 shall be deposited into the General Revenue Fund.

1432 (c) A school bus used exclusively to transport pupils to
 1433 and from school or school or church activities or functions
 1434 within their own county: \$41 flat, of which \$11 shall be
 1435 deposited into the General Revenue Fund.

1436 (d) A wrecker, as defined in s. 320.01, which is used to
 1437 tow a vessel as defined in s. 327.02, a disabled, abandoned,
 1438 stolen-recovered, or impounded motor vehicle as defined in s.
 1439 320.01, or a replacement motor vehicle as defined in s. 320.01:
 1440 \$41 flat, of which \$11 shall be deposited into the General
 1441 Revenue Fund.

1442 (e) A wrecker that is used to tow any nondisabled motor
 1443 vehicle, a vessel, or any other cargo unless used as defined in
 1444 paragraph (d), as follows:

1445 1. Gross vehicle weight of 10,000 pounds or more, but less
 1446 than 15,000 pounds: \$118 flat, of which \$31 shall be deposited
 1447 into the General Revenue Fund.

1448 2. Gross vehicle weight of 15,000 pounds or more, but less
 1449 than 20,000 pounds: \$177 flat, of which \$46 shall be deposited
 1450 into the General Revenue Fund.

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1451 3. Gross vehicle weight of 20,000 pounds or more, but less
 1452 than 26,000 pounds: \$251 flat, of which \$65 shall be deposited
 1453 into the General Revenue Fund.

1454 4. Gross vehicle weight of 26,000 pounds or more, but less
 1455 than 35,000 pounds: \$324 flat, of which \$84 shall be deposited
 1456 into the General Revenue Fund.

1457 5. Gross vehicle weight of 35,000 pounds or more, but less
 1458 than 44,000 pounds: \$405 flat, of which \$105 shall be deposited
 1459 into the General Revenue Fund.

1460 6. Gross vehicle weight of 44,000 pounds or more, but less
 1461 than 55,000 pounds: \$772 flat, of which \$200 shall be deposited
 1462 into the General Revenue Fund.

1463 7. Gross vehicle weight of 55,000 pounds or more, but less
 1464 than 62,000 pounds: \$915 flat, of which \$237 shall be deposited
 1465 into the General Revenue Fund.

1466 8. Gross vehicle weight of 62,000 pounds or more, but less
 1467 than 72,000 pounds: \$1,080 flat, of which \$280 shall be
 1468 deposited into the General Revenue Fund.

1469 9. Gross vehicle weight of 72,000 pounds or more: \$1,322
 1470 flat, of which \$343 shall be deposited into the General Revenue
 1471 Fund.

1472 (f) A hearse or ambulance: \$40.50 flat, of which \$10.50
 1473 shall be deposited into the General Revenue Fund.

1474 (6) MOTOR VEHICLES FOR HIRE.—

1475 (a) Under nine passengers: \$17 flat, of which \$4.50 shall
 1476 be deposited into the General Revenue Fund; plus \$1.50 per cwt,
 1477 of which 50 cents shall be deposited into the General Revenue
 1478 Fund.

1479 (b) Nine passengers and over: \$17 flat, of which \$4.50

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

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1480 shall be deposited into the General Revenue Fund; plus \$2 per
 1481 cwt, of which 50 cents shall be deposited into the General
 1482 Revenue Fund.

1483 (7) TRAILERS FOR PRIVATE USE.—

1484 (a) Any trailer weighing 500 pounds or less: \$6.75 flat per
 1485 year or any part thereof, of which \$1.75 shall be deposited into
 1486 the General Revenue Fund.

1487 (b) Net weight over 500 pounds: \$3.50 flat, of which \$1
 1488 shall be deposited into the General Revenue Fund; plus \$1 per
 1489 cwt, of which 25 cents shall be deposited into the General
 1490 Revenue Fund.

1491 (8) TRAILERS FOR HIRE.—

1492 (a) Net weight under 2,000 pounds: \$3.50 flat, of which \$1
 1493 shall be deposited into the General Revenue Fund; plus \$1.50 per
 1494 cwt, of which 50 cents shall be deposited into the General
 1495 Revenue Fund.

1496 (b) Net weight 2,000 pounds or more: \$13.50 flat, of which
 1497 \$3.50 shall be deposited into the General Revenue Fund; plus
 1498 \$1.50 per cwt, of which 50 cents shall be deposited into the
 1499 General Revenue Fund.

1500 (9) RECREATIONAL VEHICLE-TYPE UNITS.—

1501 (a) A travel trailer or fifth-wheel trailer, as defined by
 1502 s. 320.01(1)(b), that does not exceed 35 feet in length: \$27
 1503 flat, of which \$7 shall be deposited into the General Revenue
 1504 Fund.

1505 (b) A camping trailer, as defined by s. 320.01(1)(b)2.:
 1506 \$13.50 flat, of which \$3.50 shall be deposited into the General
 1507 Revenue Fund.

1508 (c) A motor home, as defined by s. 320.01(1)(b)4.:

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

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1509 1. Net weight of less than 4,500 pounds: \$27 flat, of which
 1510 \$7 shall be deposited into the General Revenue Fund.

1511 2. Net weight of 4,500 pounds or more: \$47.25 flat, of
 1512 which \$12.25 shall be deposited into the General Revenue Fund.

1513 (d) A truck camper as defined by s. 320.01(1)(b)3.:

1514 1. Net weight of less than 4,500 pounds: \$27 flat, of which
 1515 \$7 shall be deposited into the General Revenue Fund.

1516 2. Net weight of 4,500 pounds or more: \$47.25 flat, of
 1517 which \$12.25 shall be deposited into the General Revenue Fund.

1518 (e) A private motor coach as defined by s. 320.01(1)(b)5.:

1519 1. Net weight of less than 4,500 pounds: \$27 flat, of which
 1520 \$7 shall be deposited into the General Revenue Fund.

1521 2. Net weight of 4,500 pounds or more: \$47.25 flat, of
 1522 which \$12.25 shall be deposited into the General Revenue Fund.

1523 (10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS;
 1524 35 FEET TO 40 FEET.—

1525 (a) Park trailers.—Any park trailer, as defined in s.
 1526 320.01(1)(b)7.: \$25 flat.

1527 (b) A travel trailer or fifth-wheel trailer, as defined in
 1528 s. 320.01(1)(b), that exceeds 35 feet: \$25 flat.

1529 (11) MOBILE HOMES.—

1530 (a) A mobile home not exceeding 35 feet in length: \$20
 1531 flat.

1532 (b) A mobile home over 35 feet in length, but not exceeding
 1533 40 feet: \$25 flat.

1534 (c) A mobile home over 40 feet in length, but not exceeding
 1535 45 feet: \$30 flat.

1536 (d) A mobile home over 45 feet in length, but not exceeding
 1537 50 feet: \$35 flat.

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1538 (e) A mobile home over 50 feet in length, but not exceeding
 1539 55 feet: \$40 flat.

1540 (f) A mobile home over 55 feet in length, but not exceeding
 1541 60 feet: \$45 flat.

1542 (g) A mobile home over 60 feet in length, but not exceeding
 1543 65 feet: \$50 flat.

1544 (h) A mobile home over 65 feet in length: \$80 flat.

1545 (12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised
 1546 motor vehicle dealer, independent motor vehicle dealer, marine
 1547 boat trailer dealer, or mobile home dealer and manufacturer
 1548 license plate: \$17 flat, of which \$4.50 shall be deposited into
 1549 the General Revenue Fund.

1550 (13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or
 1551 official license plate: \$4 flat, of which \$1 shall be deposited
 1552 into the General Revenue Fund.

1553 (14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor
 1554 vehicle for hire operated wholly within a city or within 25
 1555 miles thereof: \$17 flat, of which \$4.50 shall be deposited into
 1556 the General Revenue Fund; plus \$2 per cwt, of which 50 cents
 1557 shall be deposited into the General Revenue Fund.

1558 (15) TRANSPORTER.—Any transporter license plate issued to a
 1559 transporter pursuant to s. 320.133: \$101.25 flat, of which
 1560 \$26.25 shall be deposited into the General Revenue Fund.

1561 Section 33. Subsection (1) of section 655.960, Florida
 1562 Statutes, is amended to read:

1563 655.960 Definitions; ss. 655.960-655.965.—As used in this
 1564 section and ss. 655.961-655.965, unless the context otherwise
 1565 requires:

1566 (1) "Access area" means any paved walkway or sidewalk which

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1567 is within 50 feet of any automated teller machine. The term does
1568 not include any street or highway open to the use of the public,
1569 as defined in s. 316.003(78) (a) or (b) ~~s. 316.003(77) (a) or (b)~~,
1570 including any adjacent sidewalk, as defined in s. 316.003.

1571 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,

A handwritten signature in blue ink that reads "George B. Gainer".

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@papatner.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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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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

Phone 202-688-1194

Street

Washington

DC

20036

Email frank.harris@madd.org

City

State

Zip

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 Mehan Drive

Phone 850-671-3384

Street
Tallahassee, FL 32308
City State Zip

Email lmcLeod@fladvi.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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THE FLORIDA SENATE
APPEARANCE RECORD

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4-25-17
Meeting Date

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: For Against Information

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

Representing Lauren's Kids

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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4-25-17

Meeting Date

784

Bill Number (if applicable)

292206

Amendment Barcode (if applicable)

Topic Taximeters

Name Rana Brown

Job Title _____

Address 104 W Jefferson St

Street

Phone 850224 3427

Tallahassee FL 32301

City

State

Zip

Email Rana@RLBookpa.
ion

Speaking: For Against Information

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

Representing Florida Florida Taxicab Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

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, 1101

Street

West Palm Beach, FL 33401

City

State

Zip

Phone 888.284.7235

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.

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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

Meeting Date

784

Bill Number (if applicable)

407566

Amendment Barcode (if applicable)

Topic License Plates

Name Steve Whiteford

Job Title LAWYER / LOBBYIST

Address 519 E. PARK Ave

Street

Phone 850 980-6435

TALLAHASSEE, 32301

City

State

Zip

Email SteveS@Law.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.

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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)

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 lenajejasso.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.

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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

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

Phone 850-386-2904

Tallahassee, FL 32301
City State Zip

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 NON EMERGENCY TRANSPORT

Amendment Barcode (if applicable)

Name JEFF STARKEY

Job Title CAO, President

Address 106 E. Colby Ave

Phone 850 227 1660

Street TLH FL 32311
City State Zip

Email jstarkey@starkeygroup.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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4-25-17
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

Sopchoppy FL 32358
City State Zip

Email laura@floridabicycle.org

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4-25-17

Meeting Date

784

Bill Number (if applicable)

Topic Share the Road Specialty License Plate

Amendment Barcode (if applicable)

Name Bedy Afonso

Job Title EXECUTIVE DIRECTOR

Address 250 STRATHMORE AVE
Street

Phone 813-748-1513

Oldsmar FL 34677
City State Zip

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 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.

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)

Topic SB 784

Amendment Barcode (if applicable)

Name Michael Corrigan

Job Title Duval County Tax Collector

Address 231 E Forsyth St

Phone 904: 630-1464

Street
Jacksonville FL 32202

City State Zip

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.

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)

Topic Opposition to ~~increasing~~ increasing print limit for drivers

Amendment Barcode (if applicable)

Name Franklin Bailey

Job Title Legislative Intern

Address 230 Westminster Drive

Phone 407-734-8446

Street

Tallahassee

City

FL

State

32304

Zip

Email _____

Speaking: For Against Information

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

Representing Rep. Emily Stoberg, 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.

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 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;

¹See the USDOT website available at: <https://www.transportation.gov/smartcity>. (Last visited April 11, 2017.)

²See 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.)

³See 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/brdgcalf/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 primarily¹⁸ 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

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 citations²⁷ 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 network³⁴ 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 limousine³⁸ 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

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.

⁴²See the EERE website available at: <https://www.energy.gov/eere/funding/eere-funding-opportunities>. (Last visited April 14, 2017.)

⁴³*Id.*

⁴⁴See *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 metrics⁵⁰ 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 insignificant⁵⁶ 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 projects⁷⁴ 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 AWP's must set out the proposed commitments and planned expenditures for the projects listed and be based on a complete, balanced financial plan.⁸⁷ Commitments⁸⁸ 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 outlay⁹⁸ 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 emergency¹⁰² 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

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 notwithstanding 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:

<u>Fiscal Year</u>	<u>Line-Item</u>
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

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

¹²⁷See *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 Agreement¹³⁰ 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.

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 coordinators¹³⁵ 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

¹³⁷See the Commission’s website available at: <http://www.fdot.gov/ctd/communitytransystem.htm>. (Last visited March 27, 2017.)

¹³⁸See *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.)

¹³⁹See *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

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House

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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11 1. A central office that establishes policies and
12 procedures; and

13 2. Districts that carry out projects as authorized or
14 required under the policies and procedures implemented by the
15 central office pursuant to paragraph (3) (a).

16 (b)~~(a)~~ The head of the Department of Transportation is the
17 Secretary of Transportation. The secretary shall be appointed by
18 the Governor from among three persons nominated by the Florida
19 Transportation Commission and shall be subject to confirmation
20 by the Senate. The secretary shall serve at the pleasure of the
21 Governor.

22 (c)~~(b)~~ The secretary shall be a proven, effective
23 administrator who by a combination of education and experience
24 shall clearly possess a broad knowledge of the administrative,
25 financial, and technical aspects of the development, operation,
26 and regulation of transportation systems and facilities or
27 comparable systems and facilities.

28 (d)~~(e)~~ The secretary shall provide to the Florida
29 Transportation Commission or its staff, such assistance,
30 information, and documents as are requested by the commission or
31 its staff to enable the commission to fulfill its duties and
32 responsibilities.

33 (e)~~(d)~~ The secretary may appoint up to three assistant
34 secretaries who shall be directly responsible to the secretary
35 and who shall perform such duties as are assigned by the
36 secretary. The secretary shall designate to an assistant
37 secretary the duties related to enhancing economic prosperity,
38 including, but not limited to, the responsibility of liaison
39 with the head of economic development in the Executive Office of



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40 the Governor. Such assistant secretary shall be directly
41 responsible for providing the Executive Office of the Governor
42 with investment opportunities and transportation projects that
43 expand the state's role as a global hub for trade and investment
44 and enhance the supply chain system in the state to process,
45 assemble, and ship goods to markets throughout the eastern
46 United States, Canada, the Caribbean, and Latin America. The
47 secretary may delegate to any assistant secretary the authority
48 to act in the absence of the secretary.

49 (f)1.(e) Any secretary appointed after July 1, 2019 ~~57~~
50 ~~1989~~, and the assistant secretaries are ~~shall be~~ exempt from the
51 ~~provisions of~~ part III of chapter 110 and shall receive
52 compensation commensurate with their qualifications and
53 competitive with compensation for comparable responsibility in
54 other public sector organizations and in the private sector.

55 2. The salaries of the secretary and the assistant
56 secretaries shall be established by the Florida Transportation
57 Commission and determined by a market analysis focused on
58 comparably skilled individuals in other public sector
59 organizations, including, but not limited to, expressway
60 authorities, aviation authorities, and port authorities, and on
61 comparably skilled individuals in the private sector. The market
62 analysis must serve as a basis for ascertaining compensation
63 levels required to retain the secretary and assistant
64 secretaries in their positions within the department and to
65 attract external talent that can fulfill the department's
66 mission and effect change. The salary of the secretary must be
67 at least \$180,000. The salary of an assistant secretary must be
68 10 percent below that of the secretary who appoints him or her.



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69 (4) (a) 1. The operations of the department shall be
70 organized into seven districts, each headed by a district
71 secretary, and a turnpike enterprise and a rail enterprise, each
72 enterprise headed by an executive director. The district
73 secretaries and the executive directors shall be registered
74 professional engineers in accordance with ~~the provisions of~~
75 chapter 471 or the laws of another state, or, in lieu of
76 professional engineer registration, a district secretary or
77 executive director may hold an advanced degree in an appropriate
78 related discipline, such as a Master of Business Administration.

79 2. The district secretaries and the executive director of
80 the turnpike enterprise are exempt from part III of chapter 110
81 and shall receive compensation commensurate with their
82 qualifications and competitive with compensation for comparable
83 responsibility in other public sector organizations and in the
84 private sector. The salaries of the district secretaries and the
85 executive director of the turnpike enterprise must be 15 percent
86 below that of the secretary, as determined under subparagraph
87 (1) (f) 2., who is head of the department at the time the district
88 secretaries and the executive director of the turnpike
89 enterprise take their positions.

90 3. The headquarters of the districts shall be located in
91 Polk, Columbia, Washington, Broward, Volusia, Miami-Dade, and
92 Hillsborough Counties. The headquarters of the turnpike
93 enterprise shall be located in Orange County. The headquarters
94 of the rail enterprise shall be located in Leon County. In order
95 to provide for efficient operations and to expedite the
96 decisionmaking process, the department shall provide for maximum
97 decentralization to the districts.



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===== 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. 20.23, F.S.; requiring the Department of Transportation to consist of a central office and districts, subject to certain requirements; providing that any secretary appointed after a specified date and the assistant secretaries are exempt from membership in the Senior Management Service System Class; requiring the secretary and assistant secretaries to receive compensation competitive with compensation for comparable responsibility in other public sector organizations; requiring that the salaries of the secretary and the assistant secretaries be established by the Florida Transportation Commission and determined by a certain market analysis, subject to certain requirements; providing minimum specified salaries for the secretary and assistant secretaries; providing that the district secretaries and the executive director of the turnpike enterprise are exempt from membership in the Senior Management Service System Class; requiring that the district secretaries receive compensation commensurate with their qualifications and competitive with compensation for comparable responsibility in other public sector organizations and in the private sector; providing



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salary requirements for the district secretaries;
creating s.



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LEGISLATIVE ACTION

Senate

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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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11 subsection of this section, irrespective of the duration of the
12 levy. Each enactment shall specify the types of counties or
13 municipalities authorized to levy; the rate or rates which may
14 be imposed; the maximum length of time the surtax may be
15 imposed, if any; the procedure which must be followed to secure
16 voter approval, if required; the purpose for which the proceeds
17 may be expended; and such other requirements as the Legislature
18 may provide. Taxable transactions and administrative procedures
19 shall be as provided in s. 212.054.

20 (1) CHARTER COUNTY, MUNICIPALITY, AND REGIONAL
21 TRANSPORTATION SYSTEM SURTAX.—

22 (a) Each charter county that has adopted a charter, each
23 county the government of which is consolidated with that of one
24 or more municipalities, ~~and~~ each county that is within or under
25 an interlocal agreement with a regional transportation or
26 transit authority created under chapter 343 or chapter 349, and
27 each municipality and county under paragraph (b) may levy a
28 discretionary sales surtax, subject to approval by a majority
29 vote of the electorate of the county or municipality or by a
30 charter amendment approved by a majority vote of the electorate
31 of the county.

32 (b)1. A municipality with a population greater than 270,000
33 located in a county with a population greater than 1.28 million
34 but less than 1.5 million may levy a discretionary sales surtax
35 as provided in this subsection. The discretionary sales surtax
36 may only be levied within the limits of the municipality.

37 2. The levy of a discretionary sales surtax pursuant to
38 this paragraph does not prohibit the county in which the
39 municipality is located from levying a discretionary sales



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40 surtax as otherwise provided in this section. If a municipality
41 has levied a discretionary sales surtax as described in this
42 paragraph, the county within which the municipality is located
43 may also levy a discretionary sales surtax, at the same level as
44 the municipality, pursuant to referendum of the voters of the
45 county who reside outside the municipality. The proceeds from
46 such a discretionary sales surtax may only be collected outside
47 the municipality limits. Alternatively, the municipality and
48 county, by interlocal agreement, may levy such a discretionary
49 sales surtax by referendum of all the voters of the county.

50 (c) ~~(b)~~ The rate of the discretionary sales surtax shall be
51 up to 1 percent.

52 (d) ~~(e)~~ The proposal to adopt a discretionary sales surtax
53 as provided in this subsection and to create a trust fund within
54 the county or municipality accounts shall be placed on the
55 ballot in accordance with law at a time to be set at the
56 discretion of the governing body.

57 (e) ~~(d)~~ Proceeds from the surtax shall be applied to as many
58 or as few of the uses enumerated below in whatever combination
59 the county commission or municipal governing body deems
60 appropriate:

61 1. Deposited by the county or municipality in the trust
62 fund and shall be used for the purposes of development,
63 construction, equipment, maintenance, operation, supportive
64 services, including a countywide or municipality-wide bus
65 system, on-demand transportation services, and related costs of
66 a fixed guideway rapid transit system;

67 2. Remitted by the governing body of the county or
68 municipality to an expressway, transit, or transportation



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69 authority created by law to be used, at the discretion of such
70 authority, for the development, construction, operation, or
71 maintenance of roads or bridges in the county or municipality,
72 for the operation and maintenance of a bus system, for the
73 operation and maintenance of on-demand transportation services,
74 for the payment of principal and interest on existing bonds
75 issued for the construction of such roads or bridges, and, upon
76 approval by the county commission or municipal governing body,
77 such proceeds may be pledged for bonds issued to refinance
78 existing bonds or new bonds issued for the construction of such
79 roads or bridges;

80 3. Used by the county or municipality for the development,
81 construction, operation, and maintenance of roads and bridges in
82 the county or municipality; for the expansion, operation, and
83 maintenance of bus and fixed guideway systems; for the
84 expansion, operation, and maintenance of on-demand
85 transportation services; and for the payment of principal and
86 interest on bonds issued for the construction of fixed guideway
87 rapid transit systems, bus systems, roads, or bridges; and such
88 proceeds may be pledged by the governing body of the county or
89 municipality for bonds issued to refinance existing bonds or new
90 bonds issued for the construction of such fixed guideway rapid
91 transit systems, bus systems, roads, or bridges and no more than
92 25 percent used for nontransit uses; and

93 4. Used by the county or municipality for the planning,
94 development, construction, operation, and maintenance of roads
95 and bridges in the county or municipality; for the planning,
96 development, expansion, operation, and maintenance of bus and
97 fixed guideway systems; for the planning, development,



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98 construction, operation, and maintenance of on-demand
99 transportation services; and for the payment of principal and
100 interest on bonds issued for the construction of fixed guideway
101 rapid transit systems, bus systems, roads, or bridges; and such
102 proceeds may be pledged by the governing body of the county or
103 municipality for bonds issued to refinance existing bonds or new
104 bonds issued for the construction of such fixed guideway rapid
105 transit systems, bus systems, roads, or bridges. Pursuant to an
106 interlocal agreement entered into pursuant to chapter 163, the
107 governing body of the county may distribute proceeds from the
108 tax to a municipality, or an expressway or transportation
109 authority created by law to be expended for the purpose
110 authorized by this paragraph. Any county that has entered into
111 interlocal agreements for distribution of proceeds to one or
112 more municipalities in the county shall revise such interlocal
113 agreements no less than every 5 years in order to include any
114 municipalities that have been created since the prior interlocal
115 agreements were executed.

116 (f)~~(e)~~ As used in this subsection, the term "on-demand
117 transportation services" means transportation provided between
118 flexible points of origin and destination selected by individual
119 users with such service being provided at a time that is agreed
120 upon by the user and the provider of the service and that is not
121 fixed-schedule or fixed-route in nature.

122
123 ===== T I T L E A M E N D M E N T =====

124 And the title is amended as follows:

125 Delete line 2

126 and insert:



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127 An act relating to transportation; amending s.
128 212.055, F.S.; requiring certain enactments to specify
129 the types of municipalities authorized to levy a
130 discretionary sales surtax; authorizing certain
131 municipalities to levy a certain discretionary sales
132 surtax; providing requirements for the discretionary
133 sales surtax; providing that the levy of the
134 discretionary sales surtax does not prohibit the
135 county in which the municipality is located from
136 levying a certain discretionary sales surtax;
137 authorizing the county within which the municipality
138 is located to also levy a discretionary sales surtax,
139 at the same level as the municipality, pursuant to a
140 referendum of the voters of the county who reside
141 outside the municipality; providing that the county
142 discretionary sales surtax may be collected only
143 outside the municipality limits; authorizing,
144 alternatively, the municipality and county, by
145 interlocal agreement, to levy such a discretionary
146 sales surtax by referendum of all the voters of the
147 county; requiring the proposal to adopt a
148 discretionary sales surtax and to create a trust fund
149 within the municipality accounts to be placed on the
150 ballot in accordance with law at a time to be set at
151 the discretion of the governing body; providing that
152 proceeds from the surtax shall be applied to specified
153 uses in whatever combination the municipal governing
154 body deems appropriate; conforming provisions to
155 changes made by the act; creating s.



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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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11 used in this chapter, shall have the meanings respectively
12 ascribed to them in this section, except where the context
13 otherwise requires:

14 (40) MOTOR VEHICLE.—Except when used in s. 316.1001, a
15 self-propelled vehicle not operated upon rails or guideway, but
16 not including any bicycle, motorized scooter, electric personal
17 assistive mobility device, personal delivery device, swamp
18 buggy, or moped. For purposes of s. 316.1001, “motor vehicle”
19 has the same meaning as provided in s. 320.01(1)(a).

20 (51) PERSONAL DELIVERY DEVICE.—An electrically powered
21 device that:

22 (a) Is operated on sidewalks and crosswalks and intended
23 primarily for transporting property;

24 (b) Weighs less than 80 pounds, excluding cargo;

25 (c) Has a maximum speed of 10 miles per hour; and

26 (d) Is equipped with technology to allow for operation of
27 the device with or without the active control or monitoring of a
28 natural person.

29
30 A personal delivery device is not considered a vehicle unless
31 expressly defined by law as a vehicle.

32 (52) PERSONAL DELIVERY DEVICE OPERATOR.—An entity or its
33 agent that exercises direct physical control over or monitoring
34 of the navigation system and operation of a personal delivery
35 device. For the purposes of this subsection, the term “agent”
36 means a person charged by the entity with the responsibility of
37 navigating and operating the personal delivery device. The term
38 “personal delivery device operator” does not include an entity
39 or person who requests the services of a personal delivery



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40 device for the purpose of transporting property or an entity or
41 person who only arranges for and dispatches the requested
42 services of a personal delivery device.

43 (57)-(55) PRIVATE ROAD OR DRIVEWAY.—Except as otherwise
44 provided in paragraph (79) (b) (77)-(b), any privately owned way
45 or place used for vehicular travel by the owner and those having
46 express or implied permission from the owner, but not by other
47 persons.

48 (97)-(95) VEHICLE.—Every device in, upon, or by which any
49 person or property is or may be transported or drawn upon a
50 highway, except personal delivery devices and devices used
51 exclusively upon stationary rails or tracks.

52 Section 2. Subsection (7) of section 316.008, Florida
53 Statutes, is amended to read:

54 316.008 Powers of local authorities.—

55 (7) (a) A county or municipality may enact an ordinance to
56 permit, control, or regulate the operation of vehicles, golf
57 carts, mopeds, motorized scooters, and electric personal
58 assistive mobility devices on sidewalks or sidewalk areas when
59 such use is permissible under federal law. The ordinance must
60 restrict such vehicles or devices to a maximum speed of 15 miles
61 per hour in such areas.

62 (b)1. Except as provided in subparagraph 2., a personal
63 delivery device may be operated on sidewalks and crosswalks
64 within a county or municipality when such use is permissible
65 under federal law. This paragraph does not restrict a county or
66 municipality from otherwise adopting regulations for the safe
67 operation of personal delivery devices.

68 2. A personal delivery device may not be operated on the



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69 Florida Shared-Use Nonmotorized Trail Network created under s.
70 339.81 or components of the Florida Greenways and Trails System
71 created under chapter 260.

72 Section 3. Section 316.0898, Florida Statutes, is created
73 to read:

74 316.0898 Florida Smart City Challenge grant program.-

75 (1) The Department of Transportation, in consultation with
76 the Department of Highway Safety and Motor Vehicles, shall
77 develop the Florida Smart City Challenge grant program and shall
78 establish grant award requirements for municipalities or regions
79 for the purpose of receiving grant awards. Grant applicants must
80 demonstrate and document the adoption of emerging technologies
81 and their impact on the transportation system and must address
82 at least the following focus areas:

83 (a) Autonomous vehicles.

84 (b) Connected vehicles.

85 (c) Sensor-based infrastructure.

86 (d) Collecting and using data.

87 (e) Electric vehicles, including charging stations.

88 (f) Developing strategic models and partnerships.

89 (2) The goals of the grant program include, but are not
90 limited to:

91 (a) Identifying transportation challenges and identifying
92 how emerging technologies can address those challenges.

93 (b) Determining the emerging technologies and strategies
94 that have the potential to provide the most significant impacts.

95 (c) Encouraging municipalities to take significant steps to
96 integrate emerging technologies into their day-to-day
97 operations.



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98 (d) Identifying the barriers to implementing the grant
99 program and communicating those barriers to the Legislature and
100 appropriate agencies and organizations.

101 (e) Leveraging the initial grant to attract additional
102 public and private investments.

103 (f) Increasing the state's competitiveness in the pursuit
104 of grants from the United States Department of Transportation,
105 the United States Department of Energy, and other federal
106 agencies.

107 (g) Committing to the continued operation of programs
108 implemented in connection with the grant.

109 (h) Serving as a model for municipalities nationwide.

110 (i) Documenting the costs and impacts of the grant program
111 and lessons learned during implementation.

112 (j) Identifying solutions that will demonstrate local or
113 regional economic impact.

114 (3) The Department of Transportation shall develop
115 eligibility, application, and selection criteria for the program
116 grants and a plan for the promotion of the grant program to
117 municipalities or regions of this state as an opportunity to
118 compete for grant funding, including the award of grants to a
119 single recipient and secondary grants to specific projects of
120 merit within other applications. The Department of
121 Transportation may contract with a third party that demonstrates
122 knowledge and expertise in the focuses and goals of this section
123 to provide guidance in the development of the requirements of
124 this section.

125 (4) On or before January 1, 2018, the Department of
126 Transportation shall submit the grant program guidelines and



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127 plans for promotion of the grant program to the Governor, the
128 President of the Senate, and the Speaker of the House of
129 Representatives.

130 (5) This section expires July 1, 2018.

131 Section 4. Section 316.2071, Florida Statutes, is created
132 to read:

133 316.2071 Personal delivery devices.-

134 (1) Notwithstanding any provision of law to the contrary, a
135 personal delivery device may operate on sidewalks and
136 crosswalks, subject to s. 316.008(7)(b). A personal delivery
137 device operating on a sidewalk or crosswalk has all the rights
138 and duties applicable to a pedestrian under the same
139 circumstances, except that the personal delivery device must not
140 unreasonably interfere with pedestrians or traffic and must
141 yield the right-of-way to pedestrians on the sidewalk or
142 crosswalk.

143 (2) A personal delivery device must:

144 (a) Obey all official traffic and pedestrian control
145 signals and devices.

146 (b) Include a plate or marker that has a unique identifying
147 device number and identifies the name and contact information of
148 the personal delivery device operator.

149 (c) Be equipped with a braking system that, when active or
150 engaged, enables the personal delivery device to come to a
151 controlled stop.

152 (3) A personal delivery device may not:

153 (a) Operate on a public highway except to the extent
154 necessary to cross a crosswalk.

155 (b) Operate on a sidewalk or crosswalk unless the personal



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156 delivery device operator is actively controlling or monitoring
157 the navigation and operation of the personal delivery device.

158 (c) Transport hazardous materials as defined in s. 316.003.

159 (4) A personal delivery device operator must maintain an
160 insurance policy, on behalf of itself and its agents, that
161 provides general liability coverage of at least \$100,000 for
162 damages arising from the combined operations of personal
163 delivery devices under the entity's or agent's control.

164 Section 5. Paragraph (b) of subsection (2) of section
165 316.545, Florida Statutes, is amended, and present paragraphs
166 (c) and (d) of subsection (3) of that section are redesignated
167 as paragraphs (d) and (e), respectively, and a new paragraph (c)
168 is added to that subsection, to read:

169 316.545 Weight and load unlawful; special fuel and motor
170 fuel tax enforcement; inspection; penalty; review.—

171 (2)

172 (b) The officer or inspector shall inspect the license
173 plate or registration certificate of the commercial vehicle to
174 determine whether its gross weight is in compliance with the
175 declared gross vehicle weight. If its gross weight exceeds the
176 declared weight, the penalty shall be 5 cents per pound on the
177 difference between such weights. In those cases when the
178 commercial vehicle is being operated over the highways of the
179 state with an expired registration or with no registration from
180 this or any other jurisdiction or is not registered under the
181 applicable provisions of chapter 320, the penalty herein shall
182 apply on the basis of 5 cents per pound on that scaled weight
183 which exceeds 35,000 pounds on laden truck tractor-semitrailer
184 combinations or tandem trailer truck combinations, 10,000 pounds



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185 on laden straight trucks or straight truck-trailer combinations,
186 or 10,000 pounds on any unladen commercial motor vehicle. A
187 driver of a commercial motor vehicle entering the state at a
188 designated port-of-entry location, as defined in s. 316.003
189 ~~316.003(54)~~, or operating on designated routes to a port-of-
190 entry location, who obtains a temporary registration permit
191 shall be assessed a penalty limited to the difference between
192 its gross weight and the declared gross vehicle weight at 5
193 cents per pound. If the license plate or registration has not
194 been expired for more than 90 days, the penalty imposed under
195 this paragraph may not exceed \$1,000. In the case of special
196 mobile equipment, which qualifies for the license tax provided
197 for in s. 320.08(5)(b), being operated on the highways of the
198 state with an expired registration or otherwise not properly
199 registered under the applicable provisions of chapter 320, a
200 penalty of \$75 shall apply in addition to any other penalty
201 which may apply in accordance with this chapter. A vehicle found
202 in violation of this section may be detained until the owner or
203 operator produces evidence that the vehicle has been properly
204 registered. Any costs incurred by the retention of the vehicle
205 shall be the sole responsibility of the owner. A person who has
206 been assessed a penalty pursuant to this paragraph for failure
207 to have a valid vehicle registration certificate pursuant to the
208 provisions of chapter 320 is not subject to the delinquent fee
209 authorized in s. 320.07 if such person obtains a valid
210 registration certificate within 10 working days after such
211 penalty was assessed.

212 (3)

213 (c)1. For a vehicle fueled by natural gas, the fine is



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214 calculated by reducing the actual gross vehicle weight by the
215 certified weight difference between the natural gas tank and
216 fueling system and a comparable diesel tank and fueling system.
217 Upon the request of a weight inspector or a law enforcement
218 officer, the vehicle operator shall present a written
219 certification that identifies the weight of the natural gas tank
220 and fueling system and the difference in weight of a comparable
221 diesel tank and fueling system. The written certification must
222 originate from the vehicle manufacturer or the installer of the
223 natural gas tank and fueling system.

224 2. The actual gross vehicle weight for vehicles fueled by
225 natural gas may not exceed 82,000 pounds, excluding the weight
226 allowed for idle-reduction technology under paragraph (b).

227 3. This paragraph does not apply to vehicles described in
228 s. 316.535(6).

229 Section 6. Effective upon the same date that SB 340 or
230 similar legislation takes effect, if such legislation is adopted
231 in the 2017 Regular Session or any extension thereof and becomes
232 a law, section 316.851, Florida Statutes, is created to read:

233 316.851 Autonomous vehicles; providing prearranged rides.-

234 (1) An autonomous vehicle used by a transportation network
235 company to provide a prearranged ride must be covered by
236 automobile insurance as required by s. 627.748, regardless of
237 whether a human operator is physically present within the
238 vehicle when the ride occurs. When an autonomous vehicle is
239 logged on to a digital network but is not engaged in a
240 prearranged ride, the autonomous vehicle must maintain insurance
241 coverage as defined in s. 627.748(7)(b).

242 (2) An autonomous vehicle used to provide a transportation



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243 service shall carry in the vehicle proof of coverage satisfying
244 the requirements of this section at all times while operating in
245 autonomous mode.

246 Section 7. Section 316.853, Florida Statutes, is created to
247 read:

248 316.853 Automated mobility districts.-

249 (1) For the purpose of this section, an "automated mobility
250 district" means a master planned development or combination of
251 contiguous developments in which the deployment of autonomous
252 vehicles as defined in s. 316.003 as the basis for a shared
253 mobility system is a stated goal or objective of the development
254 or developments.

255 (2) The Department of Transportation shall designate
256 automated mobility districts.

257 (3) In determining the eligibility of a community for
258 designation as an automated mobility district, the Department of
259 Transportation shall consider applicable criteria from federal
260 agencies for automated mobility districts and apply those
261 criteria to eligible developments in this state.

262 Section 8. Paragraph (a) of subsection (1) of section
263 319.145, Florida Statutes, is amended to read:

264 319.145 Autonomous vehicles.-

265 (1) An autonomous vehicle registered in this state must
266 continue to meet applicable federal standards and regulations
267 for such motor vehicle. The vehicle must:

268 (a) Have a system to safely alert the operator if an
269 autonomous technology failure is detected while the autonomous
270 technology is engaged. When an alert is given, the system must:

271 1. Require the operator to take control of the autonomous



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272 vehicle; or

273 2. If the human operator does not, or is not able to, take
274 control of the autonomous vehicle, or if a human operator is not
275 physically present in the vehicle, be capable of bringing the
276 vehicle to a complete stop.

277 Section 9. Paragraph (a) of subsection (1) of section
278 320.01, Florida Statutes, is amended to read:

279 320.01 Definitions, general.—As used in the Florida
280 Statutes, except as otherwise provided, the term:

281 (1) "Motor vehicle" means:

282 (a) An automobile, motorcycle, truck, trailer, semitrailer,
283 truck tractor and semitrailer combination, or any other vehicle
284 operated on the roads of this state, used to transport persons
285 or property, and propelled by power other than muscular power,
286 but the term does not include traction engines, road rollers,
287 personal delivery devices as defined in s. 316.003, special
288 mobile equipment as defined in s. 316.003, vehicles that run
289 only upon a track, bicycles, swamp buggies, or mopeds.

290 Section 10. Subsection (19) is added to section 320.02,
291 Florida Statutes, to read:

292 320.02 Registration required; application for registration;
293 forms.—

294 (19) A personal delivery device as defined in s. 316.003 is
295 not required to satisfy the registration and insurance
296 requirements of this section.

297 Section 11. Subsection (1) of section 324.021, Florida
298 Statutes, is amended to read:

299 324.021 Definitions; minimum insurance required.—The
300 following words and phrases when used in this chapter shall, for



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301 the purpose of this chapter, have the meanings respectively
302 ascribed to them in this section, except in those instances
303 where the context clearly indicates a different meaning:

304 (1) MOTOR VEHICLE.—Every self-propelled vehicle that ~~which~~
305 is designed and required to be licensed for use upon a highway,
306 including trailers and semitrailers designed for use with such
307 vehicles, except traction engines, road rollers, farm tractors,
308 power shovels, and well drillers, and every vehicle that ~~which~~
309 is propelled by electric power obtained from overhead wires but
310 not operated upon rails, but not including any personal delivery
311 device as defined in s. 316.003, bicycle, or moped. However, the
312 term "motor vehicle" does ~~shall~~ not include a any motor vehicle
313 as defined in s. 627.732(3) when the owner of such vehicle has
314 complied with the requirements of ss. 627.730-627.7405,
315 inclusive, unless the provisions of s. 324.051 apply; and, in
316 such case, the applicable proof of insurance provisions of s.
317 320.02 apply.

318 Section 12. Paragraph (a) of subsection (2) of section
319 324.022, Florida Statutes, is amended to read:

320 324.022 Financial responsibility for property damage.—

321 (2) As used in this section, the term:

322 (a) "Motor vehicle" means any self-propelled vehicle that
323 has four or more wheels and that is of a type designed and
324 required to be licensed for use on the highways of this state,
325 and any trailer or semitrailer designed for use with such
326 vehicle. The term does not include:

327 1. A mobile home.

328 2. A motor vehicle that is used in mass transit and
329 designed to transport more than five passengers, exclusive of



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330 the operator of the motor vehicle, and that is owned by a
331 municipality, transit authority, or political subdivision of the
332 state.

333 3. A school bus as defined in s. 1006.25.

334 4. A vehicle providing for-hire transportation that is
335 subject to the provisions of s. 324.031. A taxicab shall
336 maintain security as required under s. 324.032(1).

337 5. A personal delivery device as defined in s. 316.003.

338 Section 13. Subsection (2) of section 335.074, Florida
339 Statutes, is amended to read:

340 335.074 Safety inspection of bridges.-

341 (2) At regular intervals as required by the Federal Highway
342 Administration not to exceed 2 years, each bridge on a public
343 transportation facility shall be inspected for structural
344 soundness and safety for the passage of traffic on such bridge.
345 The thoroughness with which bridges are to be inspected shall
346 depend on such factors as age, traffic characteristics, state of
347 maintenance, and known deficiencies. The governmental entity
348 having maintenance responsibility for any such bridge shall be
349 responsible for having inspections performed and reports
350 prepared in accordance with the provisions contained herein.

351 Section 14. Effective October 1, 2017, section 335.094,
352 Florida Statutes, is created to read:

353 335.094 Highway memorial markers; public safety awareness.-

354 (1) In recognition of the department's mission to provide a
355 safe transportation system, the Legislature intends that the
356 department allow the use of highway memorial markers at or near
357 the location of traffic-related fatalities on the State Highway
358 System to raise public awareness and remind motorists to drive



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359 safely by memorializing people who have died as a result of a
360 traffic-related crash.

361 (2) The department shall establish a process, including any
362 forms deemed necessary by the department, for submitting
363 applications for installation of a memorial marker as authorized
364 in this section. Applications may be submitted to the department
365 by:

366 (a) A member of the decedent's family, which includes the
367 decedent's spouse; a child, parent, or sibling of the decedent,
368 whether biological, adopted, or step relation; and any lineal or
369 collateral descendant of the decedent; or

370 (b) Any individual who is responsible under the laws of
371 this state for the disposition of the unclaimed remains of the
372 decedent or for other matters relating to the interment or
373 memorialization of the decedent.

374 (3) The department shall establish criteria for the design
375 and fabrication of memorial markers, including, but not limited
376 to, marker components, fabrication material, and size.

377 (4) (a) The department may install a round aluminum sign
378 panel with white background and black letters uniformly
379 inscribed "Drive Safely, In Memory Of" followed by the
380 decedent's name at no charge to the applicant.

381 (b) Upon the request of the applicant and payment of a
382 reasonable fee set by the department to offset production costs,
383 memorial markers may incorporate the available emblems of belief
384 approved by the United States Department of Veterans Affairs
385 National Cemetery Administration. For purposes of this section,
386 an "emblem of belief" means an emblem that represents the
387 decedent's religious affiliation or sincerely held religious



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388 belief system, or a sincerely held belief system that was
389 functionally equivalent to a religious belief system in the life
390 of the decedent. The religion or belief system represented by an
391 emblem need not be associated with or endorsed by a church,
392 group, or organized denomination. The term does not include
393 emblems, graphics, logos, or symbols that relate to social,
394 cultural, ethnic, civic, fraternal, trade, commercial,
395 political, professional, or military status.

396 (c) An applicant may request a new emblem of belief not
397 specifically approved by the United States Department of
398 Veterans Affairs National Cemetery Administration for
399 inscription on a memorial marker as follows:

400 1. The applicant must certify that the proposed new emblem
401 of belief represents the decedent's religious affiliation or
402 sincerely held religious belief system, or a sincerely held
403 belief system that was functionally equivalent to a religious
404 belief system in the life of the decedent.

405 2. In the absence of evidence to the contrary, the
406 department shall accept as genuine an applicant's statement of
407 the religious or functionally equivalent belief system of a
408 decedent.

409 (d) If the department determines that any application under
410 this section is incomplete, the department must notify the
411 applicant in writing of any missing information and must notify
412 the applicant in writing that no further action on the
413 application will be taken until the missing information is
414 provided.

415 (5) The department shall place a memorial marker for any
416 approved application at or near the location of the fatality in



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417 a fashion that reduces driver distraction and positions the
418 marker as near the right-of-way line as possible.

419 (6) Memorial markers are intended to remind passing
420 motorists of the dangers of unsafe driving and are not intended
421 for visitation. The department shall remove a memorial marker if
422 the department determines the presence of the marker creates a
423 safety hazard. In such cases, the department shall post a notice
424 near where the marker was located indicating that the marker has
425 been removed and provide contact information for pickup of the
426 marker. The department shall store any removed markers for at
427 least 60 days. If after 60 days the memorial is not claimed, the
428 department may dispose of the marker as it deems necessary.

429 Section 15. Paragraph (c) of subsection (6) of section
430 337.11, Florida Statutes, is amended to read:

431 337.11 Contracting authority of department; bids; emergency
432 repairs, supplemental agreements, and change orders; combined
433 design and construction contracts; progress payments; records;
434 requirements of vehicle registration.-

435 (6)

436 (c) When the department determines that it is in the best
437 interest of the public for reasons of public concern, economy,
438 improved operations, or safety, and only for contracts for
439 construction and maintenance which do not exceed \$250,000 when
440 circumstances dictate rapid completion of the work, the
441 department may, ~~up to the amount of \$120,000,~~ enter into
442 ~~contracts for construction and maintenance~~ without advertising
443 and receiving competitive bids. The department may enter into
444 such contracts only upon a determination that the work is
445 necessary for one of the following reasons:



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446 1. To ensure timely completion of projects or avoidance of
447 undue delay for other projects;

448 2. To accomplish minor repairs or construction and
449 maintenance activities for which time is of the essence and for
450 which significant cost savings would occur; or

451 3. To accomplish nonemergency work necessary to ensure
452 avoidance of adverse conditions that affect the safe and
453 efficient flow of traffic.

454

455 The department shall make a good faith effort to obtain two or
456 more quotes, if available, from qualified contractors before
457 entering into any contract. The department shall give
458 consideration to disadvantaged business enterprise
459 participation. However, when the work exists within the limits
460 of an existing contract, the department shall make a good faith
461 effort to negotiate and enter into a contract with the prime
462 contractor on the existing contract.

463 Section 16. Subsection (5) is added to section 338.227,
464 Florida Statutes, to read:

465 338.227 Turnpike revenue bonds.—

466 (5) Notwithstanding s. 215.82, bonds issued pursuant to
467 this section are not required to be validated pursuant to
468 chapter 75 but may be validated at the option of the Division of
469 Bond Finance. Any complaint about such validation must be filed
470 in the circuit court of the county in which the seat of state
471 government is situated, and the clerk shall publish the notice
472 as required by s. 75.06 only in the county in which the
473 complaint is filed. The complaint and order of the circuit court
474 must be served on the state attorney of the circuit in which the



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475 action is pending.

476 Section 17. Paragraph (e) of subsection (7) of section
477 339.135, Florida Statutes, is amended to read:

478 339.135 Work program; legislative budget request;
479 definitions; preparation, adoption, execution, and amendment.—

480 (7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

481 (e) Notwithstanding paragraphs (d), ~~and~~ (g), and (h) and
482 ss. 216.177(2) and 216.351, the secretary may request the
483 Executive Office of the Governor to amend the adopted work
484 program when an emergency exists, as defined in s. 252.34, and
485 the emergency relates to the repair or rehabilitation of any
486 state transportation facility. The Executive Office of the
487 Governor may approve the amendment to the adopted work program
488 and amend that portion of the department's approved budget if a
489 delay incident to the notification requirements in paragraph (d)
490 would be detrimental to the interests of the state. However, the
491 department shall immediately notify the parties specified in
492 paragraph (d) and provide such parties written justification for
493 the emergency action within 7 days after approval by the
494 Executive Office of the Governor of the amendment to the adopted
495 work program and the department's budget. The adopted work
496 program may not be amended under this subsection without
497 certification by the comptroller of the department that there
498 are sufficient funds available pursuant to the 36-month cash
499 forecast and applicable statutes.

500 Section 18. Section 339.2405, Florida Statutes, is amended
501 to read:

502 339.2405 Florida Highway Beautification Grant Program
503 ~~Council~~.—



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504 (1) There is created within the Department of
505 Transportation the Florida Highway Beautification Grant Program
506 for the purpose of awarding grants to local governmental
507 entities for beautification of roads on the State Highway System
508 as provided in subsections (3) and (4). The department shall
509 Council. It shall consist of seven members appointed by the
510 Governor. All appointed members must be residents of this state.
511 One member must be a licensed landscape architect, one member
512 must be a representative of the Florida Federation of Garden
513 Clubs, Inc., one member must be a representative of the Florida
514 Nurserymen and Growers Association, one member must be a
515 representative of the department as designated by the head of
516 the department, one member must be a representative of the
517 Department of Agriculture and Consumer Services, and two members
518 must be private citizens. The members of the council shall serve
519 at the pleasure of the Governor.

520 ~~(2) Each chair shall be selected by the council members and~~
521 ~~shall serve a 2-year term.~~

522 ~~(3) The council shall meet no less than semiannually at the~~
523 ~~call of the chair or, in the chair's absence or incapacity, at~~
524 ~~the call of the head of the department. Four members shall~~
525 ~~constitute a quorum for the purpose of exercising all of the~~
526 ~~powers of the council. A vote of the majority of the members~~
527 ~~present shall be sufficient for all actions of the council.~~

528 ~~(4) The council members shall serve without pay but shall~~
529 ~~be entitled to per diem and travel expenses pursuant to s.~~
530 ~~112.061.~~

531 ~~(5) A member of the council may not participate in any~~
532 ~~discussion or decision to recommend grants to any qualified~~



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533 ~~local government with which the member is associated as a member~~
534 ~~of the governing body or as an employee or with which the member~~
535 ~~has entered into a contractual arrangement.~~

536 ~~(6) The council may prescribe, amend, and repeal bylaws~~
537 ~~governing the manner in which the business of the council is~~
538 ~~conducted.~~

539 ~~(7) (a) The duties of the council shall be to:~~

540 ~~(a)1.~~ Provide information to local governments and local
541 highway beautification councils regarding the state highway
542 beautification grants program.

543 ~~(b)2.~~ Accept grant requests from local governments.

544 ~~(c)3.~~ Review grant requests for compliance with department
545 ~~council~~ rules.

546 ~~(d)4.~~ Establish rules for evaluating and prioritizing the
547 grant requests. The rules must include, but are not limited to,
548 an examination of each grant's aesthetic value, cost-
549 effectiveness, level of local support, feasibility of
550 installation and maintenance, and compliance with state and
551 federal regulations. Rules adopted by the department council
552 which it uses to evaluate grant applications must take into
553 consideration the contributions made by the highway
554 beautification project in preventing litter.

555 ~~(e)5.~~ Maintain a prioritized list of approved grant
556 requests. The list must include recommended funding levels for
557 each request and, if staged implementation is appropriate,
558 funding requirements for each stage shall be provided.

559 ~~6. Assess the feasibility of planting and maintaining~~
560 ~~indigenous wildflowers and plants, instead of sod groundcovers,~~
561 ~~along the rights-of-way of state roads and highways. In making~~



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562 ~~such assessment, the council shall utilize data from other~~
563 ~~states which include indigenous wildflower and plant species in~~
564 ~~their highway vegetative management systems.~~

565 ~~(b) The council may, at the request of the head of the~~
566 ~~department, review and make recommendations on any other highway~~
567 ~~beautification matters relating to the State Highway System.~~

568 ~~(8) The head of the department shall provide from existing~~
569 ~~personnel such staff support services to the council as are~~
570 ~~necessary to enable the council to fulfill its duties and~~
571 ~~responsibilities.~~

572 ~~(2)(9)~~ Local highway beautification councils may be created
573 by local governmental entities or by the Legislature. Prior to
574 being submitted to the department council, a grant request must
575 be approved by the local government or governments of the area
576 in which the project is located.

577 ~~(3)(10)~~ The head of the department, ~~after receiving~~
578 ~~recommendations from the council~~, shall award grants to local
579 governmental entities that have submitted grant requests for
580 beautification of roads on the State Highway System and which
581 requests are on the ~~council's~~ approved list. The grants shall be
582 awarded in the order they appear on the ~~council's~~ prioritized
583 list and in accordance with available funding.

584 ~~(4)(11)~~ State highway beautification grants may be
585 requested only for projects to beautify through landscaping
586 roads on the State Highway System. The grant request shall
587 identify all costs associated with the project, including
588 sprinkler systems, plant materials, equipment, and labor. A
589 grant shall provide for the costs of purchase and installation
590 of a sprinkler system, the cost of plant materials and



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591 fertilizer, and may provide for the costs for labor associated
592 with the installation of the plantings. Each local government
593 that receives a grant is ~~shall be~~ responsible for any costs for
594 water, for the maintenance of the sprinkler system, for the
595 maintenance of the landscaped areas in accordance with a
596 maintenance agreement with the department, and, except as
597 otherwise provided in the grant, for any costs for labor
598 associated with the installation of the plantings. The
599 department may provide, by contract, services to maintain such
600 landscaping at a level not to exceed the cost of routine
601 maintenance of an equivalent unlandscaped area.

602 ~~(12) The council shall annually submit to the head of the~~
603 ~~Department of Transportation a proposal recommending the level~~
604 ~~of grant funding.~~

605 Section 19. Section 343.52, Florida Statutes, is reordered
606 and amended to read:

607 343.52 Definitions.—As used in this part, the term:

608 (2) ~~(1)~~ "Authority" means the South Florida Regional
609 Transportation Authority.

610 (3) ~~(2)~~ "Board" means the governing body of the authority.

611 (4) "Department" means the Department of Transportation.

612 (1) ~~(3)~~ "Area served" means Miami-Dade, Broward, and Palm
613 Beach Counties. However, this area may be expanded by mutual
614 consent of the authority and the board of county commissioners
615 of Monroe County. The authority may not expand into any
616 additional counties without the department's prior written
617 approval.

618 (8) ~~(4)~~ "Transit system" means a system used for the
619 transportation of people and goods by means of, without



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620 limitation, a street railway, an elevated railway having a fixed
621 guideway, a commuter railroad, a subway, motor vehicles, or
622 motor buses, and includes a complete system of tracks, stations,
623 and rolling stock necessary to effectuate passenger service to
624 or from the surrounding regional municipalities.

625 (7)~~(5)~~ "Transit facilities" means property, avenues of
626 access, equipment, or buildings built and installed in Miami-
627 Dade, Broward, and Palm Beach Counties which are required to
628 support a transit system.

629 (6) "Member" means the individuals constituting the board.

630 (5)~~(7)~~ "Feeder transit services" means a transit system
631 that transports passengers to or from stations within or across
632 counties.

633 Section 20. Present subsections (4) and (5) of section
634 343.54, Florida Statutes, are redesignated as subsections (5)
635 and (6), respectively, and a new subsection (4) is added to that
636 section, to read:

637 343.54 Powers and duties.—

638 (4) Notwithstanding any other provision of this part, the
639 authority may not enter into, extend, or renew any contract or
640 other agreement under this part without the department's prior
641 review and written approval of the authority's proposed
642 expenditures if such contract or agreement may be funded, in
643 whole or in part, with funds provided by the department.

644 Section 21. Paragraph (c) of subsection (4) of section
645 343.58, Florida Statutes, is amended to read:

646 343.58 County funding for the South Florida Regional
647 Transportation Authority.—

648 (4) Notwithstanding any other provision of law to the



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649 contrary and effective July 1, 2010, until as provided in
650 paragraph (d), the department shall transfer annually from the
651 State Transportation Trust Fund to the South Florida Regional
652 Transportation Authority the amounts specified in subparagraph
653 (a)1. or subparagraph (a)2.

654 (c)1. Funds provided to the authority by the department
655 under this subsection constitute state financial assistance
656 provided to a nonstate entity to carry out a state project
657 subject to the provisions of ss. 215.97 and 215.971. The
658 department shall provide the funds in accordance with the terms
659 of a written agreement to be entered into between the authority
660 and the department which shall provide for department review,
661 approval and audit of authority expenditure of such funds, and
662 shall include such other provisions as are required by
663 applicable law. The department is specifically authorized to
664 agree to advance the authority one-fourth of the total funding
665 provided under this subsection for a state fiscal year at the
666 beginning of each state fiscal year, with monthly payments over
667 the fiscal year on a reimbursement basis as supported by
668 invoices and such additional documentation and information as
669 the department may reasonably require, and a reconciliation of
670 the advance against remaining invoices in the last quarter of
671 the fiscal year may not be committed by the authority without
672 the approval of the department, which may not be unreasonably
673 withheld. At least 90 days before advertising any procurement or
674 renewing any existing contract that will rely on state funds for
675 payment, the authority shall notify the department of the
676 proposed procurement or renewal and the proposed terms thereof.
677 If the department, within 60 days after receipt of notice,



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678 ~~objects in writing to the proposed procurement or renewal,~~
679 ~~specifying its reasons for objection, the authority may not~~
680 ~~proceed with the proposed procurement or renewal. Failure of the~~
681 ~~department to object in writing within 60 days after notice~~
682 ~~shall be deemed consent. This requirement does not impair or~~
683 ~~cause the authority to cancel contracts that exist as of June~~
684 ~~30, 2012.~~

685 2. To enable the department to evaluate the authority's
686 proposed uses of state funds, the authority shall annually
687 provide the department with its proposed budget for the
688 following authority fiscal year and shall promptly provide the
689 department with any additional documentation or information
690 required by the department for its evaluation of the proposed
691 uses of the state funds.

692 Section 22. Subsection (2) of section 215.82, Florida
693 Statutes, is amended to read:

694 215.82 Validation; when required.-

695 (2) Any bonds issued pursuant to this act which are
696 validated shall be validated in the manner provided by chapter
697 75. In actions to validate bonds to be issued in the name of the
698 State Board of Education under s. 9(a) and (d), Art. XII of the
699 State Constitution and bonds to be issued pursuant to chapter
700 259, the Land Conservation Program, the complaint shall be filed
701 in the circuit court of the county where the seat of state
702 government is situated, the notice required to be published by
703 s. 75.06 shall be published only in the county where the
704 complaint is filed, and the complaint and order of the circuit
705 court shall be served only on the state attorney of the circuit
706 in which the action is pending. In any action to validate bonds



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707 issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1),
708 Art. XII of the State Constitution or issued pursuant to s.
709 215.605 ~~or s. 338.227~~, the complaint shall be filed in the
710 circuit court of the county where the seat of state government
711 is situated, the notice required to be published by s. 75.06
712 shall be published in a newspaper of general circulation in the
713 county where the complaint is filed and in two other newspapers
714 of general circulation in the state, and the complaint and order
715 of the circuit court shall be served only on the state attorney
716 of the circuit in which the action is pending; provided,
717 however, that if publication of notice pursuant to this section
718 would require publication in more newspapers than would
719 publication pursuant to s. 75.06, such publication shall be made
720 pursuant to s. 75.06.

721 Section 23. Paragraph (d) of subsection (2) of section
722 343.53, Florida Statutes, is amended to read:

723 343.53 South Florida Regional Transportation Authority.—

724 (2) The governing board of the authority shall consist of
725 10 voting members, as follows:

726 (d) If the authority's service area is expanded pursuant to
727 s. 343.54(6) ~~s. 343.54(5)~~, the county containing the new service
728 area shall have two members appointed to the board as follows:

729 1. The county commission of the county shall elect a
730 commissioner as that commission's representative on the board.
731 The commissioner must be a member of the county commission when
732 elected and for the full extent of his or her term.

733 2. The Governor shall appoint a citizen member to the board
734 who is not a member of the county commission but who is a
735 resident and a qualified elector of that county.



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736 Section 24. Section 427.011, Florida Statutes, is reordered
737 and amended to read:

738 427.011 Definitions.—For the purposes of ss. 427.011-
739 427.017:

740 ~~(9)~~⁽¹⁾ "Transportation disadvantaged" means those persons
741 who because of physical or mental disability, income status, or
742 age are unable to transport themselves or to purchase
743 transportation and are, therefore, dependent upon others to
744 obtain access to health care, employment, education, shopping,
745 social activities, or other life-sustaining activities, or
746 children who are handicapped or high-risk or at-risk as defined
747 in s. 411.202.

748 ~~(5)~~⁽²⁾ "Metropolitan planning organization" means the
749 organization responsible for carrying out transportation
750 planning and programming in accordance with the provisions of 23
751 U.S.C. s. 134, as provided in 23 U.S.C. s. 104(f) (3).

752 ~~(1)~~⁽³⁾ "Agency" means an official, officer, commission,
753 authority, council, committee, department, division, bureau,
754 board, section, or any other unit or entity of the state or of a
755 city, town, municipality, county, or other local governing body
756 or a private nonprofit transportation service-providing agency.

757 ~~(11)~~⁽⁴⁾ "Transportation improvement program" means a staged
758 multiyear program of transportation improvements, including an
759 annual element, which is developed by a metropolitan planning
760 organization or designated official planning agency.

761 ~~(2)~~⁽⁵⁾ "Community transportation coordinator" means a
762 transportation entity recommended by a metropolitan planning
763 organization, or by the appropriate designated official planning
764 agency as provided for in ss. 427.011-427.017 in an area outside



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765 the purview of a metropolitan planning organization, to ensure
766 that coordinated transportation services are provided to the
767 transportation disadvantaged population in a designated service
768 area.

769 (12)~~(6)~~ "Transportation operator" means one or more public,
770 private for-profit, or private nonprofit entities engaged by the
771 community transportation coordinator to provide service to
772 transportation disadvantaged persons pursuant to a coordinated
773 system service plan.

774 (3)~~(7)~~ "Coordinating board" means an advisory entity in
775 each designated service area composed of representatives
776 appointed by the metropolitan planning organization or
777 designated official planning agency, to provide assistance to
778 the community transportation coordinator relative to the
779 coordination of transportation services.

780 (8) "Purchasing agency" means a department or agency whose
781 head is an ex officio, nonvoting adviser to the commission, or
782 an agency that purchases transportation services for the
783 transportation disadvantaged.

784 (7)~~(9)~~ "Paratransit" means those elements of public transit
785 which provide service between specific origins and destinations
786 selected by the individual user with such service being provided
787 at a time that is agreed upon by the user and provider of the
788 service. Paratransit service is provided by taxis, limousines,
789 "dial-a-ride," buses, transportation network companies, and
790 other demand-responsive operations that are characterized by
791 their nonscheduled, nonfixed route nature.

792 (10) "Transportation disadvantaged funds" means any local
793 government, state, or available federal funds that are for the



463056

794 transportation of the transportation disadvantaged. Such funds
795 may include, but are not limited to, funds for planning,
796 Medicaid transportation, administration, operation, procurement,
797 and maintenance of vehicles or equipment and capital
798 investments. Transportation disadvantaged funds do not include
799 funds for the transportation of children to public schools.

800 (4)~~(11)~~ "Coordination" means the arrangement for the
801 provision of transportation services to the transportation
802 disadvantaged in a manner that is cost-effective, efficient, and
803 reduces fragmentation and duplication of services.

804 (6)~~(12)~~ "Nonsponsored transportation disadvantaged
805 services" means transportation disadvantaged services that are
806 not sponsored or subsidized by any funding source other than the
807 Transportation Disadvantaged Trust Fund.

808 Section 25. Subsection (1) of section 316.2128, Florida
809 Statutes, is amended to read:

810 316.2128 Operation of motorized scooters and miniature
811 motorcycles; requirements for sales.-

812 (1) A person who engages in the business of, serves in the
813 capacity of, or acts as a commercial seller of motorized
814 scooters or miniature motorcycles in this state must prominently
815 display at his or her place of business a notice that such
816 vehicles are not legal to operate on public roads, may not be
817 registered as motor vehicles, and may not be operated on
818 sidewalks unless authorized by an ordinance enacted pursuant to
819 s. 316.008(7)(a) ~~316.008(7)~~ or s. 316.212(8). The required
820 notice must also appear in all forms of advertising offering
821 motorized scooters or miniature motorcycles for sale. The notice
822 and a copy of this section must also be provided to a consumer



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823 prior to the consumer's purchasing or becoming obligated to
824 purchase a motorized scooter or a miniature motorcycle.

825 Section 26. Paragraph (a) of subsection (2) of section
826 316.613, Florida Statutes, is amended to read:

827 316.613 Child restraint requirements.—

828 (2) As used in this section, the term "motor vehicle" means
829 a motor vehicle as defined in s. 316.003 that is operated on the
830 roadways, streets, and highways of the state. The term does not
831 include:

832 (a) A school bus as defined in s. 316.003 ~~316.003(68)~~.

833 Section 27. Subsection (1) of section 655.960, Florida
834 Statutes, is amended to read:

835 655.960 Definitions; ss. 655.960-655.965.—As used in this
836 section and ss. 655.961-655.965, unless the context otherwise
837 requires:

838 (1) "Access area" means any paved walkway or sidewalk which
839 is within 50 feet of any automated teller machine. The term does
840 not include any street or highway open to the use of the public,
841 as defined in s. 316.003(79) (a) or (b) ~~316.003(77)~~ (a) or (b),
842 including any adjacent sidewalk, as defined in s. 316.003.

843
844 ===== T I T L E A M E N D M E N T =====

845 And the title is amended as follows:

846 Delete lines 2 - 130

847 and insert:

848 An act relating to transportation; amending s.

849 316.003, F.S.; revising and providing definitions;

850 amending s. 316.008, F.S.; authorizing operation of

851 personal delivery devices within a county or



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852 municipality under certain circumstances; providing
853 construction; providing exceptions; creating s.
854 316.0898, F.S.; requiring the Department of
855 Transportation, in consultation with the Department of
856 Highway Safety and Motor Vehicles, to develop the
857 Florida Smart City Challenge grant program; specifying
858 requirements for grant program applicants;
859 establishing goals for the grant program; requiring
860 the Department of Transportation to develop specified
861 criteria for the program grants and a plan for
862 promotion of the grant program; authorizing the
863 Department of Transportation to contract with a third
864 party that demonstrates certain knowledge and
865 expertise for a specified purpose; requiring the
866 Department of Transportation to submit certain
867 information regarding the grant program to the
868 Governor and the Legislature by a specified date;
869 providing for repeal; creating s. 316.2071, F.S.;
870 providing requirements for the operation of personal
871 delivery devices; requiring specified insurance
872 coverage; amending s. 316.545, F.S.; conforming a
873 cross-reference; providing for the calculation of
874 fines for unlawful weight and load for a vehicle
875 fueled by natural gas; requiring the vehicle operator
876 to present a certain written certification upon
877 request by a weight inspector or law enforcement
878 officer; prescribing a maximum actual gross vehicle
879 weight for vehicles fueled by natural gas; providing
880 applicability; creating s. 316.851, F.S.; requiring an



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881 autonomous vehicle used by a transportation network
882 company to be covered by automobile insurance, subject
883 to certain requirements; requiring an autonomous
884 vehicle used to provide a transportation service to
885 carry in the vehicle proof of coverage satisfying
886 certain requirements at all times while operating in
887 autonomous mode; creating s. 316.853, F.S.; defining
888 the term "automated mobility district"; requiring the
889 Department of Transportation to designate automated
890 mobility districts; requiring the department to
891 consider applicable criteria from federal agencies for
892 automated mobility districts in determining
893 eligibility of a community for the designation;
894 amending s. 319.145, F.S.; requiring an autonomous
895 vehicle registered in this state to be capable of
896 bringing the vehicle to a full stop when an alert is
897 given if the human operator does not, or is not able
898 to, take control of the autonomous vehicle, or if a
899 human operator is not physically present in the
900 vehicle; amending s. 320.01, F.S.; excluding personal
901 delivery devices from the definition of the term
902 "motor vehicle"; amending s. 320.02, F.S.; exempting a
903 personal delivery device from certain registration and
904 insurance requirements; amending ss. 324.021 and
905 324.022, F.S.; excluding personal delivery devices
906 from the definition of the term "motor vehicle";
907 amending s. 335.074, F.S.; requiring bridges on public
908 transportation facilities to be inspected for certain
909 purposes at regular intervals as required by the



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910 Federal Highway Administration; creating s. 335.094,
911 F.S.; providing legislative intent; requiring the
912 department to establish a process, including any forms
913 deemed necessary by the department, for submitting
914 applications for installation of a memorial marker;
915 specifying persons who may submit such applications to
916 the department; requiring the department to establish
917 criteria for the design and fabrication of memorial
918 markers; authorizing the department to install a
919 certain sign at no charge to an applicant; providing
920 that memorial markers may incorporate the available
921 emblems of belief approved by the United States
922 Department of Veterans Affairs National Cemetery
923 Administration upon the request of the applicant and
924 payment of a reasonable fee set by the department to
925 offset production costs; defining the term "emblem of
926 belief"; authorizing an applicant to request a new
927 emblem of belief not specifically approved by the
928 United States Department of Veterans Affairs National
929 Cemetery Administration for inscription on a memorial
930 marker, subject to certain requirements; requiring the
931 department, under certain circumstances, to notify an
932 applicant of any missing information and that no
933 further action on the application will be taken until
934 the missing information is provided; providing
935 requirements for placement of the memorial marker by
936 the department; requiring the department to remove a
937 memorial marker if the department determines the
938 presence of the marker creates a safety hazard,



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939 subject to certain requirements; amending s. 337.11,
940 F.S.; increasing the allowable amount for contracts
941 for construction and maintenance which the department
942 may enter into, in certain circumstances, without
943 advertising and receiving competitive bids; amending
944 s. 338.227, F.S.; providing that certain bonds are not
945 required to be validated but may be validated at the
946 option of the Division of Bond Finance; providing
947 filing, notice, and service requirements for
948 complaints and circuit court orders concerning such
949 validation; amending s. 339.135, F.S.; providing an
950 additional exception related to the amendment of
951 adopted work programs when an emergency exists;
952 amending s. 339.2405, F.S.; replacing the Florida
953 Highway Beautification Council within the department
954 with the Florida Highway Beautification Grant Program;
955 providing the purpose of the program; providing duties
956 of the department; conforming provisions to changes
957 made by the act; amending s. 343.52, F.S.; defining
958 the term "department"; amending s. 343.54, F.S.;
959 prohibiting the South Florida Regional Transportation
960 Authority from entering into, extending, or renewing
961 certain contracts or other agreements without the
962 department's prior review and written approval if such
963 contracts or agreements may be funded with funds
964 provided by the department; amending s. 343.58, F.S.;
965 providing that certain funds provided to the authority
966 by the department constitute state financial
967 assistance for specified purposes, subject to certain



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968 requirements; requiring the department to provide
969 certain funds in accordance with the terms of an
970 agreement between the authority and the department;
971 authorizing the department to advance the authority a
972 certain amount of the total funding for a state fiscal
973 year at the beginning of each state fiscal year,
974 subject to certain requirements; requiring the
975 authority to promptly provide the department any
976 documentation or information, in addition to the
977 proposed annual budget, which is required by the
978 department for its evaluation of the proposed uses of
979 state funds; amending s. 215.82, F.S.; conforming a
980 provision to changes made by the act; amending s.
981 343.53, F.S.; conforming a cross-reference; amending
982 s. 427.011, F.S.; revising the definition of the term
983 "paratransit"; authorizing the Secretary of
984 Transportation to enroll the State of Florida in
985 federal pilot programs or projects for the collection
986 and study of data for the review of federal or state
987 roadway safety, infrastructure sustainability,
988 congestion mitigation, transportation system
989 efficiency, autonomous vehicle technology, or capacity
990 challenges; amending ss. 316.2128, 316.613, and
991 655.960, F.S.; conforming cross-references; providing
992 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:

1 **Senate Amendment to Amendment (463056) (with title**
2 **amendment)**

3
4 Between lines 296 and 297
5 insert:

6 Section 11. Section 320.0605, Florida Statutes, is amended
7 to read:

8 320.0605 Certificate of registration; possession required;
9 exception.—

10 (1) (a) The registration certificate or an official copy



536292

11 thereof, a true copy or electronic copy of rental or lease
12 documentation issued for a motor vehicle or issued for a
13 replacement vehicle in the same registration period, a temporary
14 receipt printed upon self-initiated electronic renewal of a
15 registration via the Internet, or a cab card issued for a
16 vehicle registered under the International Registration Plan
17 shall, at all times while the vehicle is being used or operated
18 on the roads of this state, be in the possession of the operator
19 thereof or be carried in the vehicle for which issued and shall
20 be exhibited upon demand of any authorized law enforcement
21 officer or any agent of the department, except for a vehicle
22 registered under s. 320.0657. ~~The provisions of~~ This section
23 does ~~do~~ not apply during the first 30 days after purchase of a
24 replacement vehicle. A violation of this section is a
25 noncriminal traffic infraction, punishable as a nonmoving
26 violation as provided in chapter 318.

27 (b)1. The act of presenting to a law enforcement officer or
28 an agent of the department an electronic device displaying an
29 electronic copy of rental or lease documentation does not
30 constitute consent for the officer or agent to access any
31 information on the device other than the displayed rental or
32 lease documentation.

33 2. The person who presents the device to the officer or
34 agent assumes the liability for any resulting damage to the
35 device.

36 (2) Rental or lease documentation that is sufficient to
37 satisfy the requirement in subsection (1) includes the
38 following:

39 (a) ~~Date of rental and time of exit from rental facility;~~



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- 40 (b) Rental station identification;
- 41 (c) Rental agreement number;
- 42 (d) Rental vehicle identification number;
- 43 (e) Rental vehicle license plate number and state of
- 44 registration;
- 45 (f) Vehicle's make, model, and color;
- 46 (g) Vehicle's mileage; and
- 47 (h) Authorized renter's name.

48
49 ===== T I T L E A M E N D M E N T =====

50 And the title is amended as follows:

51 Delete line 904

52 and insert:

53 insurance requirements; amending s. 320.0605, F.S.;

54 providing that an electronic copy of rental or lease

55 documentation issued for a motor vehicle or issued for

56 a replacement vehicle in the same registration period

57 may be in the possession of the operator or be carried

58 in the vehicle, to be exhibited upon demand of any

59 authorized law enforcement officer or any agent of the

60 Department of Highway Safety and Motor Vehicles;

61 providing that the act of presenting to a law

62 enforcement officer or an agent of the department an

63 electronic device displaying an electronic copy of

64 rental or lease documentation does not constitute

65 consent for the officer or agent to access any

66 information on the device other than the displayed

67 rental or lease documentation; providing that the

68 person who presents the device to the officer or agent



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69 assumes the liability for any resulting damage to the
70 device; revising information in rental or lease
71 documentation that is sufficient to satisfy a certain
72 requirement; amending ss. 324.021 and



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LEGISLATIVE ACTION

Senate

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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



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11 337.404 as the "authority," that have jurisdiction and control
12 of public roads or publicly owned rail corridors are authorized
13 to prescribe and enforce reasonable rules or regulations with
14 reference to the placing and maintaining across, on, or within
15 the right-of-way limits of any road or publicly owned rail
16 corridors under their respective jurisdictions any electric
17 transmission, voice telephone, telegraph, data, or other
18 communications services lines or wireless facilities; pole
19 lines; poles; railways; ditches; sewers; water, heat, or gas
20 mains; pipelines; fences; gasoline tanks and pumps; or other
21 structures referred to in this section and in ss. 337.402,
22 337.403, and 337.404 as the "utility." The department may enter
23 into a permit-delegation agreement with a governmental entity if
24 issuance of a permit is based on requirements that the
25 department finds will ensure the safety and integrity of
26 facilities of the Department of Transportation; however, the
27 permit-delegation agreement does not apply to facilities of
28 electric utilities as defined in s. 366.02(2).

29
30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

32 Delete line 83

33 and insert:

34 receiving competitive bids; amending s. 337.401, F.S.;

35 authorizing the Department of Transportation and

36 certain local governmental entities to prescribe and

37 enforce reasonable rules or regulations with reference

38 to the placing and maintaining across, on, or within

39 the right-of-way limits of any road or publicly owned



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40 rail corridors under their respective jurisdictions
41 any voice or data communications services lines or
42 wireless facilities; amending s. 338.227, F.S.;



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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

11 Constitution. No more than \$10 billion of bonds may be
12 outstanding to fund approved turnpike projects.

13 (2) The department may use turnpike revenues, the State
14 Transportation Trust Fund moneys allocated for turnpike projects
15 pursuant to s. 339.65, federal funds, and bond proceeds, and
16 shall use the most cost-efficient combination of such funds, in
17 developing a financial plan for funding turnpike projects. The
18 department must submit a report of the estimated cost for each
19 ongoing turnpike project and for each planned project to the
20 Legislature 14 days before the convening of the regular
21 legislative session. Verification of economic feasibility and
22 statements of environmental feasibility for individual turnpike
23 projects must be based on the entire project as approved.
24 Statements of environmental feasibility are not required for
25 those projects listed in s. 12, chapter 90-136, Laws of Florida,
26 for which the Project Development and Environmental Reports were
27 completed by July 1, 1990. All required environmental permits
28 must be obtained before the department may advertise for bids
29 for contracts for the construction of any turnpike project.

30 (3) Bonds may not be issued to fund a turnpike project
31 until the department has made a final determination that the
32 project is economically feasible in accordance with s. 338.221,
33 based on the most current information available.

34 (4) (a) Subject to the verification of economic feasibility
35 by the department in accordance with s. 338.221(8), the
36 department may include the acquisition of the Garcon Point
37 Bridge, and related assets, as a turnpike project in its
38 tentative work program in accordance with s. 338.223. Upon
39 approval of the acquisition through approval of the department's



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40 tentative work program in accordance with s. 339.135, the
41 department may acquire the Garcon Point Bridge, including
42 related assets, and as part of such acquisition may purchase
43 outstanding Santa Rosa Bay Bridge Authority bonds. The
44 department has the authority to enter into any agreements
45 necessary to implement the acquisition, including the purchase
46 of Santa Rosa Bay Bridge Authority bonds, and to specify the
47 terms and conditions thereof. Upon acquisition, the Garcon Point
48 Bridge shall become a part of the turnpike system. Pursuant to
49 section 11(f), Art. VII of the State Constitution, the issuance
50 of revenue bonds to finance the department's acquisition of the
51 Garcon Point Bridge is approved.

52 (b) The acquisition price paid by the department shall
53 first be used to settle all claims of bondholders of the Santa
54 Rosa Bay Bridge Authority Revenue Bonds, Series 1996.

55 (c) No toll rate increase may be imposed on the Garcon
56 Point Bridge by the authority, the department, or the trustee
57 for bondholders, in connection with the acquisition of the
58 bridge by the department. Following any acquisition by the
59 department, no increase in tolls for use of the bridge shall be
60 permitted except as required by law or as required to comply
61 with the covenants contained in any resolution under which bonds
62 have been issued.

63 (d) Neither the department nor the state shall incur any
64 financial obligation for the acquisition of the Garcon Point
65 Bridge in excess of forecasted gross revenues from the operation
66 of the bridge. Therefore, the total acquisition price paid by
67 the department may not exceed the present value of the gross
68 revenues (calculated without any increase in the existing toll



69 rate) anticipated to be collected from the operation of the
70 bridge between the date of a purchase agreement in accordance
71 with this section and the end of the anticipated remaining
72 useful life of the bridge as it exists as of the date of the
73 purchase agreement.

74 (e) Upon the acquisition of the Garcon Point Bridge as
75 authorized by this subsection, the October 23, 1996, Lease
76 Purchase Agreement between the authority and the department, as
77 amended, shall be terminated.

78
79 ===== T I T L E A M E N D M E N T =====

80 And the title is amended as follows:

81 Delete line 88

82 and insert:

83 court orders concerning such validation; amending s.
84 338.2275, F.S.; authorizing the department to include
85 the acquisition of the Garcon Point Bridge and related
86 assets as a turnpike project in the department's
87 tentative work program, subject to certain
88 requirements; authorizing the department to acquire
89 the bridge and outstanding Santa Rosa Bay Bridge
90 Authority bonds upon approval of the acquisition
91 through approval of the department's tentative work
92 program; authorizing the department to enter into
93 necessary agreements to implement the acquisition and
94 to specify the terms and conditions thereof; providing
95 that the bridge becomes a part of the turnpike system
96 upon its acquisition; approving the issuance of
97 revenue bonds; requiring the acquisition price paid by



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98 the department to first be used to settle all claims
99 of the holders of certain Santa Rosa Bay Bridge
100 Authority Revenue Bonds; prohibiting a toll rate
101 increase in connection with the acquisition of the
102 bridge; prohibiting any increase in tolls for use of
103 the bridge following its acquisition, except as
104 required by law or to comply with bond covenants;
105 prohibiting the department or the state from incurring
106 any financial obligation for the acquisition in excess
107 of certain gross revenues; providing that the
108 acquisition price paid by the department may not
109 exceed the present value of certain gross revenues;
110 terminating a certain lease-purchase agreement between
111 the Santa Rosa Bay Bridge Authority and the department
112 upon the acquisition of the Garcon Point Bridge;
113 repealing part IV of chapter 348, F.S., relating to
114 the Santa Rosa Bay Bridge Authority, upon acquisition
115 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,



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11 roads, or highways if any of the following conditions exist:

12 (a) Any area of the tire's tread is worn to 2/32-inch tread
13 depth or less.

14 (b) Damage to the tire, including any cut, crack, bulge,
15 puncture, scrape, or wear, that exposes the reinforcing plies of
16 the tire.

17 (c) The tire has been repaired in one or more of the
18 following manners:

19 1. A repair made in the tread shoulder or belt edge area of
20 the tire.

21 2. A puncture repair using a cured rubber stem or plug
22 through to the outside of the tire instead of the puncture being
23 patched or sealed on the inside of the tire.

24 3. A repair to the sidewall or bead area of the tire.

25 4. A repair of a puncture larger than one-fourth of an
26 inch.

27 (d) The tire shows evidence of a temporary tire sealant
28 having been used without a subsequent proper repair.

29 (e) The tire identification number has been defaced or
30 removed.

31 (f) The tire has inner liner or bead damage.

32 (g) The tire shows evidence of internal separation, such as
33 a bulge or an area of irregular tread wear.

34 (2) A person who knowingly violates this section commits a
35 deceptive and unfair trade practice actionable under the Florida
36 Deceptive and Unfair Trade Practices Act pursuant to part II of
37 this chapter.

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



268346

40 And the title is amended as follows:
41 Delete line 123
42 and insert:
43 "paratransit"; creating s. 501.977, F.S.; prohibiting
44 the installation, for compensation, of certain tires
45 on specified motor vehicles; specifying what
46 constitutes an unsafe used tire; providing that
47 violations of the act are deceptive and unfair trade
48 practices; authorizing the Secretary of



788242

LEGISLATIVE ACTION

Senate

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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



788242

11 Constitution. No more than \$10 billion of bonds may be
12 outstanding to fund approved turnpike projects.

13 (2) The department may use turnpike revenues, the State
14 Transportation Trust Fund moneys allocated for turnpike projects
15 pursuant to s. 339.65, federal funds, and bond proceeds, and
16 shall use the most cost-efficient combination of such funds, in
17 developing a financial plan for funding turnpike projects. The
18 department must submit a report of the estimated cost for each
19 ongoing turnpike project and for each planned project to the
20 Legislature 14 days before the convening of the regular
21 legislative session. Verification of economic feasibility and
22 statements of environmental feasibility for individual turnpike
23 projects must be based on the entire project as approved.
24 Statements of environmental feasibility are not required for
25 those projects listed in s. 12, chapter 90-136, Laws of Florida,
26 for which the Project Development and Environmental Reports were
27 completed by July 1, 1990. All required environmental permits
28 must be obtained before the department may advertise for bids
29 for contracts for the construction of any turnpike project.

30 (3) Bonds may not be issued to fund a turnpike project
31 until the department has made a final determination that the
32 project is economically feasible in accordance with s. 338.221,
33 based on the most current information available.

34 (4) (a) Subject to the verification of economic feasibility
35 by the department in accordance with s. 338.221(8), the
36 department may include the acquisition of the Garcon Point
37 Bridge, and related assets, as a turnpike project in its
38 tentative work program in accordance with s. 338.223. Upon
39 approval of the acquisition through approval of the department's



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40 tentative work program in accordance with s. 339.135, the
41 department may acquire the Garcon Point Bridge, including
42 related assets, and as part of such acquisition may purchase
43 outstanding Santa Rosa Bay Bridge Authority bonds. The
44 department has the authority to enter into any agreements
45 necessary to implement the acquisition, including the purchase
46 of Santa Rosa Bay Bridge Authority bonds, and to specify the
47 terms and conditions thereof. Upon acquisition, the Garcon Point
48 Bridge shall become a part of the turnpike system. Pursuant to
49 section 11(f), Art. VII of the State Constitution, the issuance
50 of revenue bonds to finance the department's acquisition of the
51 Garcon Point Bridge is approved.

52 (b) The acquisition price paid by the department shall
53 first be used to settle all claims of bondholders of the Santa
54 Rosa Bay Bridge Authority Revenue Bonds, Series 1996.

55 (c) No toll rate increase may be imposed on the Garcon
56 Point Bridge by the authority, the department, or the trustee
57 for bondholders, in connection with the acquisition of the
58 bridge by the department. Following any acquisition by the
59 department, no increase in tolls for use of the bridge shall be
60 permitted except as required by law or as required to comply
61 with the covenants contained in any resolution under which bonds
62 have been issued.

63 (d) Neither the department nor the state shall incur any
64 financial obligation for the acquisition of the Garcon Point
65 Bridge in excess of forecasted gross revenues from the operation
66 of the bridge. Therefore, the total acquisition price paid by
67 the department may not exceed the present value of the gross
68 revenues (calculated without any increase in the existing toll



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69 rate) anticipated to be collected from the operation of the
70 bridge between the date of a purchase agreement in accordance
71 with this section and the end of the anticipated remaining
72 useful life of the bridge as it exists as of the date of the
73 purchase agreement.

74 (e) Upon the acquisition of the Garcon Point Bridge as
75 authorized by this subsection, the October 23, 1996, Lease
76 Purchase Agreement between the authority and the department, as
77 amended, shall be terminated.

78 Section 19. Upon acquisition of the Garcon Point Bridge as
79 authorized by subsection (4) of s. 338.2275, part IV of chapter
80 348, consisting of ss. 348.965-348.9781, is repealed.

81
82 ===== T I T L E A M E N D M E N T =====

83 And the title is amended as follows:

84 Delete line 88

85 and insert:

86 court orders concerning such validation; amending s.
87 338.2275, F.S.; authorizing the department to include
88 the acquisition of the Garcon Point Bridge and related
89 assets as a turnpike project in the department's
90 tentative work program, subject to certain
91 requirements; authorizing the department to acquire
92 the bridge and outstanding Santa Rosa Bay Bridge
93 Authority bonds upon approval of the acquisition
94 through approval of the department's tentative work
95 program; authorizing the department to enter into
96 necessary agreements to implement the acquisition and
97 to specify the terms and conditions thereof; providing



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98 that the bridge becomes a part of the turnpike system
99 upon its acquisition; approving the issuance of
100 revenue bonds; requiring the acquisition price paid by
101 the department to first be used to settle all claims
102 of the holders of certain Santa Rosa Bay Bridge
103 Authority Revenue Bonds; prohibiting a toll rate
104 increase in connection with the acquisition of the
105 bridge; prohibiting any increase in tolls for use of
106 the bridge following its acquisition, except as
107 required by law or to comply with bond covenants;
108 prohibiting the department or the state from incurring
109 any financial obligation for the acquisition in excess
110 of certain gross revenues; providing that the
111 acquisition price paid by the department may not
112 exceed the present value of certain gross revenues;
113 terminating a certain lease-purchase agreement between
114 the Santa Rosa Bay Bridge Authority and the department
115 upon the acquisition of the Garcon Point Bridge;
116 repealing part IV of chapter 348, F.S., relating to
117 the Santa Rosa Bay Bridge Authority, upon acquisition
118 of the bridge; amending s.



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LEGISLATIVE ACTION

Senate

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House

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



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11 ramps, bridges, and other construction within the interstate
12 right-of-way can hinder the ability of the public to view
13 existing permitted signs; and allowing a minimal height increase
14 based upon the height of the obstruction is reasonable.

15 Section 20. Notwithstanding general law to the contrary, in
16 the event that a properly permitted sign on an interstate
17 highway within Broward County is subsequently obstructed by the
18 construction of a ramp, braided bridge, or other permanent
19 visual obstruction within the interstate right-of-way, the
20 allowable height of the permitted sign shall be measured from
21 the top of the visual obstruction. However, the height of the
22 sign may not exceed 100 feet above the crown of the main
23 traveled way of the road to which the sign is permitted
24 regardless of the height of the visual obstruction.

25 Section 21. The Department of Transportation is authorized
26 to promulgate any rules or forms necessary to implement this
27 act.

28
29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 Delete line 130

32 and insert:

33 challenges; providing legislative findings; providing
34 for an alternate means to measure permitted sign
35 height on interstate highways within Broward County;
36 providing for the Department of Transportation to
37 promulgate rules; providing effective dates, one of
38 which is



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

1 A bill to be entitled
2 An act relating to transportation; creating s.
3 316.0898, F.S.; requiring the Department of
4 Transportation, in consultation with the Department of
5 Highway Safety and Motor Vehicles, to develop the
6 Florida Smart City Challenge grant program; specifying
7 requirements for grant program applicants;
8 establishing goals for the grant program; requiring
9 the Department of Transportation to develop specified
10 criteria for the program grants and a plan for
11 promotion of the grant program; authorizing the
12 Department of Transportation to contract with a third
13 party that demonstrates certain knowledge and
14 expertise for a specified purpose; requiring the
15 Department of Transportation to submit certain
16 information regarding the grant program to the
17 Governor and the Legislature by a specified date;
18 providing for repeal; amending s. 316.545, F.S.;
19 providing for the calculation of fines for unlawful
20 weight and load for a vehicle fueled by natural gas;
21 requiring the vehicle operator to present a certain
22 written certification upon request by a weight
23 inspector or law enforcement officer; prescribing a
24 maximum actual gross vehicle weight for vehicles
25 fueled by natural gas; providing applicability;
26 creating s. 316.851, F.S.; requiring an autonomous



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27 vehicle used by a transportation network company to be
28 covered by automobile insurance, subject to certain
29 requirements; requiring an autonomous vehicle used to
30 provide a transportation service to carry in the
31 vehicle proof of coverage satisfying certain
32 requirements at all times while operating in
33 autonomous mode; creating s. 316.853, F.S.; defining
34 the term "automated mobility district"; requiring the
35 Department of Transportation to designate automated
36 mobility districts; requiring the department to
37 consider applicable criteria from federal agencies for
38 automated mobility districts in determining
39 eligibility of a community for the designation;
40 amending s. 319.145, F.S.; requiring an autonomous
41 vehicle registered in this state to be capable of
42 bringing the vehicle to a full stop when an alert is
43 given if the human operator does not, or is not able
44 to, take control of the autonomous vehicle, or if a
45 human operator is not physically present in the
46 vehicle; amending s. 335.074, F.S.; requiring bridges
47 on public transportation facilities to be inspected
48 for certain purposes at regular intervals as required
49 by the Federal Highway Administration; creating s.
50 335.094, F.S.; providing legislative intent; requiring
51 the department to establish a process, including any
52 forms deemed necessary by the department, for
53 submitting applications for installation of a memorial
54 marker; specifying persons who may submit such
55 applications to the department; requiring the



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56 department to establish criteria for the design and
57 fabrication of memorial markers; authorizing the
58 department to install a certain sign at no charge to
59 an applicant; providing that memorial markers may
60 incorporate the available emblems of belief approved
61 by the United States Department of Veterans Affairs
62 National Cemetery Administration upon the request of
63 the applicant and payment of a reasonable fee set by
64 the department to offset production costs; defining
65 the term "emblem of belief"; authorizing an applicant
66 to request a new emblem of belief not specifically
67 approved by the United States Department of Veterans
68 Affairs National Cemetery Administration for
69 inscription on a memorial marker, subject to certain
70 requirements; requiring the department, under certain
71 circumstances, to notify an applicant of any missing
72 information and that no further action on the
73 application will be taken until the missing
74 information is provided; providing requirements for
75 placement of the memorial marker by the department;
76 requiring the department to remove a memorial marker
77 if the department determines the presence of the
78 marker creates a safety hazard, subject to certain
79 requirements; amending s. 337.11, F.S.; increasing the
80 allowable amount for contracts for construction and
81 maintenance which the department may enter into, in
82 certain circumstances, without advertising and
83 receiving competitive bids; amending s. 338.227, F.S.;
84 providing that certain bonds are not required to be



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85 validated but may be validated at the option of the
86 Division of Bond Finance; providing filing, notice,
87 and service requirements for complaints and circuit
88 court orders concerning such validation; amending s.
89 339.135, F.S.; providing an additional exception
90 related to the amendment of adopted work programs when
91 an emergency exists; amending s. 339.2405, F.S.;
92 replacing the Florida Highway Beautification Council
93 within the department with the Florida Highway
94 Beautification Grant Program; providing the purpose of
95 the program; providing duties of the department;
96 conforming provisions to changes made by the act;
97 amending s. 343.52, F.S.; defining the term
98 "department"; amending s. 343.54, F.S.; prohibiting
99 the South Florida Regional Transportation Authority
100 from entering into, extending, or renewing certain
101 contracts or other agreements without the department's
102 prior review and written approval if such contracts or
103 agreements may be funded with funds provided by the
104 department; amending s. 343.58, F.S.; providing that
105 certain funds provided to the authority by the
106 department constitute state financial assistance for
107 specified purposes, subject to certain requirements;
108 requiring the department to provide certain funds in
109 accordance with the terms of an agreement between the
110 authority and the department; authorizing the
111 department to advance the authority a certain amount
112 of the total funding for a state fiscal year at the
113 beginning of each state fiscal year, subject to



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114 certain requirements; requiring the authority to
115 promptly provide the department any documentation or
116 information, in addition to the proposed annual
117 budget, which is required by the department for its
118 evaluation of the proposed uses of state funds;
119 amending s. 215.82, F.S.; conforming a provision to
120 changes made by the act; amending s. 343.53, F.S.;
121 conforming a cross-reference; amending s. 427.011,
122 F.S.; revising the definition of the term
123 "paratransit"; authorizing the Secretary of
124 Transportation to enroll the State of Florida in
125 federal pilot programs or projects for the collection
126 and study of data for the review of federal or state
127 roadway safety, infrastructure sustainability,
128 congestion mitigation, transportation system
129 efficiency, autonomous vehicle technology, or capacity
130 challenges; providing effective dates, one of which is
131 contingent.

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

134
135 Section 1. Section 316.0898, Florida Statutes, is created
136 to read:

137 316.0898 Florida Smart City Challenge grant program.-

138 (1) The Department of Transportation, in consultation with
139 the Department of Highway Safety and Motor Vehicles, shall
140 develop the Florida Smart City Challenge grant program and shall
141 establish grant award requirements for municipalities or regions
142 for the purpose of receiving grant awards. Grant applicants must



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143 demonstrate and document the adoption of emerging technologies
144 and their impact on the transportation system and must address
145 at least the following focus areas:

146 (a) Autonomous vehicles.

147 (b) Connected vehicles.

148 (c) Sensor-based infrastructure.

149 (d) Collecting and using data.

150 (e) Electric vehicles, including charging stations.

151 (f) Developing strategic models and partnerships.

152 (2) The goals of the grant program include, but are not
153 limited to:

154 (a) Identifying transportation challenges and identifying
155 how emerging technologies can address those challenges.

156 (b) Determining the emerging technologies and strategies
157 that have the potential to provide the most significant impacts.

158 (c) Encouraging municipalities to take significant steps to
159 integrate emerging technologies into their day-to-day
160 operations.

161 (d) Identifying the barriers to implementing the grant
162 program and communicating those barriers to the Legislature and
163 appropriate agencies and organizations.

164 (e) Leveraging the initial grant to attract additional
165 public and private investments.

166 (f) Increasing the state's competitiveness in the pursuit
167 of grants from the United States Department of Transportation,
168 the United States Department of Energy, and other federal
169 agencies.

170 (g) Committing to the continued operation of programs
171 implemented in connection with the grant.



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172 (h) Serving as a model for municipalities nationwide.
173 (i) Documenting the costs and impacts of the grant program
174 and lessons learned during implementation.
175 (j) Identifying solutions that will demonstrate local or
176 regional economic impact.
177 (3) The Department of Transportation shall develop
178 eligibility, application, and selection criteria for the program
179 grants and a plan for the promotion of the grant program to
180 municipalities or regions of this state as an opportunity to
181 compete for grant funding, including the award of grants to a
182 single recipient and secondary grants to specific projects of
183 merit within other applications. The Department of
184 Transportation may contract with a third party that demonstrates
185 knowledge and expertise in the focuses and goals of this section
186 to provide guidance in the development of the requirements of
187 this section.
188 (4) On or before January 1, 2018, the Department of
189 Transportation shall submit the grant program guidelines and
190 plans for promotion of the grant program to the Governor, the
191 President of the Senate, and the Speaker of the House of
192 Representatives.
193 (5) This section expires July 1, 2018.
194 Section 2. Present paragraphs (c) and (d) of subsection (3)
195 of section 316.545, Florida Statutes, are redesignated as
196 paragraphs (d) and (e), respectively, and a new paragraph (c) is
197 added to that subsection, to read:
198 316.545 Weight and load unlawful; special fuel and motor
199 fuel tax enforcement; inspection; penalty; review.-
200 (3)



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201 (c)1. For a vehicle fueled by natural gas, the fine is
202 calculated by reducing the actual gross vehicle weight by the
203 certified weight difference between the natural gas tank and
204 fueling system and a comparable diesel tank and fueling system.
205 Upon the request of a weight inspector or a law enforcement
206 officer, the vehicle operator shall present a written
207 certification that identifies the weight of the natural gas tank
208 and fueling system and the difference in weight of a comparable
209 diesel tank and fueling system. The written certification must
210 originate from the vehicle manufacturer or the installer of the
211 natural gas tank and fueling system.
212 2. The actual gross vehicle weight for vehicles fueled by
213 natural gas may not exceed 82,000 pounds, excluding the weight
214 allowed for idle-reduction technology under paragraph (b).
215 3. This paragraph does not apply to vehicles described in
216 s. 316.535(6).
217 Section 3. Effective upon the same date that SB 340 or
218 similar legislation takes effect, if such legislation is adopted
219 in the 2017 Regular Session or any extension thereof and becomes
220 a law, section 316.851, Florida Statutes, is created to read:
221 316.851 Autonomous vehicles; providing prearranged rides.-
222 (1) An autonomous vehicle used by a transportation network
223 company to provide a prearranged ride must be covered by
224 automobile insurance as required by s. 627.748, regardless of
225 whether a human operator is physically present within the
226 vehicle when the ride occurs. When an autonomous vehicle is
227 logged on to a digital network but is not engaged in a
228 prearranged ride, the autonomous vehicle must maintain insurance
229 coverage as defined in s. 627.748(7)(b).



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230 (2) An autonomous vehicle used to provide a transportation
231 service shall carry in the vehicle proof of coverage satisfying
232 the requirements of this section at all times while operating in
233 autonomous mode.

234 Section 4. Section 316.853, Florida Statutes, is created to
235 read:

236 316.853 Automated mobility districts.-

237 (1) For the purpose of this section, an "automated mobility
238 district" means a master planned development or combination of
239 contiguous developments in which the deployment of autonomous
240 vehicles as defined in s. 316.003 as the basis for a shared
241 mobility system is a stated goal or objective of the development
242 or developments.

243 (2) The Department of Transportation shall designate
244 automated mobility districts.

245 (3) In determining the eligibility of a community for
246 designation as an automated mobility district, the Department of
247 Transportation shall consider applicable criteria from federal
248 agencies for automated mobility districts and apply those
249 criteria to eligible developments in this state.

250 Section 5. Paragraph (a) of subsection (1) of section
251 319.145, Florida Statutes, is amended to read:

252 319.145 Autonomous vehicles.-

253 (1) An autonomous vehicle registered in this state must
254 continue to meet applicable federal standards and regulations
255 for such motor vehicle. The vehicle must:

256 (a) Have a system to safely alert the operator if an
257 autonomous technology failure is detected while the autonomous
258 technology is engaged. When an alert is given, the system must:



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259 1. Require the operator to take control of the autonomous
260 vehicle; or

261 2. If the human operator does not, or is not able to, take
262 control of the autonomous vehicle, or if a human operator is not
263 physically present in the vehicle, be capable of bringing the
264 vehicle to a complete stop.

265 Section 6. Subsection (2) of section 335.074, Florida
266 Statutes, is amended to read:

267 335.074 Safety inspection of bridges.-

268 (2) At regular intervals as required by the Federal Highway
269 Administration not to exceed 2 years, each bridge on a public
270 transportation facility shall be inspected for structural
271 soundness and safety for the passage of traffic on such bridge.
272 The thoroughness with which bridges are to be inspected shall
273 depend on such factors as age, traffic characteristics, state of
274 maintenance, and known deficiencies. The governmental entity
275 having maintenance responsibility for any such bridge shall be
276 responsible for having inspections performed and reports
277 prepared in accordance with the provisions contained herein.

278 Section 7. Effective October 1, 2017, section 335.094,
279 Florida Statutes, is created to read:

280 335.094 Highway memorial markers; public safety awareness.-

281 (1) In recognition of the department's mission to provide a
282 safe transportation system, the Legislature intends that the
283 department allow the use of highway memorial markers at or near
284 the location of traffic-related fatalities on the State Highway
285 System to raise public awareness and remind motorists to drive
286 safely by memorializing people who have died as a result of a
287 traffic-related crash.



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288 (2) The department shall establish a process, including any
289 forms deemed necessary by the department, for submitting
290 applications for installation of a memorial marker as authorized
291 in this section. Applications may be submitted to the department
292 by:

293 (a) A member of the decedent's family, which includes the
294 decedent's spouse; a child, parent, or sibling of the decedent,
295 whether biological, adopted, or step relation; and any lineal or
296 collateral descendant of the decedent; or

297 (b) Any individual who is responsible under the laws of
298 this state for the disposition of the unclaimed remains of the
299 decedent or for other matters relating to the interment or
300 memorialization of the decedent.

301 (3) The department shall establish criteria for the design
302 and fabrication of memorial markers, including, but not limited
303 to, marker components, fabrication material, and size.

304 (4) (a) The department may install a round aluminum sign
305 panel with white background and black letters uniformly
306 inscribed "Drive Safely, In Memory Of" followed by the
307 decedent's name at no charge to the applicant.

308 (b) Upon the request of the applicant and payment of a
309 reasonable fee set by the department to offset production costs,
310 memorial markers may incorporate the available emblems of belief
311 approved by the United States Department of Veterans Affairs
312 National Cemetery Administration. For purposes of this section,
313 an "emblem of belief" means an emblem that represents the
314 decedent's religious affiliation or sincerely held religious
315 belief system, or a sincerely held belief system that was
316 functionally equivalent to a religious belief system in the life



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317 of the decedent. The religion or belief system represented by an
318 emblem need not be associated with or endorsed by a church,
319 group, or organized denomination. The term does not include
320 emblems, graphics, logos, or symbols that relate to social,
321 cultural, ethnic, civic, fraternal, trade, commercial,
322 political, professional, or military status.

323 (c) An applicant may request a new emblem of belief not
324 specifically approved by the United States Department of
325 Veterans Affairs National Cemetery Administration for
326 inscription on a memorial marker as follows:

327 1. The applicant must certify that the proposed new emblem
328 of belief represents the decedent's religious affiliation or
329 sincerely held religious belief system, or a sincerely held
330 belief system that was functionally equivalent to a religious
331 belief system in the life of the decedent.

332 2. In the absence of evidence to the contrary, the
333 department shall accept as genuine an applicant's statement of
334 the religious or functionally equivalent belief system of a
335 decedent.

336 (d) If the department determines that any application under
337 this section is incomplete, the department must notify the
338 applicant in writing of any missing information and must notify
339 the applicant in writing that no further action on the
340 application will be taken until the missing information is
341 provided.

342 (5) The department shall place a memorial marker for any
343 approved application at or near the location of the fatality in
344 a fashion that reduces driver distraction and positions the
345 marker as near the right-of-way line as possible.



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346 (6) Memorial markers are intended to remind passing
347 motorists of the dangers of unsafe driving and are not intended
348 for visitation. The department shall remove a memorial marker if
349 the department determines the presence of the marker creates a
350 safety hazard. In such cases, the department shall post a notice
351 near where the marker was located indicating that the marker has
352 been removed and provide contact information for pickup of the
353 marker. The department shall store any removed markers for at
354 least 60 days. If after 60 days the memorial is not claimed, the
355 department may dispose of the marker as it deems necessary.

356 Section 8. Paragraph (c) of subsection (6) of section
357 337.11, Florida Statutes, is amended to read:

358 337.11 Contracting authority of department; bids; emergency
359 repairs, supplemental agreements, and change orders; combined
360 design and construction contracts; progress payments; records;
361 requirements of vehicle registration.-

362 (6)

363 (c) When the department determines that it is in the best
364 interest of the public for reasons of public concern, economy,
365 improved operations, or safety, and only for contracts for
366 construction and maintenance which do not exceed \$250,000 when
367 circumstances dictate rapid completion of the work, the
368 department may, ~~up to the amount of \$120,000,~~ enter into
369 ~~contracts for construction and maintenance~~ without advertising
370 and receiving competitive bids. The department may enter into
371 such contracts only upon a determination that the work is
372 necessary for one of the following reasons:

373 1. To ensure timely completion of projects or avoidance of
374 undue delay for other projects;



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375 2. To accomplish minor repairs or construction and
376 maintenance activities for which time is of the essence and for
377 which significant cost savings would occur; or

378 3. To accomplish nonemergency work necessary to ensure
379 avoidance of adverse conditions that affect the safe and
380 efficient flow of traffic.

381
382 The department shall make a good faith effort to obtain two or
383 more quotes, if available, from qualified contractors before
384 entering into any contract. The department shall give
385 consideration to disadvantaged business enterprise
386 participation. However, when the work exists within the limits
387 of an existing contract, the department shall make a good faith
388 effort to negotiate and enter into a contract with the prime
389 contractor on the existing contract.

390 Section 9. Subsection (5) is added to section 338.227,
391 Florida Statutes, to read:

392 338.227 Turnpike revenue bonds.-

393 (5) Notwithstanding s. 215.82, bonds issued pursuant to
394 this section are not required to be validated pursuant to
395 chapter 75 but may be validated at the option of the Division of
396 Bond Finance. Any complaint about such validation must be filed
397 in the circuit court of the county in which the seat of state
398 government is situated, and the clerk shall publish the notice
399 as required by s. 75.06 only in the county in which the
400 complaint is filed. The complaint and order of the circuit court
401 must be served on the state attorney of the circuit in which the
402 action is pending.

403 Section 10. Paragraph (e) of subsection (7) of section



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404 339.135, Florida Statutes, is amended to read:
405 339.135 Work program; legislative budget request;
406 definitions; preparation, adoption, execution, and amendment.—
407 (7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—
408 (e) Notwithstanding paragraphs (d), ~~and (g), and (h)~~ and
409 ss. 216.177(2) and 216.351, the secretary may request the
410 Executive Office of the Governor to amend the adopted work
411 program when an emergency exists, as defined in s. 252.34, and
412 the emergency relates to the repair or rehabilitation of any
413 state transportation facility. The Executive Office of the
414 Governor may approve the amendment to the adopted work program
415 and amend that portion of the department's approved budget if a
416 delay incident to the notification requirements in paragraph (d)
417 would be detrimental to the interests of the state. However, the
418 department shall immediately notify the parties specified in
419 paragraph (d) and provide such parties written justification for
420 the emergency action within 7 days after approval by the
421 Executive Office of the Governor of the amendment to the adopted
422 work program and the department's budget. The adopted work
423 program may not be amended under this subsection without
424 certification by the comptroller of the department that there
425 are sufficient funds available pursuant to the 36-month cash
426 forecast and applicable statutes.
427 Section 11. Section 339.2405, Florida Statutes, is amended
428 to read:
429 339.2405 Florida Highway Beautification Grant Program
430 Council.—
431 (1) There is created within the Department of
432 Transportation the Florida Highway Beautification Grant Program



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433 ~~for the purpose of awarding grants to local governmental~~
434 ~~entities for beautification of roads on the State Highway System~~
435 ~~as provided in subsections (3) and (4). The department shall~~
436 ~~Council. It shall consist of seven members appointed by the~~
437 ~~Governor. All appointed members must be residents of this state.~~
438 ~~One member must be a licensed landscape architect, one member~~
439 ~~must be a representative of the Florida Federation of Garden~~
440 ~~Clubs, Inc., one member must be a representative of the Florida~~
441 ~~Nurserymen and Growers Association, one member must be a~~
442 ~~representative of the department as designated by the head of~~
443 ~~the department, one member must be a representative of the~~
444 ~~Department of Agriculture and Consumer Services, and two members~~
445 ~~must be private citizens. The members of the council shall serve~~
446 ~~at the pleasure of the Governor.~~
447 ~~(2) Each chair shall be selected by the council members and~~
448 ~~shall serve a 2-year term.~~
449 ~~(3) The council shall meet no less than semiannually at the~~
450 ~~call of the chair or, in the chair's absence or incapacity, at~~
451 ~~the call of the head of the department. Four members shall~~
452 ~~constitute a quorum for the purpose of exercising all of the~~
453 ~~powers of the council. A vote of the majority of the members~~
454 ~~present shall be sufficient for all actions of the council.~~
455 ~~(4) The council members shall serve without pay but shall~~
456 ~~be entitled to per diem and travel expenses pursuant to s.~~
457 ~~112.061.~~
458 ~~(5) A member of the council may not participate in any~~
459 ~~discussion or decision to recommend grants to any qualified~~
460 ~~local government with which the member is associated as a member~~
461 ~~of the governing body or as an employee or with which the member~~



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462 ~~has entered into a contractual arrangement.~~

463 ~~(6) The council may prescribe, amend, and repeal bylaws~~
464 ~~governing the manner in which the business of the council is~~
465 ~~conducted.~~

466 ~~(7)(a) The duties of the council shall be to:~~

467 ~~(a)1-~~ Provide information to local governments and local
468 highway beautification councils regarding the state highway
469 beautification grants program.

470 ~~(b)2-~~ Accept grant requests from local governments.

471 ~~(c)3-~~ Review grant requests for compliance with department
472 ~~council~~ rules.

473 ~~(d)4-~~ Establish rules for evaluating and prioritizing the
474 grant requests. The rules must include, but are not limited to,
475 an examination of each grant's aesthetic value, cost-
476 effectiveness, level of local support, feasibility of
477 installation and maintenance, and compliance with state and
478 federal regulations. Rules adopted by the department council
479 which it uses to evaluate grant applications must take into
480 consideration the contributions made by the highway
481 beautification project in preventing litter.

482 ~~(e)5-~~ Maintain a prioritized list of approved grant
483 requests. The list must include recommended funding levels for
484 each request and, if staged implementation is appropriate,
485 funding requirements for each stage shall be provided.

486 ~~6. Assess the feasibility of planting and maintaining~~
487 ~~indigenous wildflowers and plants, instead of sod groundcovers,~~
488 ~~along the rights-of-way of state roads and highways. In making~~
489 ~~such assessment, the council shall utilize data from other~~
490 ~~states which include indigenous wildflower and plant species in~~



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491 ~~their highway vegetative management systems.~~

492 ~~(b) The council may, at the request of the head of the~~
493 ~~department, review and make recommendations on any other highway~~
494 ~~beautification matters relating to the State Highway System.~~

495 ~~(8) The head of the department shall provide from existing~~
496 ~~personnel such staff support services to the council as are~~
497 ~~necessary to enable the council to fulfill its duties and~~
498 ~~responsibilities.~~

499 ~~(2)(9)~~ Local highway beautification councils may be created
500 by local governmental entities or by the Legislature. Prior to
501 being submitted to the department council, a grant request must
502 be approved by the local government or governments of the area
503 in which the project is located.

504 ~~(3)(10) The head of the department, after receiving~~
505 ~~recommendations from the council, shall award grants to local~~
506 ~~governmental entities that have submitted grant requests for~~
507 ~~beautification of roads on the State Highway System and which~~
508 ~~requests are on the council's approved list. The grants shall be~~
509 ~~awarded in the order they appear on the council's prioritized~~
510 ~~list and in accordance with available funding.~~

511 ~~(4)(11)~~ State highway beautification grants may be
512 requested only for projects to beautify through landscaping
513 roads on the State Highway System. The grant request shall
514 identify all costs associated with the project, including
515 sprinkler systems, plant materials, equipment, and labor. A
516 grant shall provide for the costs of purchase and installation
517 of a sprinkler system, the cost of plant materials and
518 fertilizer, and may provide for the costs for labor associated
519 with the installation of the plantings. Each local government



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520 that receives a grant ~~is shall be~~ responsible for any costs for
521 water, for the maintenance of the sprinkler system, for the
522 maintenance of the landscaped areas in accordance with a
523 maintenance agreement with the department, and, except as
524 otherwise provided in the grant, for any costs for labor
525 associated with the installation of the plantings. The
526 department may provide, by contract, services to maintain such
527 landscaping at a level not to exceed the cost of routine
528 maintenance of an equivalent unlandscaped area.

529 ~~(12) The council shall annually submit to the head of the~~
530 ~~Department of Transportation a proposal recommending the level~~
531 ~~of grant funding.~~

532 Section 12. Section 343.52, Florida Statutes, is reordered
533 and amended to read:

534 343.52 Definitions.—As used in this part, the term:

535 ~~(2)(1)~~ "Authority" means the South Florida Regional
536 Transportation Authority.

537 ~~(3)(2)~~ "Board" means the governing body of the authority.

538 ~~(4)~~ "Department" means the Department of Transportation.

539 ~~(1)(3)~~ "Area served" means Miami-Dade, Broward, and Palm
540 Beach Counties. However, this area may be expanded by mutual
541 consent of the authority and the board of county commissioners
542 of Monroe County. The authority may not expand into any
543 additional counties without the department's prior written
544 approval.

545 ~~(8)(4)~~ "Transit system" means a system used for the
546 transportation of people and goods by means of, without
547 limitation, a street railway, an elevated railway having a fixed
548 guideway, a commuter railroad, a subway, motor vehicles, or



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549 motor buses, and includes a complete system of tracks, stations,
550 and rolling stock necessary to effectuate passenger service to
551 or from the surrounding regional municipalities.

552 ~~(7)(5)~~ "Transit facilities" means property, avenues of
553 access, equipment, or buildings built and installed in Miami-
554 Dade, Broward, and Palm Beach Counties which are required to
555 support a transit system.

556 (6) "Member" means the individuals constituting the board.

557 ~~(5)(7)~~ "Feeder transit services" means a transit system
558 that transports passengers to or from stations within or across
559 counties.

560 Section 13. Present subsections (4) and (5) of section
561 343.54, Florida Statutes, are redesignated as subsections (5)
562 and (6), respectively, and a new subsection (4) is added to that
563 section, to read:

564 343.54 Powers and duties.—

565 (4) Notwithstanding any other provision of this part, the
566 authority may not enter into, extend, or renew any contract or
567 other agreement under this part without the department's prior
568 review and written approval of the authority's proposed
569 expenditures if such contract or agreement may be funded, in
570 whole or in part, with funds provided by the department.

571 Section 14. Paragraph (c) of subsection (4) of section
572 343.58, Florida Statutes, is amended to read:

573 343.58 County funding for the South Florida Regional
574 Transportation Authority.—

575 (4) Notwithstanding any other provision of law to the
576 contrary and effective July 1, 2010, until as provided in
577 paragraph (d), the department shall transfer annually from the



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578 State Transportation Trust Fund to the South Florida Regional
579 Transportation Authority the amounts specified in subparagraph
580 (a)1. or subparagraph (a)2.
581 (c)1. Funds provided to the authority by the department
582 under this subsection constitute state financial assistance
583 provided to a nonstate entity to carry out a state project
584 subject to the provisions of ss. 215.97 and 215.971. The
585 department shall provide the funds in accordance with the terms
586 of a written agreement to be entered into between the authority
587 and the department which shall provide for department review,
588 approval and audit of authority expenditure of such funds, and
589 shall include such other provisions as are required by
590 applicable law. The department is specifically authorized to
591 agree to advance the authority one-fourth of the total funding
592 provided under this subsection for a state fiscal year at the
593 beginning of each state fiscal year, with monthly payments over
594 the fiscal year on a reimbursement basis as supported by
595 invoices and such additional documentation and information as
596 the department may reasonably require, and a reconciliation of
597 the advance against remaining invoices in the last quarter of
598 the fiscal year may not be committed by the authority without
599 the approval of the department, which may not be unreasonably
600 withheld. At least 90 days before advertising any procurement or
601 renewing any existing contract that will rely on state funds for
602 payment, the authority shall notify the department of the
603 proposed procurement or renewal and the proposed terms thereof.
604 If the department, within 60 days after receipt of notice,
605 objects in writing to the proposed procurement or renewal,
606 specifying its reasons for objection, the authority may not



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607 ~~proceed with the proposed procurement or renewal. Failure of the~~
608 ~~department to object in writing within 60 days after notice~~
609 ~~shall be deemed consent. This requirement does not impair or~~
610 ~~cause the authority to cancel contracts that exist as of June~~
611 ~~30, 2012.~~

612 2. To enable the department to evaluate the authority's
613 proposed uses of state funds, the authority shall annually
614 provide the department with its proposed budget for the
615 following authority fiscal year and shall promptly provide the
616 department with any additional documentation or information
617 required by the department for its evaluation of the proposed
618 uses of the state funds.

619 Section 15. Subsection (2) of section 215.82, Florida
620 Statutes, is amended to read:

621 215.82 Validation; when required.—

622 (2) Any bonds issued pursuant to this act which are
623 validated shall be validated in the manner provided by chapter
624 75. In actions to validate bonds to be issued in the name of the
625 State Board of Education under s. 9(a) and (d), Art. XII of the
626 State Constitution and bonds to be issued pursuant to chapter
627 259, the Land Conservation Program, the complaint shall be filed
628 in the circuit court of the county where the seat of state
629 government is situated, the notice required to be published by
630 s. 75.06 shall be published only in the county where the
631 complaint is filed, and the complaint and order of the circuit
632 court shall be served only on the state attorney of the circuit
633 in which the action is pending. In any action to validate bonds
634 issued pursuant to s. 1010.62 or issued pursuant to s. 9(a) (1),
635 Art. XII of the State Constitution or issued pursuant to s.



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636 215.605 ~~or s. 338.227~~, the complaint shall be filed in the
637 circuit court of the county where the seat of state government
638 is situated, the notice required to be published by s. 75.06
639 shall be published in a newspaper of general circulation in the
640 county where the complaint is filed and in two other newspapers
641 of general circulation in the state, and the complaint and order
642 of the circuit court shall be served only on the state attorney
643 of the circuit in which the action is pending; provided,
644 however, that if publication of notice pursuant to this section
645 would require publication in more newspapers than would
646 publication pursuant to s. 75.06, such publication shall be made
647 pursuant to s. 75.06.

648 Section 16. Paragraph (d) of subsection (2) of section
649 343.53, Florida Statutes, is amended to read:

650 343.53 South Florida Regional Transportation Authority.—

651 (2) The governing board of the authority shall consist of
652 10 voting members, as follows:

653 (d) If the authority's service area is expanded pursuant to
654 s. 343.54(6) ~~s. 343.54(5)~~, the county containing the new service
655 area shall have two members appointed to the board as follows:

656 1. The county commission of the county shall elect a
657 commissioner as that commission's representative on the board.
658 The commissioner must be a member of the county commission when
659 elected and for the full extent of his or her term.

660 2. The Governor shall appoint a citizen member to the board
661 who is not a member of the county commission but who is a
662 resident and a qualified elector of that county.

663 Section 17. Section 427.011, Florida Statutes, is reordered
664 and amended to read:



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665 427.011 Definitions.—For the purposes of ss. 427.011-
666 427.017:

667 ~~(9)-(1)~~ "Transportation disadvantaged" means those persons
668 who because of physical or mental disability, income status, or
669 age are unable to transport themselves or to purchase
670 transportation and are, therefore, dependent upon others to
671 obtain access to health care, employment, education, shopping,
672 social activities, or other life-sustaining activities, or
673 children who are handicapped or high-risk or at-risk as defined
674 in s. 411.202.

675 ~~(5)-(2)~~ "Metropolitan planning organization" means the
676 organization responsible for carrying out transportation
677 planning and programming in accordance with the provisions of 23
678 U.S.C. s. 134, as provided in 23 U.S.C. s. 104(f)(3).

679 ~~(1)-(3)~~ "Agency" means an official, officer, commission,
680 authority, council, committee, department, division, bureau,
681 board, section, or any other unit or entity of the state or of a
682 city, town, municipality, county, or other local governing body
683 or a private nonprofit transportation service-providing agency.

684 ~~(11)-(4)~~ "Transportation improvement program" means a staged
685 multiyear program of transportation improvements, including an
686 annual element, which is developed by a metropolitan planning
687 organization or designated official planning agency.

688 ~~(2)-(5)~~ "Community transportation coordinator" means a
689 transportation entity recommended by a metropolitan planning
690 organization, or by the appropriate designated official planning
691 agency as provided for in ss. 427.011-427.017 in an area outside
692 the purview of a metropolitan planning organization, to ensure
693 that coordinated transportation services are provided to the



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694 transportation disadvantaged population in a designated service
695 area.

696 ~~(12)(6)~~ "Transportation operator" means one or more public,
697 private for-profit, or private nonprofit entities engaged by the
698 community transportation coordinator to provide service to
699 transportation disadvantaged persons pursuant to a coordinated
700 system service plan.

701 ~~(3)(7)~~ "Coordinating board" means an advisory entity in
702 each designated service area composed of representatives
703 appointed by the metropolitan planning organization or
704 designated official planning agency, to provide assistance to
705 the community transportation coordinator relative to the
706 coordination of transportation services.

707 (8) "Purchasing agency" means a department or agency whose
708 head is an ex officio, nonvoting adviser to the commission, or
709 an agency that purchases transportation services for the
710 transportation disadvantaged.

711 ~~(7)(9)~~ "Paratransit" means those elements of public transit
712 which provide service between specific origins and destinations
713 selected by the individual user with such service being provided
714 at a time that is agreed upon by the user and provider of the
715 service. Paratransit service is provided by taxis, limousines,
716 "dial-a-ride," buses, transportation network companies, and
717 other demand-responsive operations that are characterized by
718 their nonscheduled, nonfixed route nature.

719 (10) "Transportation disadvantaged funds" means any local
720 government, state, or available federal funds that are for the
721 transportation of the transportation disadvantaged. Such funds
722 may include, but are not limited to, funds for planning,



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723 Medicaid transportation, administration, operation, procurement,
724 and maintenance of vehicles or equipment and capital
725 investments. Transportation disadvantaged funds do not include
726 funds for the transportation of children to public schools.

727 ~~(4)(11)~~ "Coordination" means the arrangement for the
728 provision of transportation services to the transportation
729 disadvantaged in a manner that is cost-effective, efficient, and
730 reduces fragmentation and duplication of services.

731 ~~(6)(12)~~ "Nonsponsored transportation disadvantaged
732 services" means transportation disadvantaged services that are
733 not sponsored or subsidized by any funding source other than the
734 Transportation Disadvantaged Trust Fund.

735 Section 18. The Secretary of Transportation may enroll the
736 State of Florida in any federal pilot program or project for the
737 collection and study of data for the review of federal or state
738 roadway safety, infrastructure sustainability, congestion
739 mitigation, transportation system efficiency, autonomous vehicle
740 technology, or capacity challenges.

741 Section 19. Except as otherwise provided in this act, this
742 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;

¹See the USDOT website available at: <https://www.transportation.gov/smartcity>. (Last visited April 11, 2017.)

²See 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.)

³See 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/brdgc/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 primarily¹⁸ 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

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 citations²⁷ 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 network³⁴ 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 limousine³⁸ 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

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 metrics⁵⁰ 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 insignificant⁵⁶ 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 projects⁷⁴ 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 AWP's must set out the proposed commitments and planned expenditures for the projects listed and be based on a complete, balanced financial plan.⁸⁷ Commitments⁸⁸ 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 outlay⁹⁸ 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 emergency¹⁰² 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

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 notwithstanding 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:

<u>Fiscal Year</u>	<u>Line-Item</u>
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

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

¹²⁷See *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 Agreement¹³⁰ 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.

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 coordinators¹³⁵ 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

¹³⁷See the Commission’s website available at: <http://www.fdot.gov/ctd/communitytransystem.htm>. (Last visited March 27, 2017.)

¹³⁸See *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.)

¹³⁹See *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

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1 A bill to be entitled
 2 An act relating to transportation; amending s.
 3 316.545, F.S.; providing for the calculation of fines
 4 for unlawful weight and load for a vehicle fueled by
 5 natural gas; requiring the vehicle operator to present
 6 a certain written certification upon request by a
 7 weight inspector or law enforcement officer;
 8 prescribing a maximum actual gross vehicle weight for
 9 vehicles fueled by natural gas; providing
 10 applicability; amending s. 335.074, F.S.; requiring
 11 bridges on public transportation facilities to be
 12 inspected for certain purposes at regular intervals as
 13 required by the Federal Highway Administration;
 14 amending s. 337.11, F.S.; increasing the allowable
 15 amount for contracts for construction and maintenance
 16 which the Department of Transportation may enter into,
 17 in certain circumstances, without advertising and
 18 receiving competitive bids; amending s. 338.227, F.S.;
 19 providing that certain bonds are not required to be
 20 validated but may be validated at the option of the
 21 Division of Bond Finance; providing filing, notice,
 22 and service requirements for complaints and circuit
 23 court orders concerning such validation; amending s.
 24 339.135, F.S.; providing an additional exception
 25 related to the amendment of adopted work programs when
 26 an emergency exists; amending s. 339.2405, F.S.;
 27 replacing the Florida Highway Beautification Council
 28 within the department with the Florida Highway
 29 Beautification Grant Program; providing the purpose of

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30 the program; providing duties of the department,
 31 including the establishment of rules related to grant
 32 requests; conforming provisions to changes made by the
 33 act; amending s. 343.52, F.S.; defining the term
 34 "department"; amending s. 343.54, F.S.; prohibiting
 35 the South Florida Regional Transportation Authority
 36 from entering into, extending, or renewing certain
 37 contracts or other agreements without the department's
 38 prior review and written approval if such contracts or
 39 agreements may be funded with funds provided by the
 40 department; amending s. 343.58, F.S.; prohibiting
 41 specified funds provided to the authority by the
 42 department from being committed by the authority
 43 without the prior review and written approval by the
 44 department of the authority's expenditures; deleting
 45 requirements relating to notification by the authority
 46 to the department of a proposed procurement or of a
 47 renewal of any existing contract that will rely on
 48 state funds for payment; requiring the authority to
 49 promptly provide the department any documentation or
 50 information, in addition to the proposed annual
 51 budget, which is required by the department for its
 52 evaluation of the proposed uses of state funds;
 53 prohibiting certain funding from being provided to the
 54 authority by the department until the authority
 55 terminates a Notice of Intent of Contract Award for a
 56 specified request for proposal; requiring the
 57 authority, before entering into a new contract for the
 58 services that were the subject of such request for

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59 proposal, to obtain the department's written approval
 60 of all terms and conditions of the new procurement and
 61 contract for such services; amending s. 215.82, F.S.;
 62 conforming a provision to changes made by the act;
 63 amending s. 343.53, F.S.; conforming a cross-
 64 reference; providing an effective date.

65
 66 Be It Enacted by the Legislature of the State of Florida:

67
 68 Section 1. Present paragraphs (c) and (d) of subsection (3)
 69 of section 316.545, Florida Statutes, are redesignated as
 70 paragraphs (d) and (e), respectively, and a new paragraph (c) is
 71 added to that subsection, to read:

72 316.545 Weight and load unlawful; special fuel and motor
 73 fuel tax enforcement; inspection; penalty; review.—

74 (3)

75 (c)1. For a vehicle fueled by natural gas, the fine is
 76 calculated by reducing the actual gross vehicle weight by the
 77 certified weight difference between the natural gas tank and
 78 fueling system and a comparable diesel tank and fueling system.
 79 Upon the request of a weight inspector or a law enforcement
 80 officer, the vehicle operator shall present a written
 81 certification that identifies the weight of the natural gas tank
 82 and fueling system and the difference in weight of a comparable
 83 diesel tank and fueling system. The written certification must
 84 originate from the vehicle manufacturer or the installer of the
 85 natural gas tank and fueling system.

86 2. The actual gross vehicle weight for vehicles fueled by
 87 natural gas may not exceed 82,000 pounds, excluding the weight

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88 allowed for idle-reduction technology under paragraph (b).

89 3. This paragraph does not apply to vehicles described in
 90 s. 316.535(6).

91 Section 2. Subsection (2) of section 335.074, Florida
 92 Statutes, is amended to read:

93 335.074 Safety inspection of bridges.—

94 (2) At regular intervals as required by the Federal Highway
 95 Administration ~~not to exceed 2 years~~, each bridge on a public
 96 transportation facility shall be inspected for structural
 97 soundness and safety for the passage of traffic on such bridge.
 98 The thoroughness with which bridges are to be inspected shall
 99 depend on such factors as age, traffic characteristics, state of
 100 maintenance, and known deficiencies. The governmental entity
 101 having maintenance responsibility for any such bridge shall be
 102 responsible for having inspections performed and reports
 103 prepared in accordance with the provisions contained herein.

104 Section 3. Paragraph (c) of subsection (6) of section
 105 337.11, Florida Statutes, is amended to read:

106 337.11 Contracting authority of department; bids; emergency
 107 repairs, supplemental agreements, and change orders; combined
 108 design and construction contracts; progress payments; records;
 109 requirements of vehicle registration.—

110 (6)

111 (c) When the department determines that it is in the best
 112 interest of the public for reasons of public concern, economy,
 113 improved operations, or safety, and only for contracts for
 114 construction and maintenance which do not exceed \$250,000 when
 115 circumstances dictate rapid completion of the work, the
 116 department may, ~~up to the amount of \$120,000,~~ enter into

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117 contracts ~~for construction and maintenance~~ without advertising
 118 and receiving competitive bids. The department may enter into
 119 such contracts only upon a determination that the work is
 120 necessary for one of the following reasons:

- 121 1. To ensure timely completion of projects or avoidance of
- 122 undue delay for other projects;
- 123 2. To accomplish minor repairs or construction and
- 124 maintenance activities for which time is of the essence and for
- 125 which significant cost savings would occur; or
- 126 3. To accomplish nonemergency work necessary to ensure
- 127 avoidance of adverse conditions that affect the safe and
- 128 efficient flow of traffic.

129
 130 The department shall make a good faith effort to obtain two or
 131 more quotes, if available, from qualified contractors before
 132 entering into any contract. The department shall give
 133 consideration to disadvantaged business enterprise
 134 participation. However, when the work exists within the limits
 135 of an existing contract, the department shall make a good faith
 136 effort to negotiate and enter into a contract with the prime
 137 contractor on the existing contract.

138 Section 4. Subsection (5) is added to section 338.227,
 139 Florida Statutes, to read:

140 338.227 Turnpike revenue bonds.—

141 (5) Notwithstanding s. 215.82, bonds issued pursuant to
 142 this section are not required to be validated pursuant to
 143 chapter 75 but may be validated at the option of the Division of
 144 Bond Finance. Any complaint about such validation must be filed
 145 in the circuit court of the county in which the seat of state

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146 government is situated, and the clerk shall publish the notice
 147 as required by s. 75.06 only in the county in which the
 148 complaint is filed. The complaint and order of the circuit court
 149 must be served on the state attorney of the circuit in which the
 150 action is pending.

151 Section 5. Paragraph (e) of subsection (7) of section
 152 339.135, Florida Statutes, is amended to read:

153 339.135 Work program; legislative budget request;
 154 definitions; preparation, adoption, execution, and amendment.—

155 (7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

156 (e) Notwithstanding paragraphs (d), ~~and~~ (g), and (h) and
 157 ss. 216.177(2) and 216.351, the secretary may request the
 158 Executive Office of the Governor to amend the adopted work
 159 program when an emergency exists, as defined in s. 252.34, and
 160 the emergency relates to the repair or rehabilitation of any
 161 state transportation facility. The Executive Office of the
 162 Governor may approve the amendment to the adopted work program
 163 and amend that portion of the department's approved budget if a
 164 delay incident to the notification requirements in paragraph (d)
 165 would be detrimental to the interests of the state. However, the
 166 department shall immediately notify the parties specified in
 167 paragraph (d) and provide such parties written justification for
 168 the emergency action within 7 days after approval by the
 169 Executive Office of the Governor of the amendment to the adopted
 170 work program and the department's budget. The adopted work
 171 program may not be amended under this subsection without
 172 certification by the comptroller of the department that there
 173 are sufficient funds available pursuant to the 36-month cash
 174 forecast and applicable statutes.

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175 Section 6. Section 339.2405, Florida Statutes, is amended
176 to read:

177 339.2405 Florida Highway Beautification Grant Program
178 Council.-

179 (1) There is created within the Department of
180 Transportation the Florida Highway Beautification Grant Program
181 for the purpose of awarding grants to local governmental
182 entities for beautification of roads on the State Highway System
183 as provided in subsections (3) and (4). The department shall
184 Council. It shall consist of seven members appointed by the
185 Governor. All appointed members must be residents of this state.
186 One member must be a licensed landscape architect, one member
187 must be a representative of the Florida Federation of Garden
188 Clubs, Inc., one member must be a representative of the Florida
189 Nurserymen and Growers Association, one member must be a
190 representative of the department as designated by the head of
191 the department, one member must be a representative of the
192 Department of Agriculture and Consumer Services, and two members
193 must be private citizens. The members of the council shall serve
194 at the pleasure of the Governor.

195 ~~(2) Each chair shall be selected by the council members and~~
196 ~~shall serve a 2-year term.~~

197 ~~(3) The council shall meet no less than semiannually at the~~
198 ~~call of the chair or, in the chair's absence or incapacity, at~~
199 ~~the call of the head of the department. Four members shall~~
200 ~~constitute a quorum for the purpose of exercising all of the~~
201 ~~powers of the council. A vote of the majority of the members~~
202 ~~present shall be sufficient for all actions of the council.~~

203 ~~(4) The council members shall serve without pay but shall~~

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204 ~~be entitled to per diem and travel expenses pursuant to s.~~
205 ~~112.061.~~

206 ~~(5) A member of the council may not participate in any~~
207 ~~discussion or decision to recommend grants to any qualified~~
208 ~~local government with which the member is associated as a member~~
209 ~~of the governing body or as an employee or with which the member~~
210 ~~has entered into a contractual arrangement.~~

211 ~~(6) The council may prescribe, amend, and repeal bylaws~~
212 ~~governing the manner in which the business of the council is~~
213 ~~conducted.~~

214 ~~(7)(a) The duties of the council shall be to:~~

215 ~~(a)1- Provide information to local governments and local~~
216 ~~highway beautification councils regarding the state highway~~
217 ~~beautification grants program.~~

218 ~~(b)2- Accept grant requests from local governments.~~

219 ~~(c)3- Review grant requests for compliance with department~~
220 ~~council rules.~~

221 ~~(d)4- Establish rules for evaluating and prioritizing the~~
222 ~~grant requests. The rules must include, but are not limited to,~~
223 ~~an examination of each grant's aesthetic value, cost-~~
224 ~~effectiveness, level of local support, feasibility of~~
225 ~~installation and maintenance, and compliance with state and~~
226 ~~federal regulations. Rules adopted by the department council~~
227 ~~which it uses to evaluate grant applications must take into~~
228 ~~consideration the contributions made by the highway~~
229 ~~beautification project in preventing litter.~~

230 ~~(e)5- Maintain a prioritized list of approved grant~~
231 ~~requests. The list must include recommended funding levels for~~
232 ~~each request and, if staged implementation is appropriate,~~

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233 funding requirements for each stage shall be provided.

234 ~~6. Assess the feasibility of planting and maintaining~~
 235 ~~indigenous wildflowers and plants, instead of sod groundcovers,~~
 236 ~~along the rights-of-way of state roads and highways. In making~~
 237 ~~such assessment, the council shall utilize data from other~~
 238 ~~states which include indigenous wildflower and plant species in~~
 239 ~~their highway vegetative management systems.~~

240 ~~(b) The council may, at the request of the head of the~~
 241 ~~department, review and make recommendations on any other highway~~
 242 ~~beautification matters relating to the State Highway System.~~

243 ~~(8) The head of the department shall provide from existing~~
 244 ~~personnel such staff support services to the council as are~~
 245 ~~necessary to enable the council to fulfill its duties and~~
 246 ~~responsibilities.~~

247 (2)(9) Local highway beautification councils may be created
 248 by local governmental entities or by the Legislature. Prior to
 249 being submitted to the department council, a grant request must
 250 be approved by the local government or governments of the area
 251 in which the project is located.

252 (3)(10) The head of the department, ~~after receiving~~
 253 ~~recommendations from the council~~, shall award grants to local
 254 governmental entities that have submitted grant requests for
 255 beautification of roads on the State Highway System and which
 256 requests are on the ~~council's~~ approved list. The grants shall be
 257 awarded in the order they appear on the ~~council's~~ prioritized
 258 list and in accordance with available funding.

259 (4)(11) State highway beautification grants may be
 260 requested only for projects to beautify through landscaping
 261 roads on the State Highway System. The grant request shall

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262 identify all costs associated with the project, including
 263 sprinkler systems, plant materials, equipment, and labor. A
 264 grant shall provide for the costs of purchase and installation
 265 of a sprinkler system, the cost of plant materials and
 266 fertilizer, and may provide for the costs for labor associated
 267 with the installation of the plantings. Each local government
 268 that receives a grant is ~~shall be~~ responsible for any costs for
 269 water, for the maintenance of the sprinkler system, for the
 270 maintenance of the landscaped areas in accordance with a
 271 maintenance agreement with the department, and, except as
 272 otherwise provided in the grant, for any costs for labor
 273 associated with the installation of the plantings. The
 274 department may provide, by contract, services to maintain such
 275 landscaping at a level not to exceed the cost of routine
 276 maintenance of an equivalent unlandscaped area.

277 ~~(12) The council shall annually submit to the head of the~~
 278 ~~Department of Transportation a proposal recommending the level~~
 279 ~~of grant funding.~~

280 Section 7. Section 343.52, Florida Statutes, is reordered
 281 and amended to read:

282 343.52 Definitions.—As used in this part, the term:

283 (2)(1) "Authority" means the South Florida Regional
 284 Transportation Authority.

285 (3)(2) "Board" means the governing body of the authority.

286 (4) "Department" means the Department of Transportation.

287 (1)(3) "Area served" means Miami-Dade, Broward, and Palm
 288 Beach Counties. However, this area may be expanded by mutual
 289 consent of the authority and the board of county commissioners
 290 of Monroe County. The authority may not expand into any

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291 additional counties without the department's prior written
292 approval.

293 ~~(8)(4)~~ "Transit system" means a system used for the
294 transportation of people and goods by means of, without
295 limitation, a street railway, an elevated railway having a fixed
296 guideway, a commuter railroad, a subway, motor vehicles, or
297 motor buses, and includes a complete system of tracks, stations,
298 and rolling stock necessary to effectuate passenger service to
299 or from the surrounding regional municipalities.

300 ~~(7)(5)~~ "Transit facilities" means property, avenues of
301 access, equipment, or buildings built and installed in Miami-
302 Dade, Broward, and Palm Beach Counties which are required to
303 support a transit system.

304 ~~(6)(6)~~ "Member" means the individuals constituting the
305 board.

306 ~~(5)(7)~~ "Feeder transit services" means a transit system
307 that transports passengers to or from stations within or across
308 counties.

309 Section 8. Present subsections (4) and (5) of section
310 343.54, Florida Statutes, are redesignated as subsections (5)
311 and (6), respectively, and a new subsection (4) is added to that
312 section, to read:

313 343.54 Powers and duties.-

314 (4) Notwithstanding any other provision of this part, the
315 authority may not enter into, extend, or renew any contract or
316 other agreement under this part without the department's prior
317 review and written approval of the authority's proposed
318 expenditures if such contract or agreement may be funded, in
319 whole or in part, with funds provided by the department.

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320 Section 9. Paragraph (c) of subsection (4) of section
321 343.58, Florida Statutes, is amended, and paragraph (e) is added
322 to that subsection, to read:

323 343.58 County funding for the South Florida Regional
324 Transportation Authority.-

325 (4) Notwithstanding any other provision of law to the
326 contrary and effective July 1, 2010, until as provided in
327 paragraph (d), the department shall transfer annually from the
328 State Transportation Trust Fund to the South Florida Regional
329 Transportation Authority the amounts specified in subparagraph
330 (a)1. or subparagraph (a)2.

331 (c)1. Funds provided to the authority by the department
332 under this subsection may not be committed by the authority
333 without the prior review and written approval by ~~of~~ the
334 department of the authority's expenditures, ~~which may not be~~
335 ~~unreasonably withheld. At least 90 days before advertising any~~
336 ~~procurement or renewing any existing contract that will rely on~~
337 ~~state funds for payment, the authority shall notify the~~
338 ~~department of the proposed procurement or renewal and the~~
339 ~~proposed terms thereof. If the department, within 60 days after~~
340 ~~receipt of notice, objects in writing to the proposed~~
341 ~~procurement or renewal, specifying its reasons for objection,~~
342 ~~the authority may not proceed with the proposed procurement or~~
343 ~~renewal. Failure of the department to object in writing within~~
344 ~~60 days after notice shall be deemed consent. This requirement~~
345 ~~does not impair or cause the authority to cancel contracts that~~
346 ~~exist as of June 30, 2012.~~

347 2. To enable the department to evaluate the authority's
348 proposed uses of state funds, the authority shall annually

596-03007-17

20171118c1

349 provide the department with its proposed budget for the
 350 following authority fiscal year and shall promptly provide the
 351 department with any additional documentation or information
 352 required by the department for its evaluation of the proposed
 353 uses of the state funds.

354 (e) Funding may not be provided to the authority by the
 355 department under this subsection until the authority withdraws,
 356 cancels, or otherwise terminates the authority's Notice of
 357 Intent of Contract Award for Request for Proposal 16-010
 358 "Operating Services," approved by the authority's board on
 359 January 27, 2017. Before entering into a new contract for the
 360 services that were the subject of the Request for Proposal 16-
 361 010, the authority must obtain the department's written approval
 362 of all terms and conditions of a new procurement and contract
 363 for the services that were the subject of such request for
 364 proposal to ensure that the authority has sufficient revenues to
 365 fund the contract.

366 Section 10. Subsection (2) of section 215.82, Florida
 367 Statutes, is amended to read:

368 215.82 Validation; when required.—

369 (2) Any bonds issued pursuant to this act which are
 370 validated shall be validated in the manner provided by chapter
 371 75. In actions to validate bonds to be issued in the name of the
 372 State Board of Education under s. 9(a) and (d), Art. XII of the
 373 State Constitution and bonds to be issued pursuant to chapter
 374 259, the Land Conservation Program, the complaint shall be filed
 375 in the circuit court of the county where the seat of state
 376 government is situated, the notice required to be published by
 377 s. 75.06 shall be published only in the county where the

Page 13 of 15

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

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378 complaint is filed, and the complaint and order of the circuit
 379 court shall be served only on the state attorney of the circuit
 380 in which the action is pending. In any action to validate bonds
 381 issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1),
 382 Art. XII of the State Constitution or issued pursuant to s.
 383 215.605 ~~or s. 338.227~~, the complaint shall be filed in the
 384 circuit court of the county where the seat of state government
 385 is situated, the notice required to be published by s. 75.06
 386 shall be published in a newspaper of general circulation in the
 387 county where the complaint is filed and in two other newspapers
 388 of general circulation in the state, and the complaint and order
 389 of the circuit court shall be served only on the state attorney
 390 of the circuit in which the action is pending; provided,
 391 however, that if publication of notice pursuant to this section
 392 would require publication in more newspapers than would
 393 publication pursuant to s. 75.06, such publication shall be made
 394 pursuant to s. 75.06.

395 Section 11. Paragraph (d) of subsection (2) of section
 396 343.53, Florida Statutes, is amended to read:

397 343.53 South Florida Regional Transportation Authority.—

398 (2) The governing board of the authority shall consist of
 399 10 voting members, as follows:

400 (d) If the authority's service area is expanded pursuant to
 401 s. 343.54(6) ~~s. 343.54(5)~~, the county containing the new service
 402 area shall have two members appointed to the board as follows:

403 1. The county commission of the county shall elect a
 404 commissioner as that commission's representative on the board.
 405 The commissioner must be a member of the county commission when
 406 elected and for the full extent of his or her term.

Page 14 of 15

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

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407 2. The Governor shall appoint a citizen member to the board
408 who is not a member of the county commission but who is a
409 resident and a qualified elector of that county.

410 Section 12. This act shall take effect July 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 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,

A handwritten signature in blue ink that reads "George B. Gainer".

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

Phone 813 274 8251

Tampa FL 33602

City

State

Zip

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 / BRIDGE AUTHORITY SANTA ROSA

Name ROB WILLIAMSON

Job Title COMMISSIONER SANTA ROSA COUNTY - CHAIR

Address PO BOX 6118

Phone 850 529-2525

Street

NAVARAE

City

FL

State

32566

Zip

Email Rob@will

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.

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

1118

Bill Number (if applicable)

463056

Amendment Barcode (if applicable)

Topic TRANSPORTATION

Name CHRISTOPHER EMMANUEL

Job Title POLICY DIRECTOR

Address 136 S. BRONOUGH
Street

Phone _____

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 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

4/25/2017
Meeting Date

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

SB1118
Bill Number (if applicable)

Topic Transportation

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Street Tallahassee, FL 32307
City State Zip

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.

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 25th, 2011

Meeting Date

SB 1118

Bill Number (if applicable)

Topic Transportation

Amendment Barcode (if applicable)

Name JACK COVY

Job Title Lobbyist

Address 730 E. PARK AVE.

Phone _____

Street

Tallahassee

City

FL

State

32301

Zip

Email jackcovy@pacconsultants.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
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Sanders</u>	<u>Betta</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Sanders/Johnson</u>	<u>Hansen</u>	<u>AP</u>	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 premiums⁵ 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 expenses¹² to affected guaranty associations for payment.¹³

Covered Policies

Generally, direct life insurance policies, health insurance policies, individual and allocated¹⁴ annuity contracts, and supplemental contracts¹⁵ 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 not 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.

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



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

11 | or interest.

12 |

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

14 | And the title is amended as follows:

15 | Delete lines 11 - 14

16 | and insert:

17 | health insurance policies beginning on a specified

18 | 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 (1) 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:

(1) 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:

1-00852-17

2017814__

62 631.718 Assessments.-

63 (3) (a) The amount of any Class A assessment must ~~shall~~ be
64 determined by the board and may be made on a non-pro rata basis.
65 The assessment may not be credited against future insolvency
66 assessments and may not exceed \$500 ~~\$250~~ per member insurer in
67 any one calendar year.

68 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,

A handwritten signature in black ink, appearing to read "Doug Broxson".

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

Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic FL Life + Health Guaranty Assoc

Name Jane Hennessy

Job Title Lobbyist

Address 106 S Monroe St

Phone 850/509-5800

Street Tall State FL Zip 32301

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.



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 Negrón
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 DEVAUGHN WHICH 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

February 16, 2009

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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

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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

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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

February 16, 2009

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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)

February 16, 2009

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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

February 16, 2009

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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.

SPECIAL MASTER'S FINAL REPORT – SB 26 (2008) Senator Al Lawson

February 16, 2009

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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

1 A bill to be entitled
 2 An act for the relief of Wendy Smith and Dennis
 3 Darling, Sr., parents of Devaughn Darling, deceased;
 4 providing an appropriation to compensate the parents
 5 for the loss of their son, Devaughn Darling, whose
 6 death occurred while he was engaged in football
 7 preseason training on the Florida State University
 8 campus; providing a limitation on the payment of
 9 attorney fees; providing an effective date.

10

11 WHEREAS, on February 21, 2001, Devaughn Darling, the son of
 12 Wendy Smith and Dennis Darling, Sr., collapsed and died while
 13 participating in preseason training in preparation for the
 14 upcoming football season at Florida State University, and

15 WHEREAS, after litigation had ensued and during mediation,
 16 the parents of Devaughn Darling and Florida State University
 17 agreed to compromise and settle all of the disputed claims
 18 rather than continue with litigation and its attendant
 19 uncertainties, and

20 WHEREAS, the parties resolved, compromised, and settled all
 21 claims by a stipulated settlement agreement providing for the
 22 entry of a consent final judgment against Florida State
 23 University in the amount of \$2 million, of which the Division of
 24 Risk Management of the Department of Financial Services has paid
 25 the statutory limit of \$200,000 pursuant to s. 768.28, Florida
 26 Statutes, and

27 WHEREAS, as provided by the settlement agreement, Florida
 28 State University has agreed to support the passage of a claim
 29 bill for the remaining unpaid portion of the consent judgment,

Page 1 of 2

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

590-01952-17

201748c1

30 \$1.8 million, NOW, THEREFORE,
 31
 32 Be It Enacted by the Legislature of the State of Florida:

33

34 Section 1. The facts stated in the preamble to this act are
 35 found and declared to be true.

36 Section 2. Florida State University is authorized and
 37 directed to appropriate from funds of the university not
 38 otherwise appropriated to draw a warrant in the amount of \$1.8
 39 million, to be paid to Wendy Smith and Dennis Darling, Sr.,
 40 parents of decedent Devaughn Darling, as relief for their
 41 losses.

42 Section 3. The amount paid by the Division of Risk
 43 Management of the Department of Financial Services pursuant to
 44 s. 768.28, Florida Statutes, and the amount awarded under this
 45 act are intended to provide the sole compensation for all
 46 present and future claims arising out of the factual situation
 47 described in the preamble to this act which resulted in the
 48 death of Devaughn Darling. The total amount paid for attorney
 49 fees relating to this claim may not exceed 25 percent of the
 50 amount awarded under this act.

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

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25/17
Meeting Date

48
Bill Number (if applicable)

Topic Dennoughn Darling Charis bill

Amendment Barcode (if applicable)

Name KAREN SKYERS

Job Title Attorney

Address 204 S. Monroe St 203
Street

Phone 813-304-9463

TUH FL 32301
City State Zip

Email Kskyers@bptlegal.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.

The Florida Senate
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.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Blizzard</u>	<u>Betta</u>	<u>AGG</u>	Recommend: Fav/CS
4.	<u>Blizzard</u>	<u>Hansen</u>	<u>AP</u>	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 \$5.75³.

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

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 file 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.

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



464850

LEGISLATIVE ACTION

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

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

12 Delete line 22

13 and insert:

14 required to pay a fee to file the petition; requiring
15 the enforcement or modification of an established
16 parenting time plan to be sought through a court of
17 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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57 declared to be the public policy of this state that this act be
58 construed and administered to the end that children shall be
59 maintained from the resources of their parents, thereby
60 relieving, at least in part, the burden presently borne by the
61 general citizenry through public assistance programs. It is also
62 the public policy of this state to encourage frequent contact
63 between a child and each parent to optimize the development of a
64 close and continuing relationship between each parent and the
65 child.

66 Section 2. Section 409.2554, Florida Statutes, is reordered
67 and amended to read:

68 409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss.
69 409.2551-409.2598, the term:

70 (5)(1) "Department" means the Department of Revenue.

71 (6)(2) "Dependent child" means any unemancipated person
72 under the age of 18, any person under the age of 21 and still in
73 school, or any person who is mentally or physically
74 incapacitated when such incapacity began before ~~prior~~ to such
75 person reaching the age of 18. This definition may ~~shall~~ not be
76 construed to impose an obligation for child support beyond the
77 child's attainment of majority except as imposed in s. 409.2561.

78 (3) "Court" means the circuit court.

79 (4) "Court order" means any judgment or order of any court
80 of appropriate jurisdiction of the state, or an order of a court
81 of competent jurisdiction of another state, ordering payment of
82 a set or determinable amount of support money.

83 (7)(5) "Health insurance" means coverage under a fee-for-
84 service arrangement, health maintenance organization, or
85 preferred provider organization, and other types of coverage



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86 available to either parent, under which medical services could
87 be provided to a dependent child.

88 (8)(6) "Obligee" means the person to whom support payments
89 are made pursuant to an alimony or child support order.

90 (9)(7) "Obligor" means a person who is responsible for
91 making support payments pursuant to an alimony or child support
92 order.

93 (12)(8) "Public assistance" means money assistance paid on
94 the basis of Title IV-E and Title XIX of the Social Security
95 Act, temporary cash assistance, or food assistance benefits
96 received on behalf of a child under 18 years of age who has an
97 absent parent.

98 (10)(9) "Program attorney" means an attorney employed by
99 the department, under contract with the department, or employed
100 by a contractor of the department, to provide legal
101 representation for the department in a proceeding related to the
102 determination of paternity or the establishment, modification,
103 or enforcement of support brought pursuant to law.

104 (11)(10) "Prosecuting attorney" means any private attorney,
105 county attorney, city attorney, state attorney, program
106 attorney, or an attorney employed by an entity of a local
107 political subdivision who engages in legal action related to the
108 determination of paternity or the establishment, modification,
109 or enforcement of support brought pursuant to this act.

110 (13) "State Case Registry" means the automated registry
111 maintained by the Title IV-D agency, containing records of each
112 Title IV-D case and of each support order established or
113 modified in the state on or after October 1, 1998. Such records
114 must consist of data elements as required by the United States



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115 Secretary of Health and Human Services.

116 (14) "State Disbursement Unit" means the unit established
117 and operated by the Title IV-D agency to provide one central
118 address for collection and disbursement of child support
119 payments made in cases enforced by the department pursuant to
120 Title IV-D of the Social Security Act and in cases not being
121 enforced by the department in which the support order was
122 initially issued in this state on or after January 1, 1994, and
123 in which the obligor's child support obligation is being paid
124 through income deduction order.

125 (16) "Title IV-D Standard Parenting Time Plan" means a
126 document that may be agreed to by the parents to govern the
127 relationship between the parents and to provide the parent who
128 owes support a reasonable minimum amount of time with his or her
129 child. The plan set forth in s. 409.25633 includes timetables
130 that specify the time, including overnights and holidays, that a
131 child may spend with each parent.

132 (15)-(11) "Support," unless otherwise specified, means:

133 (a) Child support, and, when the child support obligation
134 is being enforced by the Department of Revenue, spousal support
135 or alimony for the spouse or former spouse of the obligor with
136 whom the child is living.

137 (b) Child support only in cases not being enforced by the
138 Department of Revenue.

139 (1)-(12) "Administrative costs" means any costs, including
140 attorney attorney's fees, clerk's filing fees, recording fees
141 and other expenses incurred by the clerk of the circuit court,
142 service of process fees, or mediation costs, incurred by the
143 Title IV-D agency in its effort to administer the Title IV-D



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144 program. The administrative costs ~~that which~~ must be collected
145 by the department shall be assessed on a case-by-case basis
146 based upon a method for determining costs approved by the
147 Federal Government. The administrative costs shall be assessed
148 periodically by the department. The methodology for determining
149 administrative costs shall be made available to the judge or any
150 party who requests it. Only those amounts ordered independent of
151 current support, arrears, or past public assistance obligation
152 shall be considered and applied toward administrative costs.

153 (2)-(13) "Child support services" includes any civil,
154 criminal, or administrative action taken by the Title IV-D
155 program to determine paternity, establish, modify, enforce, or
156 collect support.

157 (17)-(14) "Undistributable collection" means a support
158 payment received by the department which the department
159 determines cannot be distributed to the final intended
160 recipient.

161 (18)-(15) "Unidentifiable collection" means a payment
162 received by the department for which a parent, depository or
163 circuit civil numbers, or source of the payment cannot be
164 identified.

165 Section 3. Subsection (2) of section 409.2557, Florida
166 Statutes, is amended to read:

167 409.2557 State agency for administering child support
168 enforcement program.—

169 (2) The department in its capacity as the state Title IV-D
170 agency ~~has shall have~~ the authority to take actions necessary to
171 carry out the public policy of ensuring that children are
172 maintained from the resources of their parents to the extent



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173 possible. The department's authority ~~includes shall include~~, but
174 ~~is not be~~ limited to, the establishment of paternity or support
175 obligations, the establishment of a Title IV-D Standard
176 Parenting Time Plan or any other parenting time plan agreed to
177 and signed by the parents, and ~~as well as~~ the modification,
178 enforcement, and collection of support obligations.

179 Section 4. Subsections (2), (4), (5), and (7) of section
180 409.2563, Florida Statutes, are amended to read:

181 409.2563 Administrative establishment of child support
182 obligations.—

183 (2) PURPOSE AND SCOPE.—

184 (a) It is not the Legislature's intent to limit the
185 jurisdiction of the circuit courts to hear and determine issues
186 regarding child support or parenting time. This section is
187 intended to provide the department with an alternative procedure
188 for establishing child support obligations and establishing a
189 parenting time plan only if the parents are in agreement, in
190 Title IV-D cases in a fair and expeditious manner when there is
191 no court order of support. The procedures in this section are
192 effective throughout the state and shall be implemented
193 statewide.

194 (b) If the parents do not have an existing time-sharing
195 schedule or parenting time plan and do not agree to a parenting
196 time plan, a plan may not be included in the initial
197 administrative order and the order must include a statement
198 explaining its absence.

199 (c) If the parents have a judicially established parenting
200 time plan, the plan may not be included in the administrative or
201 initial judicial order.



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202 (d) Any notification provided by the department may not
203 include a Title IV-D Standard Parenting Time Plan if Florida is
204 not the child's home state, when one parent does not reside in
205 Florida, if either parent has requested nondisclosure for fear
206 of harm from the other parent, or when the parent who owes
207 support is incarcerated.

208 (e) ~~(b)~~ The administrative procedure set forth in this
209 section concerns only the establishment of child support
210 obligations and, if agreed to and signed by both parents, a
211 parenting time plan or Title IV-D Standard Parenting Time Plan.
212 This section does not grant jurisdiction to the department or
213 the Division of Administrative Hearings to hear or determine
214 issues of dissolution of marriage, separation, alimony or
215 spousal support, termination of parental rights, dependency,
216 disputed paternity, except for a determination of paternity as
217 provided in s. 409.256, ~~or award of~~ or change of time-sharing.
218 If both parents have agreed to and signed a parenting time plan
219 before the establishment of the administrative support order,
220 the department or the Division of Administrative Hearings shall
221 incorporate the agreed-upon parenting time plan into the
222 administrative support order. This paragraph notwithstanding,
223 the department and the Division of Administrative Hearings may
224 make findings of fact that are necessary for a proper
225 determination of a parent's support obligation as authorized by
226 this section.

227 (f) ~~(e)~~ If there is no support order for a child in a Title
228 IV-D case whose paternity has been established or is presumed by
229 law, or whose paternity is the subject of a proceeding under s.
230 409.256, the department may establish a parent's child support



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231 obligation pursuant to this section, s. 61.30, and other
232 relevant provisions of state law. The administrative support
233 order must include a parenting time plan or Title IV-D Standard
234 Parenting Time Plan as agreed to and signed by both parents. The
235 parent's obligation determined by the department may include any
236 obligation to pay retroactive support and any obligation to
237 provide for health care for a child, whether through insurance
238 coverage, reimbursement of expenses, or both. The department may
239 proceed on behalf of:

- 240 1. An applicant or recipient of public assistance, as
241 provided by ss. 409.2561 and 409.2567;
- 242 2. A former recipient of public assistance, as provided by
243 s. 409.2569;
- 244 3. An individual who has applied for services as provided
245 by s. 409.2567;
- 246 4. Itself or the child, as provided by s. 409.2561; or
- 247 5. A state or local government of another state, as
248 provided by chapter 88.

249 (g)(d) Either parent, or a caregiver if applicable, may at
250 any time file a civil action in a circuit court having
251 jurisdiction and proper venue to determine parental support
252 obligations, if any. A support order issued by a circuit court
253 prospectively supersedes an administrative support order
254 rendered by the department.

255 (h)(e) Pursuant to paragraph (e) (b), neither the
256 department nor the Division of Administrative Hearings has
257 jurisdiction to ~~award or~~ change child custody or rights of
258 parental contact. The department or the Division of
259 Administrative Hearings shall incorporate a parenting time plan



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260 or Title IV-D Standard Parenting Time Plan as agreed to and
261 signed by both parents into the administrative support order.
262 Either parent may at any time file a civil action in a circuit
263 having jurisdiction and proper venue for a determination of
264 child custody and rights of parental contact.

265 (i)(f) The department shall terminate the administrative
266 proceeding and file an action in circuit court to determine
267 support if within 20 days after receipt of the initial notice
268 the parent from whom support is being sought requests in writing
269 that the department proceed in circuit court or states in
270 writing his or her intention to address issues concerning time-
271 sharing or rights to parental contact in court and if within 10
272 days after receipt of the department's petition and waiver of
273 service the parent from whom support is being sought signs and
274 returns the waiver of service form to the department.

275 (j)(g) The notices and orders issued by the department
276 under this section shall be written clearly and plainly.

277 (4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE
278 SUPPORT ORDER.—To commence a proceeding under this section, the
279 department shall provide to the parent from whom support is not
280 being sought and serve the parent from whom support is being
281 sought with a notice of proceeding to establish administrative
282 support order, a copy of the Title IV-D Standard Parenting Time
283 Plan, and a blank financial affidavit form. The notice must
284 state:

- 285 (a) The names of both parents, the name of the caregiver,
286 if any, and the name and date of birth of the child or children;
- 287 (b) That the department intends to establish an
288 administrative support order as defined in this section;



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289 (c) That the department will incorporate a parenting time
290 plan or Title IV-D Standard Parenting Time Plan, as agreed to
291 and signed by both parents, into the administrative support
292 order;

293 (d)(e) That both parents must submit a completed financial
294 affidavit to the department within 20 days after receiving the
295 notice, as provided by paragraph (13) (a);

296 (e)(d) That both parents, or parent and caregiver if
297 applicable, are required to furnish to the department
298 information regarding their identities and locations, as
299 provided by paragraph (13) (b);

300 (f)(e) That both parents, or parent and caregiver if
301 applicable, are required to promptly notify the department of
302 any change in their mailing addresses to ensure receipt of all
303 subsequent pleadings, notices, and orders, as provided by
304 paragraph (13) (c);

305 (g)(f) That the department will calculate support
306 obligations based on the child support guidelines schedule in s.
307 61.30 and using all available information, as provided by
308 paragraph (5) (a), and will incorporate such obligations into a
309 proposed administrative support order;

310 (h)(g) That the department will send by regular mail to
311 both parents, or parent and caregiver if applicable, a copy of
312 the proposed administrative support order, the department's
313 child support worksheet, and any financial affidavits submitted
314 by a parent or prepared by the department;

315 (i)(h) That the parent from whom support is being sought
316 may file a request for a hearing in writing within 20 days after
317 the date of mailing or other service of the proposed



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318 administrative support order or will be deemed to have waived
319 the right to request a hearing;

320 (j)(i) That if the parent from whom support is being sought
321 does not file a timely request for hearing after service of the
322 proposed administrative support order, the department will issue
323 an administrative support order that incorporates the findings
324 of the proposed administrative support order, and any agreed-
325 upon parenting time plan. The department will send by regular
326 mail a copy of the administrative support order and any
327 incorporated parenting time plan to both parents, or parent and
328 caregiver if applicable;

329 (k)(j) That after an administrative support order is
330 rendered incorporating any agreed-upon parenting time plan, the
331 department will file a copy of the order with the clerk of the
332 circuit court;

333 (l)(k) That after an administrative support order is
334 rendered, the department may enforce the administrative support
335 order by any lawful means. The department does not have
336 jurisdiction to enforce any parenting time plan that is
337 incorporated into an administrative support order;

338 (m)(l) That either parent, or caregiver if applicable, may
339 file at any time a civil action in a circuit court having
340 jurisdiction and proper venue to determine parental support
341 obligations, if any, and that a support order issued by a
342 circuit court supersedes an administrative support order
343 rendered by the department;

344 (n)(m) That neither the department nor the Division of
345 Administrative Hearings has jurisdiction to ~~award or~~ change
346 child custody or rights of parental contact or time-sharing, and



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347 these issues may be addressed only in circuit court. The
348 department or the Division of Administrative Hearings may
349 incorporate, if agreed to and signed by both parents, a
350 parenting time plan or Title IV-D Standard Parenting Time Plan
351 when the administrative support order is established.

352 1. The parent from whom support is being sought may request
353 in writing that the department proceed in circuit court to
354 determine his or her support obligations.

355 2. The parent from whom support is being sought may state
356 in writing to the department his or her intention to address
357 issues concerning custody or rights to parental contact in
358 circuit court.

359 3. If the parent from whom support is being sought submits
360 the request authorized in subparagraph 1., or the statement
361 authorized in subparagraph 2. to the department within 20 days
362 after the receipt of the initial notice, the department shall
363 file a petition in circuit court for the determination of the
364 parent's child support obligations, and shall send to the parent
365 from whom support is being sought a copy of its petition, a
366 notice of commencement of action, and a request for waiver of
367 service of process as provided in the Florida Rules of Civil
368 Procedure.

369 4. If, within 10 days after receipt of the department's
370 petition and waiver of service, the parent from whom support is
371 being sought signs and returns the waiver of service form to the
372 department, the department shall terminate the administrative
373 proceeding without prejudice and proceed in circuit court.

374 5. In any circuit court action filed by the department
375 pursuant to this paragraph or filed by a parent from whom



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376 support is being sought or other person pursuant to paragraph
377 (m) ~~(l)~~ or paragraph (o) ~~(n)~~, the department shall be a party
378 only with respect to those issues of support allowed and
379 reimbursable under Title IV-D of the Social Security Act. It is
380 the responsibility of the parent from whom support is being
381 sought or other person to take the necessary steps to present
382 other issues for the court to consider;—

383 (o) ~~(n)~~ That if the parent from whom support is being sought
384 files an action in circuit court and serves the department with
385 a copy of the petition within 20 days after being served notice
386 under this subsection, the administrative process ends without
387 prejudice and the action must proceed in circuit court; and

388 (p) ~~(e)~~ Information provided by the Office of State Courts
389 Administrator concerning the availability and location of self-
390 help programs for those who wish to file an action in circuit
391 court but who cannot afford an attorney.

392
393 The department may serve the notice of proceeding to establish
394 an administrative support order and agreed-upon parenting time
395 plan or Title IV-D Standard Parenting Time Plan by certified
396 mail, restricted delivery, return receipt requested.
397 Alternatively, the department may serve the notice by any means
398 permitted for service of process in a civil action. For purposes
399 of this section, an authorized employee of the department may
400 serve the notice and execute an affidavit of service. Service by
401 certified mail is completed when the certified mail is received
402 or refused by the addressee or by an authorized agent as
403 designated by the addressee in writing. If a person other than
404 the addressee signs the return receipt, the department shall



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405 attempt to reach the addressee by telephone to confirm whether
406 the notice was received, and the department shall document any
407 telephonic communications. If someone other than the addressee
408 signs the return receipt, the addressee does not respond to the
409 notice, and the department is unable to confirm that the
410 addressee has received the notice, service is not completed and
411 the department shall attempt to have the addressee served
412 personally. The department shall provide the parent from whom
413 support is not being sought or the caregiver with a copy of the
414 notice by regular mail to the last known address of the parent
415 from whom support is not being sought or caregiver.

416 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

417 (a) After serving notice upon a parent in accordance with
418 subsection (4), the department shall calculate that parent's
419 child support obligation under the child support guidelines
420 schedule as provided by s. 61.30, based on any timely financial
421 affidavits received and other information available to the
422 department. If either parent fails to comply with the
423 requirement to furnish a financial affidavit, the department may
424 proceed on the basis of information available from any source,
425 if such information is sufficiently reliable and detailed to
426 allow calculation of guideline schedule amounts under s. 61.30.
427 If a parent receives public assistance and fails to submit a
428 financial affidavit, the department may submit a financial
429 affidavit or written declaration for that parent pursuant to s.
430 61.30(15). If there is a lack of sufficient reliable information
431 concerning a parent's actual earnings for a current or past
432 period, it shall be presumed for the purpose of establishing a
433 support obligation that the parent had an earning capacity equal



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434 to the federal minimum wage during the applicable period.

435 (b) The department shall send by regular mail to both
436 parents, or to a parent and caregiver if applicable, copies of
437 the proposed administrative support order, a copy of the Title
438 IV-D Standard Parenting Time Plan, its completed child support
439 worksheet, and any financial affidavits submitted by a parent or
440 prepared by the department. The proposed administrative support
441 order must contain the same elements as required for an
442 administrative support order under paragraph (7)(e).

443 (c) The department shall provide a notice of rights with
444 the proposed administrative support order, which notice must
445 inform the parent from whom support is being sought that:

446 1. The parent from whom support is being sought may, within
447 20 days after the date of mailing or other service of the
448 proposed administrative support order, request a hearing by
449 filing a written request for hearing in a form and manner
450 specified by the department;

451 2. If the parent from whom support is being sought files a
452 timely request for a hearing, the case shall be transferred to
453 the Division of Administrative Hearings, which shall conduct
454 further proceedings and may enter an administrative support
455 order;

456 3. A parent from whom support is being sought who fails to
457 file a timely request for a hearing shall be deemed to have
458 waived the right to a hearing, and the department may render an
459 administrative support order pursuant to paragraph (7)(b);

460 4. The parent from whom support is being sought may consent
461 in writing to entry of an administrative support order without a
462 hearing;



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463 5. The parent from whom support is being sought may, within
464 10 days after the date of mailing or other service of the
465 proposed administrative support order, contact a department
466 representative, at the address or telephone number specified in
467 the notice, to informally discuss the proposed administrative
468 support order and, if informal discussions are requested timely,
469 the time for requesting a hearing will be extended until 10 days
470 after the department notifies the parent that the informal
471 discussions have been concluded; and

472 6. If an administrative support order that establishes a
473 parent's support obligation and incorporates either a parenting
474 time plan or Title IV-D Standard Parenting Time Plan agreed to
475 and signed by both parents is rendered, whether after a hearing
476 or without a hearing, the department may enforce the
477 administrative support order by any lawful means. The department
478 does not have the jurisdiction or authority to enforce a
479 parenting time plan.

480 (d) If, after serving the proposed administrative support
481 order but before a final administrative support order is
482 rendered, the department receives additional information that
483 makes it necessary to amend the proposed administrative support
484 order, it shall prepare an amended proposed administrative
485 support order, with accompanying amended child support
486 worksheets and other material necessary to explain the changes,
487 and follow the same procedures set forth in paragraphs (b) and
488 (c).

489 (7) ADMINISTRATIVE SUPPORT ORDER.—

490 (a) If a hearing is held, the administrative law judge of
491 the Division of Administrative Hearings shall issue an



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492 administrative support order that will include a parenting time
493 plan or Title IV-D Standard Parenting Time Plan agreed to and
494 signed by both parents, or a final order denying an
495 administrative support order, which constitutes final agency
496 action by the department. The Division of Administrative
497 Hearings shall transmit any such order to the department for
498 filing and rendering.

499 (b) If the parent from whom support is being sought does
500 not file a timely request for a hearing, the parent will be
501 deemed to have waived the right to request a hearing.

502 (c) If the parent from whom support is being sought waives
503 the right to a hearing, or consents in writing to the entry of
504 an order without a hearing, the department may render an
505 administrative support order that will include a parenting time
506 plan or Title IV-D Standard Parenting Time Plan agreed to and
507 signed by both parents.

508 (d) The department shall send by regular mail a copy of the
509 administrative support order that will include a parenting time
510 plan or Title IV-D Standard Parenting Time Plan agreed to and
511 signed by both parents, or the final order denying an
512 administrative support order, to both parents, or a parent and
513 caregiver if applicable. The parent from whom support is being
514 sought shall be notified of the right to seek judicial review of
515 the administrative support order in accordance with s. 120.68.

516 (e) An administrative support order must comply with ss.
517 61.13(1) and 61.30. The department shall develop a standard form
518 or forms for administrative support orders. An administrative
519 support order must provide and state findings, if applicable,
520 concerning:



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- 521 1. The full name and date of birth of the child or
522 children;
- 523 2. The name of the parent from whom support is being sought
524 and the other parent or caregiver;
- 525 3. The parent's duty and ability to provide support;
- 526 4. The amount of the parent's monthly support obligation;
- 527 5. Any obligation to pay retroactive support;
- 528 6. The parent's obligation to provide for the health care
529 needs of each child, whether through health insurance,
530 contribution toward the cost of health insurance, payment or
531 reimbursement of health care expenses for the child, or any
532 combination thereof;
- 533 7. The beginning date of any required monthly payments and
534 health insurance;
- 535 8. That all support payments ordered must be paid to the
536 Florida State Disbursement Unit as provided by s. 61.1824;
- 537 9. That the parents, or caregiver if applicable, must file
538 with the department when the administrative support order is
539 rendered, if they have not already done so, and update as
540 appropriate the information required pursuant to paragraph
541 (13)(b);
- 542 10. That both parents, or parent and caregiver if
543 applicable, are required to promptly notify the department of
544 any change in their mailing addresses pursuant to paragraph
545 (13)(c); and
- 546 11. That if the parent ordered to pay support receives
547 reemployment assistance or unemployment compensation benefits,
548 the payor shall withhold, and transmit to the department, 40
549 percent of the benefits for payment of support, not to exceed



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- 550 the amount owed.
- 551
- 552 An income deduction order as provided by s. 61.1301 must be
553 incorporated into the administrative support order or, if not
554 incorporated into the administrative support order, the
555 department or the Division of Administrative Hearings shall
556 render a separate income deduction order.
- 557 Section 5. Section 409.25633, Florida Statutes, is created
558 to read:
- 559 409.25633 Title IV-D Standard Parenting Time Plans.—The
560 best interest of the child is the primary consideration of the
561 parenting plan and special consideration should be given to the
562 age and needs of each child. There is no presumption for or
563 against the father or mother of the child or for or against any
564 specific time-sharing schedule when a parenting time plan is
565 created.
- 566 (1) A Title IV-D Standard Parenting Time Plan shall be
567 presented to the parents in any administrative action taken by
568 the Title IV-D program to establish or modify child support or
569 to determine paternity. If the parents agree to the Title IV-D
570 Standard Parenting Time Plan or to another parenting time plan,
571 the plan must be signed by the parents and incorporated into the
572 administrative order. If the parents do not agree to a Title IV-
573 D Standard Parenting Time Plan or if an agreed-upon parenting
574 time plan is not included, the Department of Revenue must enter
575 an administrative support order and refer the parents to the
576 court of appropriate jurisdiction to establish a parenting time
577 plan. The department must note on the referral that an
578 administrative support order has been entered. If a parenting



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579 time plan is not included in the administrative support order
580 entered pursuant to s. 409.2563, the department must provide
581 information to the parents on the process to establish such a
582 plan.

583 (2) The parent who owes support is entitled to parenting
584 time with the child. If the parents do not have a signed,
585 agreed-upon parenting time plan, the following Title IV-D
586 Standard Parenting Time Plan must be incorporated into an
587 administrative support order if agreed to and signed by the
588 parents:

589 (a) Every other weekend.—The second and fourth full weekend
590 of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The
591 weekends may begin upon the child's release from school on
592 Friday and end on Sunday at 6 p.m. or when the child returns to
593 school on Monday morning. The weekend time may be extended by
594 holidays that fall on Friday or Monday;

595 (b) One evening per week.—One weekday beginning at 6 p.m.
596 and ending at 8 p.m. or, if both parents agree, from when the
597 child is released from school until 8 p.m.;

598 (c) Thanksgiving break.—In even-numbered years, the
599 Thanksgiving break from 6 p.m. on the Wednesday before
600 Thanksgiving until 6 p.m. on the Sunday following Thanksgiving.
601 If both parents agree, the Thanksgiving break parenting time may
602 begin upon the child's release from school and end upon the
603 child's return to school the following Monday;

604 (d) Winter break.—In odd-numbered years, the first half of
605 winter break, from the child's release from school, beginning at
606 6 p.m. or, if both parents agree, upon the child's release from
607 school, until noon on December 26. In even-numbered years, the



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608 second half of winter break from noon on December 26 until 6
609 p.m. on the day before school resumes or, if both parents agree,
610 upon the child's return to school;

611 (e) Spring break.—In even-numbered years, the week of
612 spring break from 6 p.m. the day the child is released from
613 school until 6 p.m. the night before school resumes. If both
614 parents agree, the spring break parenting time may begin upon
615 the child's release from school and end upon the child's return
616 to school the following Monday; and

617 (f) Summer break.—For 2 weeks in the summer beginning at 6
618 p.m. the first Sunday following the last day of school.

619 (3) In the event the parents have not agreed on a parenting
620 schedule at the time of the child support hearing, the
621 department shall enter an administrative support order and refer
622 the parents to a court of appropriate jurisdiction for the
623 establishment of a parenting time plan.

624 (4) The Title IV-D Standard Parenting Time Plan is not
625 intended for the use by, and may not be provided to, parents and
626 families with domestic or family violence concerns.

627 (5) If, after the incorporation of an agreed-upon parenting
628 time plan into an administrative support order, a parent becomes
629 concerned about the safety of the child during the child's time
630 with the other parent, a modification of the parenting time plan
631 may be sought through a court of appropriate jurisdiction.

632 (6) The department shall create and provide a form for a
633 petition to establish a parenting time plan for parents who have
634 not agreed on a parenting schedule at the time of the child
635 support hearing. The department shall provide the form to the
636 parents, but may not file the petition or represent either



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637 parent at the hearing.

638 (7) The parents may not be required to pay a fee to file
639 the petition to establish a parenting plan.

640 (8) The department may adopt rules to implement and
641 administer this section.

642 Section 6. Subsections (1) and (2) of section 409.2564,
643 Florida Statutes, are amended to read:

644 409.2564 Actions for support.—

645 (1) In each case in which regular support payments are not
646 being made as provided herein, the department shall institute,
647 within 30 days after determination of the obligor's reasonable
648 ability to pay, action as is necessary to secure the obligor's
649 payment of current support, ~~and~~ any arrearage that which may
650 have accrued under an existing order of support, and, if a
651 parenting time plan was not incorporated into the existing order
652 of support, include either a signed, agreed-upon parenting time
653 plan or a signed Title IV-D Standard Parenting Time Plan, if
654 appropriate. The department shall notify the program attorney in
655 the judicial circuit in which the recipient resides setting
656 forth the facts in the case, including the obligor's address, if
657 known, and the public assistance case number. Whenever
658 applicable, the procedures established under ~~the provisions of~~
659 chapter 88, Uniform Interstate Family Support Act, chapter 61,
660 Dissolution of Marriage; Support; Time-sharing, chapter 39,
661 Proceedings Relating to Children, chapter 984, Children and
662 Families in Need of Services, and chapter 985, Delinquency;
663 Interstate Compact on Juveniles, may govern actions instituted
664 under ~~the provisions of~~ this act, except that actions for
665 support under chapter 39, chapter 984, or chapter 985 brought



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666 pursuant to this act shall not require any additional
667 investigation or supervision by the department.

668 (2) The order for support entered pursuant to an action
669 instituted by the department under ~~the provisions of~~ subsection
670 (1) shall require that the support payments be made periodically
671 to the department through the depository. An order for support
672 entered under subsection (1) must include either a signed,
673 agreed-upon parenting time plan or a signed Title IV-D Standard
674 Parenting Time Plan, if appropriate. Upon receipt of a payment
675 made by the obligor pursuant to any order of the court, the
676 depository shall transmit the payment to the department within 2
677 working days, except those payments made by personal check which
678 shall be disbursed in accordance with s. 61.181. Upon request,
679 the depository shall furnish to the department a certified
680 statement of all payments made by the obligor. Such statement
681 shall be provided by the depository at no cost to the
682 department.

683 Section 7. Paragraph (g) of subsection (2) and paragraph
684 (a) of subsection (4) of section 409.256, Florida Statutes, are
685 amended to read:

686 409.256 Administrative proceeding to establish paternity or
687 paternity and child support; order to appear for genetic
688 testing.—

689 (2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO
690 THE COURTS.—

691 (g) Section 409.2563(2)(h), (i), and (j) 409.2563(2)(e),
692 ~~(f), and (g)~~ apply to a proceeding under this section.

693 (4) NOTICE OF PROCEEDING TO ESTABLISH PATERNITY OR
694 PATERNITY AND CHILD SUPPORT; ORDER TO APPEAR FOR GENETIC



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695 TESTING; MANNER OF SERVICE; CONTENTS.—The Department of Revenue
696 shall commence a proceeding to determine paternity, or a
697 proceeding to determine both paternity and child support, by
698 serving the respondent with a notice as provided in this
699 section. An order to appear for genetic testing may be served at
700 the same time as a notice of the proceeding or may be served
701 separately. A copy of the affidavit or written declaration upon
702 which the proceeding is based shall be provided to the
703 respondent when notice is served. A notice or order to appear
704 for genetic testing shall be served by certified mail,
705 restricted delivery, return receipt requested, or in accordance
706 with the requirements for service of process in a civil action.
707 Service by certified mail is completed when the certified mail
708 is received or refused by the addressee or by an authorized
709 agent as designated by the addressee in writing. If a person
710 other than the addressee signs the return receipt, the
711 department shall attempt to reach the addressee by telephone to
712 confirm whether the notice was received, and the department
713 shall document any telephonic communications. If someone other
714 than the addressee signs the return receipt, the addressee does
715 not respond to the notice, and the department is unable to
716 confirm that the addressee has received the notice, service is
717 not completed and the department shall attempt to have the
718 addressee served personally. For purposes of this section, an
719 employee or an authorized agent of the department may serve the
720 notice or order to appear for genetic testing and execute an
721 affidavit of service. The department may serve an order to
722 appear for genetic testing on a caregiver. The department shall
723 provide a copy of the notice or order to appear by regular mail



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724 to the mother and caregiver, if they are not respondents.
725 (a) A notice of proceeding to establish paternity must
726 state:
727 1. That the department has commenced an administrative
728 proceeding to establish whether the putative father is the
729 biological father of the child named in the notice.
730 2. The name and date of birth of the child and the name of
731 the child's mother.
732 3. That the putative father has been named in an affidavit
733 or written declaration that states the putative father is or may
734 be the child's biological father.
735 4. That the respondent is required to submit to genetic
736 testing.
737 5. That genetic testing will establish either a high degree
738 of probability that the putative father is the biological father
739 of the child or that the putative father cannot be the
740 biological father of the child.
741 6. That if the results of the genetic test do not indicate
742 a statistical probability of paternity that equals or exceeds 99
743 percent, the paternity proceeding in connection with that child
744 shall cease unless a second or subsequent test is required.
745 7. That if the results of the genetic test indicate a
746 statistical probability of paternity that equals or exceeds 99
747 percent, the department may:
748 a. Issue a proposed order of paternity that the respondent
749 may consent to or contest at an administrative hearing; or
750 b. Commence a proceeding, as provided in s. 409.2563, to
751 establish an administrative support order for the child. Notice
752 of the proceeding shall be provided to the respondent by regular



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753 mail.

754 8. That, if the genetic test results indicate a statistical
755 probability of paternity that equals or exceeds 99 percent and a
756 proceeding to establish an administrative support order is
757 commenced, the department shall issue a proposed order that
758 addresses paternity and child support. The respondent may
759 consent to or contest the proposed order at an administrative
760 hearing.

761 9. That if a proposed order of paternity or proposed order
762 of both paternity and child support is not contested, the
763 department shall adopt the proposed order and render a final
764 order that establishes paternity and, if appropriate, an
765 administrative support order for the child.

766 10. That, until the proceeding is ended, the respondent
767 shall notify the department in writing of any change in the
768 respondent's mailing address and that the respondent shall be
769 deemed to have received any subsequent order, notice, or other
770 paper mailed to the most recent address provided or, if a more
771 recent address is not provided, to the address at which the
772 respondent was served, and that this requirement continues if
773 the department renders a final order that establishes paternity
774 and a support order for the child.

775 11. That the respondent may file an action in circuit court
776 for a determination of paternity, child support obligations, or
777 both.

778 12. That if the respondent files an action in circuit court
779 and serves the department with a copy of the petition or
780 complaint within 20 days after being served notice under this
781 subsection, the administrative process ends without prejudice



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782 and the action must proceed in circuit court.

783 13. That, if paternity is established, the putative father
784 may file a petition in circuit court for a determination of
785 matters relating to custody and rights of parental contact.
786

787 A notice under this paragraph must also notify the respondent of
788 the provisions in s. 409.2563(4)(n) and (p) ~~s. 409.2563(4)(m)~~
789 ~~and (o)~~.

790 Section 8. Subsection (5) of section 409.2572, Florida
791 Statutes, is amended to read:

792 409.2572 Cooperation.—

793 (5) As used in this section only, the term "applicant for
794 or recipient of public assistance for a dependent child" refers
795 to such applicants and recipients of public assistance as
796 defined in s. 409.2554(12) ~~s. 409.2554(8)~~, with the exception of
797 applicants for or recipients of Medicaid solely for the benefit
798 of a dependent child.

799 Section 9. The Department of Revenue shall report to the
800 Governor, the President of the Senate, and the Speaker of the
801 House of Representatives by December 31, 2018, on the status of
802 the implementation of this act, including the number of
803 parenting plans entered with administrative support orders and
804 the number of parents referred to the circuit court to determine
805 a parenting plan. The report must include recommendations to
806 facilitate further implementation of this act.

807 Section 10. For the 2017-2018 fiscal year, the sums of
808 \$350,476 in recurring funds and \$690,650 in nonrecurring funds
809 are appropriated from the General Revenue Fund to the Department
810 of Revenue for the purpose of implementing this act.



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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.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Blizzard</u>	<u>Betta</u>	<u>AGG</u>	Recommend: Fav/CS
4.	<u>Blizzard</u>	<u>Hansen</u>	<u>AP</u>	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 \$5.75³.

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

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

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1 A bill to be entitled
2 An act relating to child support and parenting time
3 plans; amending s. 409.2551, F.S.; stating legislative
4 intent to encourage frequent contact between a child
5 and each parent; amending s. 409.2554, F.S.; defining
6 terms; amending s. 409.2557, F.S.; authorizing the
7 Department of Revenue to establish parenting time
8 plans agreed to by both parents in Title IV-D child
9 support actions; amending s. 409.2563, F.S.; requiring
10 the department to mail Title IV-D Standard Parenting
11 Time Plans with proposed administrative support
12 orders; providing requirements for including parenting
13 time plans in certain administrative orders; creating
14 s. 409.25633, F.S.; providing the purpose and
15 requirements for Title IV-D Standard Parenting Time
16 Plans; requiring the department to refer parents who
17 do not agree on a parenting time plan to a circuit
18 court; requiring the department to create and provide
19 a form for a petition to establish a parenting time
20 plan under certain circumstances; specifying that the
21 parents are not required to pay a fee to file the
22 petition; authorizing the department to adopt rules;
23 amending s. 409.2564, F.S.; authorizing the department
24 to incorporate either an agreed-upon parenting time
25 plan or a Title IV-D Standard Parenting Time Plan in a
26 child support order; amending ss. 409.256 and
27 409.2572, F.S.; conforming cross-references; providing
28 an appropriation; providing an effective date.
29

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

31
32 Section 1. Section 409.2551, Florida Statutes, is amended
33 to read:

34 409.2551 Legislative intent.—Common-law and statutory
35 procedures governing the remedies for enforcement of support for
36 financially dependent children by persons responsible for their
37 support have not proven sufficiently effective or efficient to
38 cope with the increasing incidence of financial dependency. The
39 increasing workload of courts, prosecuting attorneys, and the
40 Attorney General has resulted in a growing burden on the
41 financial resources of the state, which is constrained to
42 provide public assistance for basic maintenance requirements
43 when parents fail to meet their primary obligations. The state,
44 therefore, exercising its police and sovereign powers, declares
45 that the common-law and statutory remedies pertaining to family
46 desertion and nonsupport of dependent children shall be
47 augmented by additional remedies directed to the resources of
48 the responsible parents. In order to render resources more
49 immediately available to meet the needs of dependent children,
50 it is the legislative intent that the remedies provided herein
51 are in addition to, and not in lieu of, existing remedies. It is
52 declared to be the public policy of this state that this act be
53 construed and administered to the end that children shall be
54 maintained from the resources of their parents, thereby
55 relieving, at least in part, the burden presently borne by the
56 general citizenry through public assistance programs. It is also
57 the public policy of this state to encourage frequent contact
58 between a child and each parent to optimize the development of a

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59 close and continuing relationship between each parent and the
 60 child. There is no presumption for or against the father or
 61 mother of the child or for or against any specific time-sharing
 62 schedule when a parenting time plan is created.

63 Section 2. Section 409.2554, Florida Statutes, is reordered
 64 and amended to read:

65 409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss.
 66 409.2551-409.2598, the term:

67 (5)-(1) "Department" means the Department of Revenue.

68 (6)-(2) "Dependent child" means any unemancipated person
 69 under the age of 18, any person under the age of 21 and still in
 70 school, or any person who is mentally or physically
 71 incapacitated when such incapacity began before ~~prior to~~ such
 72 person reaching the age of 18. This definition may ~~shall~~ not be
 73 construed to impose an obligation for child support beyond the
 74 child's attainment of majority except as imposed in s. 409.2561.

75 (3) "Court" means the circuit court.

76 (4) "Court order" means any judgment or order of any court
 77 of appropriate jurisdiction of the state, or an order of a court
 78 of competent jurisdiction of another state, ordering payment of
 79 a set or determinable amount of support money.

80 (7)-(5) "Health insurance" means coverage under a fee-for-
 81 service arrangement, health maintenance organization, or
 82 preferred provider organization, and other types of coverage
 83 available to either parent, under which medical services could
 84 be provided to a dependent child.

85 (8)-(6) "Obligee" means the person to whom support payments
 86 are made pursuant to an alimony or child support order.

87 (9)-(7) "Obligor" means a person who is responsible for

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88 making support payments pursuant to an alimony or child support
 89 order.

90 (12)-(8) "Public assistance" means money assistance paid on
 91 the basis of Title IV-E and Title XIX of the Social Security
 92 Act, temporary cash assistance, or food assistance benefits
 93 received on behalf of a child under 18 years of age who has an
 94 absent parent.

95 (10)-(9) "Program attorney" means an attorney employed by
 96 the department, under contract with the department, or employed
 97 by a contractor of the department, to provide legal
 98 representation for the department in a proceeding related to the
 99 determination of paternity or the establishment, modification,
 100 or enforcement of support brought pursuant to law.

101 (11)-(10) "Prosecuting attorney" means any private attorney,
 102 county attorney, city attorney, state attorney, program
 103 attorney, or an attorney employed by an entity of a local
 104 political subdivision who engages in legal action related to the
 105 determination of paternity or the establishment, modification,
 106 or enforcement of support brought pursuant to this act.

107 (13) "State Case Registry" means the automated registry
 108 maintained by the Title IV-D agency, containing records of each
 109 Title IV-D case and of each support order established or
 110 modified in the state on or after October 1, 1998. Such records
 111 must consist of data elements as required by the United States
 112 Secretary of Health and Human Services.

113 (14) "State Disbursement Unit" means the unit established
 114 and operated by the Title IV-D agency to provide one central
 115 address for collection and disbursement of child support
 116 payments made in cases enforced by the department pursuant to

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117 Title IV-D of the Social Security Act and in cases not being
 118 enforced by the department in which the support order was
 119 initially issued in this state on or after January 1, 1994, and
 120 in which the obligor's child support obligation is being paid
 121 through income deduction order.

122 (16) "Title IV-D Standard Parenting Time Plan" means a
 123 document which may be agreed to by the parents to govern the
 124 relationship between the parents and to provide the parent who
 125 owes support a reasonable minimum amount of time with his or her
 126 child. The plans set forth in s. 409.25633 include timetables
 127 that specify the time, including overnights and holidays, that a
 128 minor child 3 years of age or older may spend with each parent.

129 (15)(11) "Support," unless otherwise specified, means:

130 (a) Child support, and, when the child support obligation
 131 is being enforced by the Department of Revenue, spousal support
 132 or alimony for the spouse or former spouse of the obligor with
 133 whom the child is living.

134 (b) Child support only in cases not being enforced by the
 135 Department of Revenue.

136 (1)(12) "Administrative costs" means any costs, including
 137 attorney's fees, clerk's filing fees, recording fees and other
 138 expenses incurred by the clerk of the circuit court, service of
 139 process fees, or mediation costs, incurred by the Title IV-D
 140 agency in its effort to administer the Title IV-D program. The
 141 administrative costs that which must be collected by the
 142 department shall be assessed on a case-by-case basis based upon
 143 a method for determining costs approved by the Federal
 144 Government. The administrative costs shall be assessed
 145 periodically by the department. The methodology for determining

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146 administrative costs shall be made available to the judge or any
 147 party who requests it. Only those amounts ordered independent of
 148 current support, arrears, or past public assistance obligation
 149 shall be considered and applied toward administrative costs.

150 (2)(13) "Child support services" includes any civil,
 151 criminal, or administrative action taken by the Title IV-D
 152 program to determine paternity, establish, modify, enforce, or
 153 collect support.

154 (17)(14) "Undistributable collection" means a support
 155 payment received by the department which the department
 156 determines cannot be distributed to the final intended
 157 recipient.

158 (18)(15) "Unidentifiable collection" means a payment
 159 received by the department for which a parent, depository or
 160 circuit civil numbers, or source of the payment cannot be
 161 identified.

162 Section 3. Subsection (2) of section 409.2557, Florida
 163 Statutes, is amended to read:

164 409.2557 State agency for administering child support
 165 enforcement program.—

166 (2) The department in its capacity as the state Title IV-D
 167 agency ~~has shall have~~ the authority to take actions necessary to
 168 carry out the public policy of ensuring that children are
 169 maintained from the resources of their parents to the extent
 170 possible. The department's authority includes shall include, but
 171 is not be limited to, the establishment of paternity or support
 172 obligations, the establishment of a Title IV-D Standard
 173 Parenting Time Plan or any other parenting time plan agreed to
 174 by the parents, and as well as the modification, enforcement,

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175 and collection of support obligations.

176 Section 4. Subsections (2), (4), (5), and (7) of section
177 409.2563, Florida Statutes, are amended to read:

178 409.2563 Administrative establishment of child support
179 obligations.—

180 (2) PURPOSE AND SCOPE.—

181 (a) It is not the Legislature's intent to limit the
182 jurisdiction of the circuit courts to hear and determine issues
183 regarding child support or parenting time. This section is
184 intended to provide the department with an alternative procedure
185 for establishing child support obligations and establishing a
186 parenting time plan only if the parents are in agreement, in
187 Title IV-D cases in a fair and expeditious manner when there is
188 no court order of support. The procedures in this section are
189 effective throughout the state and shall be implemented
190 statewide.

191 (b) If the parents do not have an existing time sharing
192 schedule or parenting time plan and do not agree to a parenting
193 time plan, a parenting time plan will not be included in the
194 initial administrative order, only a statement explaining its
195 absence.

196 (c) If the parents have a judicially established parenting
197 time plan, the plan will not be included in the administrative
198 or initial judicial order.

199 (d) Any notification provided by the department will not
200 include Title IV-D Standard Parenting Time Plans if Florida is
201 not the child's home state, when one parent does not reside in
202 Florida, if either parent has requested nondisclosure for fear
203 of harm from the other parent, or when the parent who owes

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204 support is incarcerated.

205 ~~(e)(b)~~ The administrative procedure set forth in this
206 section concerns only the establishment of child support
207 obligations and, if agreed to by both parents, a parenting time
208 plan or Title IV-D Standard Parenting Time Plan. This section
209 does not grant jurisdiction to the department or the Division of
210 Administrative Hearings to hear or determine issues of
211 dissolution of marriage, separation, alimony or spousal support,
212 termination of parental rights, dependency, disputed paternity,
213 except for a determination of paternity as provided in s.
214 409.256, ~~or award of~~ or change of time-sharing. If both parents
215 have agreed to a parenting time plan before the establishment of
216 the administrative support order, the department or the Division
217 of Administrative Hearings will incorporate the agreed-upon
218 parenting time plan into the administrative support order. This
219 paragraph notwithstanding, the department and the Division of
220 Administrative Hearings may make findings of fact that are
221 necessary for a proper determination of a parent's support
222 obligation as authorized by this section.

223 ~~(f)(e)~~ If there is no support order for a child in a Title
224 IV-D case whose paternity has been established or is presumed by
225 law, or whose paternity is the subject of a proceeding under s.
226 409.256, the department may establish a parent's child support
227 obligation pursuant to this section, s. 61.30, and other
228 relevant provisions of state law. The administrative support
229 order will include a parenting time plan or Title IV-D Standard
230 Parenting Time Plan as agreed to by both parents. The parent's
231 obligation determined by the department may include any
232 obligation to pay retroactive support and any obligation to

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233 provide for health care for a child, whether through insurance
 234 coverage, reimbursement of expenses, or both. The department may
 235 proceed on behalf of:

- 236 1. An applicant or recipient of public assistance, as
 237 provided by ss. 409.2561 and 409.2567;
 238 2. A former recipient of public assistance, as provided by
 239 s. 409.2569;
 240 3. An individual who has applied for services as provided
 241 by s. 409.2567;
 242 4. Itself or the child, as provided by s. 409.2561; or
 243 5. A state or local government of another state, as
 244 provided by chapter 88.

245 (g)~~(d)~~ Either parent, or a caregiver if applicable, may at
 246 any time file a civil action in a circuit court having
 247 jurisdiction and proper venue to determine parental support
 248 obligations, if any. A support order issued by a circuit court
 249 prospectively supersedes an administrative support order
 250 rendered by the department.

251 (h)~~(e)~~ Pursuant to paragraph (e) ~~(b)~~, neither the
 252 department nor the Division of Administrative Hearings has
 253 jurisdiction to ~~award or~~ change child custody or rights of
 254 parental contact. The department or the Division of
 255 Administrative Hearings will incorporate a parenting time plan
 256 or Title IV-D Standard Parenting Time Plan as agreed to by both
 257 parents into the administrative support order. Either parent may
 258 at any time file a civil action in a circuit having jurisdiction
 259 and proper venue for a determination of child custody and rights
 260 of parental contact.

261 (i)~~(f)~~ The department shall terminate the administrative

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262 proceeding and file an action in circuit court to determine
 263 support if within 20 days after receipt of the initial notice
 264 the parent from whom support is being sought requests in writing
 265 that the department proceed in circuit court or states in
 266 writing his or her intention to address issues concerning time-
 267 sharing or rights to parental contact in court and if within 10
 268 days after receipt of the department's petition and waiver of
 269 service the parent from whom support is being sought signs and
 270 returns the waiver of service form to the department.

271 (j)~~(g)~~ The notices and orders issued by the department
 272 under this section shall be written clearly and plainly.

273 (4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE
 274 SUPPORT ORDER.—To commence a proceeding under this section, the
 275 department shall provide to the parent from whom support is not
 276 being sought and serve the parent from whom support is being
 277 sought with a notice of proceeding to establish administrative
 278 support order, a copy of the Title IV-D Standard Parenting Time
 279 Plans, and a blank financial affidavit form. The notice must
 280 state:

- 281 (a) The names of both parents, the name of the caregiver,
 282 if any, and the name and date of birth of the child or children;
 283 (b) That the department intends to establish an
 284 administrative support order as defined in this section;
 285 (c) That the department will incorporate a parenting time
 286 plan or Title IV-D Standard Parenting Time Plan, as agreed to by
 287 both parents, into the administrative support order;
 288 (d)~~(c)~~ That both parents must submit a completed financial
 289 affidavit to the department within 20 days after receiving the
 290 notice, as provided by paragraph (13) (a);

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291 ~~(e)-(d)~~ That both parents, or parent and caregiver if
 292 applicable, are required to furnish to the department
 293 information regarding their identities and locations, as
 294 provided by paragraph (13) (b);

295 ~~(f)-(e)~~ That both parents, or parent and caregiver if
 296 applicable, are required to promptly notify the department of
 297 any change in their mailing addresses to ensure receipt of all
 298 subsequent pleadings, notices, and orders, as provided by
 299 paragraph (13) (c);

300 ~~(g)-(f)~~ That the department will calculate support
 301 obligations based on the child support guidelines schedule in s.
 302 61.30 and using all available information, as provided by
 303 paragraph (5) (a), and will incorporate such obligations into a
 304 proposed administrative support order;

305 ~~(h)-(g)~~ That the department will send by regular mail to
 306 both parents, or parent and caregiver if applicable, a copy of
 307 the proposed administrative support order, the department's
 308 child support worksheet, and any financial affidavits submitted
 309 by a parent or prepared by the department;

310 ~~(i)-(h)~~ That the parent from whom support is being sought
 311 may file a request for a hearing in writing within 20 days after
 312 the date of mailing or other service of the proposed
 313 administrative support order or will be deemed to have waived
 314 the right to request a hearing;

315 ~~(j)-(i)~~ That if the parent from whom support is being sought
 316 does not file a timely request for hearing after service of the
 317 proposed administrative support order, the department will issue
 318 an administrative support order that incorporates the findings
 319 of the proposed administrative support order, and any agreed-

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320 upon parenting time plan. The department will send by regular
 321 mail a copy of the administrative support order and any
 322 incorporated parenting time plan to both parents, or parent and
 323 caregiver if applicable;

324 ~~(k)-(j)~~ That after an administrative support order is
 325 rendered incorporating any agreed-upon parenting time plan, the
 326 department will file a copy of the order with the clerk of the
 327 circuit court;

328 ~~(l)-(k)~~ That after an administrative support order is
 329 rendered, the department may enforce the administrative support
 330 order by any lawful means. The department does not have
 331 jurisdiction to enforce any parenting time plan that is
 332 incorporated into an administrative support order;

333 ~~(m)-(l)~~ That either parent, or caregiver if applicable, may
 334 file at any time a civil action in a circuit court having
 335 jurisdiction and proper venue to determine parental support
 336 obligations, if any, and that a support order issued by a
 337 circuit court supersedes an administrative support order
 338 rendered by the department;

339 ~~(n)-(m)~~ That neither the department nor the Division of
 340 Administrative Hearings has jurisdiction to ~~award or~~ change
 341 child custody or rights of parental contact or time-sharing, and
 342 these issues may be addressed only in circuit court. The
 343 department or the Division of Administrative Hearings may
 344 incorporate, if agreed to by both parents, a parenting time plan
 345 or Title IV-D Standard Parenting Time Plan when the
 346 administrative support order is established.

347 1. The parent from whom support is being sought may request
 348 in writing that the department proceed in circuit court to

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349 determine his or her support obligations.

350 2. The parent from whom support is being sought may state
351 in writing to the department his or her intention to address
352 issues concerning custody or rights to parental contact in
353 circuit court.

354 3. If the parent from whom support is being sought submits
355 the request authorized in subparagraph 1., or the statement
356 authorized in subparagraph 2. to the department within 20 days
357 after the receipt of the initial notice, the department shall
358 file a petition in circuit court for the determination of the
359 parent's child support obligations, and shall send to the parent
360 from whom support is being sought a copy of its petition, a
361 notice of commencement of action, and a request for waiver of
362 service of process as provided in the Florida Rules of Civil
363 Procedure.

364 4. If, within 10 days after receipt of the department's
365 petition and waiver of service, the parent from whom support is
366 being sought signs and returns the waiver of service form to the
367 department, the department shall terminate the administrative
368 proceeding without prejudice and proceed in circuit court.

369 5. In any circuit court action filed by the department
370 pursuant to this paragraph or filed by a parent from whom
371 support is being sought or other person pursuant to paragraph
372 (m) (1) or paragraph (o) (n), the department shall be a party
373 only with respect to those issues of support allowed and
374 reimbursable under Title IV-D of the Social Security Act. It is
375 the responsibility of the parent from whom support is being
376 sought or other person to take the necessary steps to present
377 other issues for the court to consider;=

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378 ~~(o) (n)~~ That if the parent from whom support is being sought
379 files an action in circuit court and serves the department with
380 a copy of the petition within 20 days after being served notice
381 under this subsection, the administrative process ends without
382 prejudice and the action must proceed in circuit court;

383 ~~(p) (e)~~ Information provided by the Office of State Courts
384 Administrator concerning the availability and location of self-
385 help programs for those who wish to file an action in circuit
386 court but who cannot afford an attorney.

387
388 The department may serve the notice of proceeding to establish
389 an administrative support order and Title IV-D Standard
390 Parenting Time Plans by certified mail, restricted delivery,
391 return receipt requested. Alternatively, the department may
392 serve the notice by any means permitted for service of process
393 in a civil action. For purposes of this section, an authorized
394 employee of the department may serve the notice and execute an
395 affidavit of service. Service by certified mail is completed
396 when the certified mail is received or refused by the addressee
397 or by an authorized agent as designated by the addressee in
398 writing. If a person other than the addressee signs the return
399 receipt, the department shall attempt to reach the addressee by
400 telephone to confirm whether the notice was received, and the
401 department shall document any telephonic communications. If
402 someone other than the addressee signs the return receipt, the
403 addressee does not respond to the notice, and the department is
404 unable to confirm that the addressee has received the notice,
405 service is not completed and the department shall attempt to
406 have the addressee served personally. The department shall

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407 provide the parent from whom support is not being sought or the
 408 caregiver with a copy of the notice by regular mail to the last
 409 known address of the parent from whom support is not being
 410 sought or caregiver.

411 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

412 (a) After serving notice upon a parent in accordance with
 413 subsection (4), the department shall calculate that parent's
 414 child support obligation under the child support guidelines
 415 schedule as provided by s. 61.30, based on any timely financial
 416 affidavits received and other information available to the
 417 department. If either parent fails to comply with the
 418 requirement to furnish a financial affidavit, the department may
 419 proceed on the basis of information available from any source,
 420 if such information is sufficiently reliable and detailed to
 421 allow calculation of guideline schedule amounts under s. 61.30.
 422 If a parent receives public assistance and fails to submit a
 423 financial affidavit, the department may submit a financial
 424 affidavit or written declaration for that parent pursuant to s.
 425 61.30(15). If there is a lack of sufficient reliable information
 426 concerning a parent's actual earnings for a current or past
 427 period, it shall be presumed for the purpose of establishing a
 428 support obligation that the parent had an earning capacity equal
 429 to the federal minimum wage during the applicable period.

430 (b) The department shall send by regular mail to both
 431 parents, or to a parent and caregiver if applicable, copies of
 432 the proposed administrative support order, a copy of the Title
 433 IV-D Standard Parenting Time Plans, its completed child support
 434 worksheet, and any financial affidavits submitted by a parent or
 435 prepared by the department. The proposed administrative support

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436 order must contain the same elements as required for an
 437 administrative support order under paragraph (7) (e).

438 (c) The department shall provide a notice of rights with
 439 the proposed administrative support order, which notice must
 440 inform the parent from whom support is being sought that:

441 1. The parent from whom support is being sought may, within
 442 20 days after the date of mailing or other service of the
 443 proposed administrative support order, request a hearing by
 444 filing a written request for hearing in a form and manner
 445 specified by the department;

446 2. If the parent from whom support is being sought files a
 447 timely request for a hearing, the case shall be transferred to
 448 the Division of Administrative Hearings, which shall conduct
 449 further proceedings and may enter an administrative support
 450 order;

451 3. A parent from whom support is being sought who fails to
 452 file a timely request for a hearing shall be deemed to have
 453 waived the right to a hearing, and the department may render an
 454 administrative support order pursuant to paragraph (7) (b);

455 4. The parent from whom support is being sought may consent
 456 in writing to entry of an administrative support order without a
 457 hearing;

458 5. The parent from whom support is being sought may, within
 459 10 days after the date of mailing or other service of the
 460 proposed administrative support order, contact a department
 461 representative, at the address or telephone number specified in
 462 the notice, to informally discuss the proposed administrative
 463 support order and, if informal discussions are requested timely,
 464 the time for requesting a hearing will be extended until 10 days

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465 after the department notifies the parent that the informal
466 discussions have been concluded; and

467 6. If an administrative support order that establishes a
468 parent's support obligation and incorporates either a parenting
469 time plan or Title IV-D Standard Parenting Time Plan agreed to
470 by both parents is rendered, whether after a hearing or without
471 a hearing, the department may enforce the administrative support
472 order by any lawful means. The department does not have the
473 jurisdiction or authority to enforce a parenting time plan.

474 (d) If, after serving the proposed administrative support
475 order but before a final administrative support order is
476 rendered, the department receives additional information that
477 makes it necessary to amend the proposed administrative support
478 order, it shall prepare an amended proposed administrative
479 support order, with accompanying amended child support
480 worksheets and other material necessary to explain the changes,
481 and follow the same procedures set forth in paragraphs (b) and
482 (c).

483 (7) ADMINISTRATIVE SUPPORT ORDER.—

484 (a) If a hearing is held, the administrative law judge of
485 the Division of Administrative Hearings shall issue an
486 administrative support order that will include a parenting time
487 plan or Title IV-D Standard Parenting Time Plan agreed to by
488 both parents, or a final order denying an administrative support
489 order, which constitutes final agency action by the department.
490 The Division of Administrative Hearings shall transmit any such
491 order to the department for filing and rendering.

492 (b) If the parent from whom support is being sought does
493 not file a timely request for a hearing, the parent will be

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494 deemed to have waived the right to request a hearing.

495 (c) If the parent from whom support is being sought waives
496 the right to a hearing, or consents in writing to the entry of
497 an order without a hearing, the department may render an
498 administrative support order that will include a parenting time
499 plan or Title IV-D Standard Parenting Time Plan agreed to by
500 both parents.

501 (d) The department shall send by regular mail a copy of the
502 administrative support order that will include a parenting time
503 plan or Title IV-D Standard Parenting Time Plan agreed to by
504 both parents, or the final order denying an administrative
505 support order, to both parents, or a parent and caregiver if
506 applicable. The parent from whom support is being sought shall
507 be notified of the right to seek judicial review of the
508 administrative support order in accordance with s. 120.68.

509 (e) An administrative support order must comply with ss.
510 61.13(1) and 61.30. The department shall develop a standard form
511 or forms for administrative support orders. An administrative
512 support order must provide and state findings, if applicable,
513 concerning:

- 514 1. The full name and date of birth of the child or
- 515 children;
- 516 2. The name of the parent from whom support is being sought
- 517 and the other parent or caregiver;
- 518 3. The parent's duty and ability to provide support;
- 519 4. The amount of the parent's monthly support obligation;
- 520 5. Any obligation to pay retroactive support;
- 521 6. The parent's obligation to provide for the health care
- 522 needs of each child, whether through health insurance,

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523 contribution toward the cost of health insurance, payment or
 524 reimbursement of health care expenses for the child, or any
 525 combination thereof;

526 7. The beginning date of any required monthly payments and
 527 health insurance;

528 8. That all support payments ordered must be paid to the
 529 ~~Florida~~ State Disbursement Unit as provided by s. 61.1824;

530 9. That the parents, or caregiver if applicable, must file
 531 with the department when the administrative support order is
 532 rendered, if they have not already done so, and update as
 533 appropriate the information required pursuant to paragraph
 534 (13) (b);

535 10. That both parents, or parent and caregiver if
 536 applicable, are required to promptly notify the department of
 537 any change in their mailing addresses pursuant to paragraph
 538 (13) (c); and

539 11. That if the parent ordered to pay support receives
 540 reemployment assistance or unemployment compensation benefits,
 541 the payor shall withhold, and transmit to the department, 40
 542 percent of the benefits for payment of support, not to exceed
 543 the amount owed.

544
 545 An income deduction order as provided by s. 61.1301 must be
 546 incorporated into the administrative support order or, if not
 547 incorporated into the administrative support order, the
 548 department or the Division of Administrative Hearings shall
 549 render a separate income deduction order.

550 Section 5. Section 409.25633, Florida Statutes, is created
 551 to read:

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552 409.25633. Title IV-D Standard Parenting Time Plans.—

553 (1) A Title IV-D Standard Parenting Time Plan must be
 554 presented to the parents in any administrative action taken by
 555 the Title IV-D program to establish or modify child support or
 556 to determine paternity. If the parents agree to the Title IV-D
 557 Standard Parenting Time Plan or to another parenting time plan,
 558 the plan must be incorporated into the administrative order. If
 559 the parents do not agree to a Title IV-D Standard Parenting Time
 560 Plan or if an agreed-upon parenting time plan is not included,
 561 the Department of Revenue must enter an administrative support
 562 order and refer the parents to the court of appropriate
 563 jurisdiction to establish a parenting time plan. The department
 564 must note on the referral that an administrative support order
 565 has been entered. If a parenting time plan is not included in
 566 the administrative support order entered under s. 409.2563, the
 567 department must provide information to the parents on the
 568 process to establish such plan.

569 (2) If the parents live within 100 miles of each other and
 570 the child is 3 years of age or older, the parent who owes
 571 support shall have parenting time with the child:

572 (a) Every other weekend.—The second and fourth full weekend
 573 of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The
 574 weekends may begin upon the child's release from school on
 575 Friday and end on Sunday at 6 p.m. or when the child returns to
 576 school on Monday morning. The weekend time may be extended by
 577 holidays that fall on Friday or Monday;

578 (b) One evening per week.—One weekday beginning at 6 p.m.
 579 and ending at 8 p.m. or if both parents agree, from when the
 580 child is released from school until 8 p.m.;

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581 (c) Thanksgiving break.—In even-numbered years, the
 582 Thanksgiving break from 6 p.m. on the Wednesday before
 583 Thanksgiving until 6 p.m. on the Sunday following Thanksgiving.
 584 If both parents agree, the Thanksgiving break parenting time may
 585 begin upon the child's release from school and end upon the
 586 child's return to school the following Monday;

587 (d) Winter break.—In odd-numbered years, the first half of
 588 winter break, from the day school is released, beginning at 6
 589 p.m. or, if both parents agree, upon the child's release from
 590 school, until noon on December 26. In even-numbered years, the
 591 second half of winter break from noon on December 26 until 6
 592 p.m. on the day before school resumes or, if both parents agree,
 593 upon the child's return to school;

594 (e) Spring break.—In even-numbered years, the week of
 595 spring break from 6 p.m. the day that school is released until 6
 596 p.m. the night before school resumes. If both parents agree, the
 597 spring break parenting time may begin upon the child's release
 598 from school and end upon the child's return to school the
 599 following Monday; and

600 (f) Summer break.—For 2 weeks in the summer beginning at 6
 601 p.m. the first Sunday following the last day of school.

602 (3) If the parents live more than 100 miles from each other
 603 and the child is 3 years of age or older, the parties may agree
 604 to follow the schedule set forth in subsection (2), or else the
 605 parent who owes child support has parenting time with the child:

606 (a) One weekend per month.—The second or fourth full
 607 weekend of the month throughout the year beginning Friday at 6
 608 p.m. through Sunday at 6 p.m. The parent who owes child support
 609 can choose the one weekend per month within 90 days after the

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610 parents begin to live more than 100 miles apart; and

611 (b) Summer break.—Forty-two days of parenting time during
 612 the summer months. The parent who is owed child support will
 613 have parenting time one weekend beginning on Friday at 6 p.m.
 614 through Sunday at 6 p.m. during any one extended period during
 615 the summer.

616 (4) If the child is under 3 years of age, the parents may
 617 agree on a parenting time plan that includes more frequent
 618 visitation with shorter timeframes, gradually leading into
 619 overnight visits and either a parenting time plan agreed to by
 620 both parents or the Title IV-D Standard Parenting Time Plan set
 621 out in this section.

622 (5) In the event the parents have not agreed on a parenting
 623 schedule at the time of the child support hearing, the
 624 department will enter an administrative support order and refer
 625 the parents to a court of appropriate jurisdiction for the
 626 establishment of a parenting time plan.

627 (6) The Title IV-D Standard Parenting Time Plans are not
 628 intended for use by parents and families with domestic or family
 629 violence concerns.

630 (7) If after the incorporation of an agreed-upon parenting
 631 time plan into an administrative support order, a parent becomes
 632 concerned about the safety of the child during the child's time
 633 with the other parent, a modification of the parenting time plan
 634 may be sought through a court of appropriate jurisdiction.

635 (8) The department will create and provide a form for a
 636 petition to establish a parenting time plan for parents who have
 637 not agreed on a parenting schedule at the time of the child
 638 support hearing. The department will provide the form to the

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639 parents but will not file the petition or represent either
 640 parent at the hearing.

641 (9) The parents will not be required to pay a fee to file
 642 the petition to establish a parenting plan.

643 (10) The department may adopt rules to implement and
 644 administer this section.

645 Section 6. Subsections (1) and (2) of section 409.2564,
 646 Florida Statutes, are amended to read:

647 409.2564 Actions for support.—

648 (1) In each case in which regular support payments are not
 649 being made as provided herein, the department shall institute,
 650 within 30 days after determination of the obligor's reasonable
 651 ability to pay, action as is necessary to secure the obligor's
 652 payment of current support, ~~and~~ any arrearage that which may
 653 have accrued under an existing order of support, and if a
 654 parenting time plan was not incorporated into the existing order
 655 of support and is appropriate, include either an agreed-upon
 656 parenting time plan or Title IV-D Standard Parenting Time Plan.

657 The department shall notify the program attorney in the judicial
 658 circuit in which the recipient resides setting forth the facts
 659 in the case, including the obligor's address, if known, and the
 660 public assistance case number. Whenever applicable, the
 661 procedures established under ~~the provisions of~~ chapter 88,
 662 Uniform Interstate Family Support Act, chapter 61, Dissolution
 663 of Marriage; Support; Time-sharing, chapter 39, Proceedings
 664 Relating to Children, chapter 984, Children and Families in Need
 665 of Services, and chapter 985, Delinquency; Interstate Compact on
 666 Juveniles, may govern actions instituted under ~~the provisions of~~
 667 this act, except that actions for support under chapter 39,

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668 chapter 984, or chapter 985 brought pursuant to this act shall
 669 not require any additional investigation or supervision by the
 670 department.

671 (2) The order for support entered pursuant to an action
 672 instituted by the department under ~~the provisions of~~ subsection
 673 (1) shall require that the support payments be made periodically
 674 to the department through the depository. An order for support
 675 entered under the provisions of subsection (1) must include
 676 either an agreed-upon parenting time plan or Title IV-D Standard
 677 Parenting Time Plan, if appropriate. Upon receipt of a payment
 678 made by the obligor pursuant to any order of the court, the
 679 depository shall transmit the payment to the department within 2
 680 working days, except those payments made by personal check which
 681 shall be disbursed in accordance with s. 61.181. Upon request,
 682 the depository shall furnish to the department a certified
 683 statement of all payments made by the obligor. Such statement
 684 shall be provided by the depository at no cost to the
 685 department.

686 Section 7. Paragraph (g) of subsection (2) and paragraph
 687 (a) of subsection (4) of section 409.256, Florida Statutes, are
 688 amended to read:

689 409.256 Administrative proceeding to establish paternity or
 690 paternity and child support; order to appear for genetic
 691 testing.—

692 (2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO
 693 THE COURTS.—

694 (g) Section 409.2563(2)(h), (i), and (j) ~~409.2563(2)(e),~~
 695 ~~(f), and (g)~~ apply to a proceeding under this section.

696 (4) NOTICE OF PROCEEDING TO ESTABLISH PATERNITY OR

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697 PATERNITY AND CHILD SUPPORT; ORDER TO APPEAR FOR GENETIC
 698 TESTING; MANNER OF SERVICE; CONTENTS.—The Department of Revenue
 699 shall commence a proceeding to determine paternity, or a
 700 proceeding to determine both paternity and child support, by
 701 serving the respondent with a notice as provided in this
 702 section. An order to appear for genetic testing may be served at
 703 the same time as a notice of the proceeding or may be served
 704 separately. A copy of the affidavit or written declaration upon
 705 which the proceeding is based shall be provided to the
 706 respondent when notice is served. A notice or order to appear
 707 for genetic testing shall be served by certified mail,
 708 restricted delivery, return receipt requested, or in accordance
 709 with the requirements for service of process in a civil action.
 710 Service by certified mail is completed when the certified mail
 711 is received or refused by the addressee or by an authorized
 712 agent as designated by the addressee in writing. If a person
 713 other than the addressee signs the return receipt, the
 714 department shall attempt to reach the addressee by telephone to
 715 confirm whether the notice was received, and the department
 716 shall document any telephonic communications. If someone other
 717 than the addressee signs the return receipt, the addressee does
 718 not respond to the notice, and the department is unable to
 719 confirm that the addressee has received the notice, service is
 720 not completed and the department shall attempt to have the
 721 addressee served personally. For purposes of this section, an
 722 employee or an authorized agent of the department may serve the
 723 notice or order to appear for genetic testing and execute an
 724 affidavit of service. The department may serve an order to
 725 appear for genetic testing on a caregiver. The department shall

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726 provide a copy of the notice or order to appear by regular mail
 727 to the mother and caregiver, if they are not respondents.
 728 (a) A notice of proceeding to establish paternity must
 729 state:
 730 1. That the department has commenced an administrative
 731 proceeding to establish whether the putative father is the
 732 biological father of the child named in the notice.
 733 2. The name and date of birth of the child and the name of
 734 the child's mother.
 735 3. That the putative father has been named in an affidavit
 736 or written declaration that states the putative father is or may
 737 be the child's biological father.
 738 4. That the respondent is required to submit to genetic
 739 testing.
 740 5. That genetic testing will establish either a high degree
 741 of probability that the putative father is the biological father
 742 of the child or that the putative father cannot be the
 743 biological father of the child.
 744 6. That if the results of the genetic test do not indicate
 745 a statistical probability of paternity that equals or exceeds 99
 746 percent, the paternity proceeding in connection with that child
 747 shall cease unless a second or subsequent test is required.
 748 7. That if the results of the genetic test indicate a
 749 statistical probability of paternity that equals or exceeds 99
 750 percent, the department may:
 751 a. Issue a proposed order of paternity that the respondent
 752 may consent to or contest at an administrative hearing; or
 753 b. Commence a proceeding, as provided in s. 409.2563, to
 754 establish an administrative support order for the child. Notice

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755 of the proceeding shall be provided to the respondent by regular
756 mail.

757 8. That, if the genetic test results indicate a statistical
758 probability of paternity that equals or exceeds 99 percent and a
759 proceeding to establish an administrative support order is
760 commenced, the department shall issue a proposed order that
761 addresses paternity and child support. The respondent may
762 consent to or contest the proposed order at an administrative
763 hearing.

764 9. That if a proposed order of paternity or proposed order
765 of both paternity and child support is not contested, the
766 department shall adopt the proposed order and render a final
767 order that establishes paternity and, if appropriate, an
768 administrative support order for the child.

769 10. That, until the proceeding is ended, the respondent
770 shall notify the department in writing of any change in the
771 respondent's mailing address and that the respondent shall be
772 deemed to have received any subsequent order, notice, or other
773 paper mailed to the most recent address provided or, if a more
774 recent address is not provided, to the address at which the
775 respondent was served, and that this requirement continues if
776 the department renders a final order that establishes paternity
777 and a support order for the child.

778 11. That the respondent may file an action in circuit court
779 for a determination of paternity, child support obligations, or
780 both.

781 12. That if the respondent files an action in circuit court
782 and serves the department with a copy of the petition or
783 complaint within 20 days after being served notice under this

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784 subsection, the administrative process ends without prejudice
785 and the action must proceed in circuit court.

786 13. That, if paternity is established, the putative father
787 may file a petition in circuit court for a determination of
788 matters relating to custody and rights of parental contact.
789

790 A notice under this paragraph must also notify the respondent of
791 the provisions in s. 409.2563(4)(n) and (p) ~~s. 409.2563(4)(m)~~
792 ~~and (e)~~.

793 Section 8. Subsection (5) of section 409.2572, Florida
794 Statutes, is amended to read:

795 409.2572 Cooperation.—

796 (5) As used in this section only, the term "applicant for
797 or recipient of public assistance for a dependent child" refers
798 to such applicants and recipients of public assistance as
799 defined in s. 409.2554(12) ~~s. 409.2554(8)~~, with the exception of
800 applicants for or recipients of Medicaid solely for the benefit
801 of a dependent child.

802 Section 9. The sum of \$419,520 in nonrecurring general
803 revenue is appropriated for contracted services to the
804 Department of Revenue for the fiscal year 2017-2018 for the
805 purpose of implementing this act. The sum of \$20,729 in
806 recurring general revenue is appropriated for expenses, and the
807 sum of \$91,127 in recurring general revenue is appropriated for
808 salaries and benefits to the Department of Revenue for the
809 fiscal year 2017-2018 for the purpose of implementing this act.

810 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)

Topic SB 590

Amendment Barcode (if applicable)

Name Mark Anderson

Job Title _____

Address 106 S. Monroe St

Phone 813-205-0658

Street

Tallahassee

FL

32301

Email Mark@Consultandco.com

City

State

Zip

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

~~10200~~ 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

Phone 561 361 8300

Street

Boca Raton

FL

33431

Email Areid@isaacsridlaw.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 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.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Fournier/Loe</u>	<u>Williams</u>	<u>AHS</u>	<u>Recommend: Fav/CS</u>
3.	<u>Fournier/Loe</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 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 allopathic¹ and osteopathic² 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 misdemeanor⁹ up to a first-degree felony with a mandatory minimum sentence of 15 years in state prison and a \$200,000 fine.¹⁰ Paraphernalia¹¹ 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 2014¹³ (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)¹⁴ for medical use¹⁵ 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 training¹⁶ 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 patients¹⁹ 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 cannabis²² 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 physician²³ 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 workshops²⁷ 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.

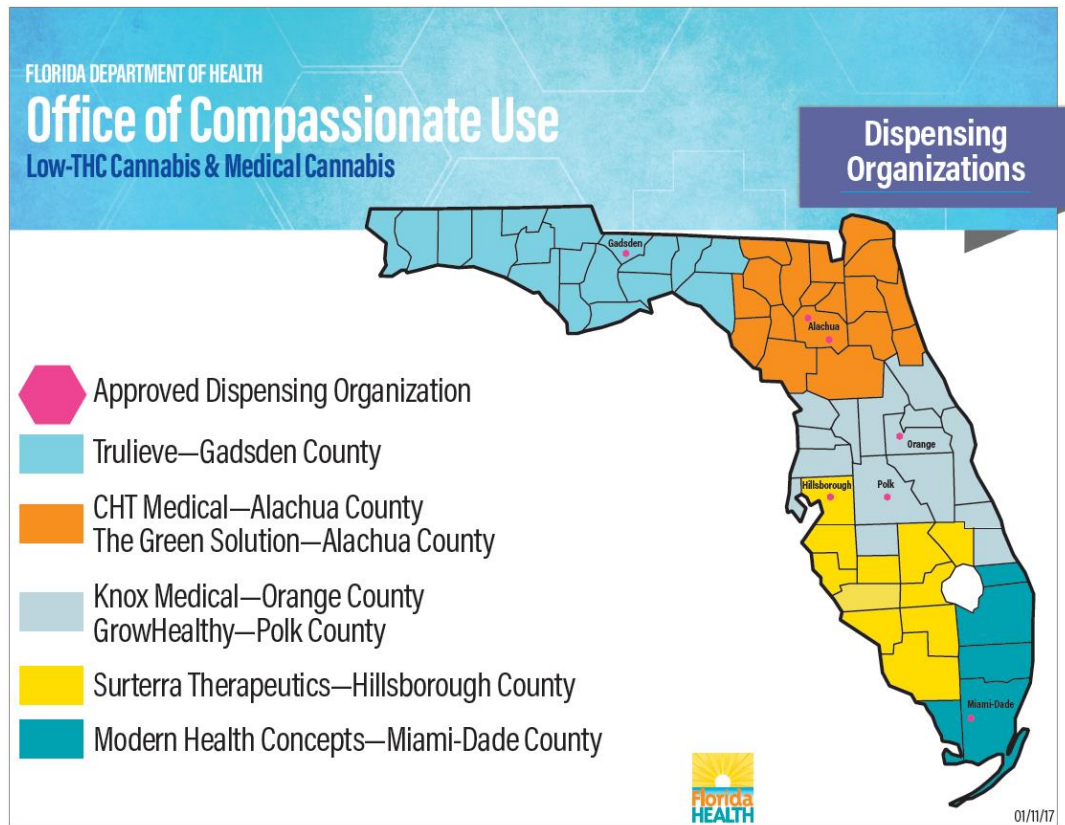
³⁰ Proposed Rule ch. 64-4, F.A.C., ID 15645147, (Feb. 2, 2015).

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;”

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 *supra* 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/3052013829132756857467.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:

- Confirms 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-Marine-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 MMTC⁵⁹ 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.

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	.	
	.	
	.	
	.	

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:



225574

11 Between lines 10 and 11

12 insert:

13 requiring a physician to conduct a physical
14 examination and make a full assessment of the medical
15 history of a patient and make certain determinations
16 before the physician may certify a patient and specify
17 a delivery device; requiring a physician to review the
18 compassionate use registry and confirm that a patient
19 does not have an active physician certification issued
20 by another physician before the physician may certify
21 a patient and specify a delivery device;



427570

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/27/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 330 - 339

and insert:

~~treatment is discontinued; and~~ 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

11 ~~University of Florida College of Pharmacy for research on the~~
12 ~~safety and efficacy of low-THC cannabis and medical cannabis on~~
13 ~~patients;~~

14 7.(h) Obtains the voluntary written informed consent of the
15

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

17 And the title is amended as follows:

18 Delete line 17

19 and insert:

20 supply; eliminating the requirement that physicians
21 maintain patient treatment plans and submit the
22 treatment plans to the University of Florida College
23 of Pharmacy; requiring written consent of a parent or
24 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

11 permanent residency by providing the department with a copy of a
12 valid Florida driver license or Florida identification card, a
13 copy of a utility bill in his or her name issued within the
14 prior 90 days which shows an address in this state, or a copy of
15 his or her Florida voter information card.

16 b. If the patient is not a permanent resident of the state:

17 (I) He or she is eligible to receive marijuana in his or
18 her state of permanent residence; and

19 (II) He or she will be remaining in this state for at least
20 3 consecutive months.

21 (A) An adult patient may provide the department with
22 documentation that may include, but is not limited to, a rental
23 agreement for a property in this state for period of at least 3
24 months, an employment contract based in this state which
25 indicates the employment is for a period of at least 3 months,
26 or a receipt for paid tuition at a school in this state for a
27 period of at least 3 months.

28 (B) A parent or legal guardian of a patient who is under
29 the age of 18 must provide documentation as described in sub-
30 sub-sub-paragraph (A) or in department rule and provide
31 additional documentation that the patient is his or her child or
32 ward.

33
34 The department shall adopt in rule a list of documents that a
35 patient may provide to qualify for an identification card under
36 this subparagraph.

37 2. Patient and caregiver identification cards must be
38 resistant to counterfeiting and tampering and must include at
39 least the following:



974884

40 a. The name, address, and date of birth of the patient or
41 caregiver, as appropriate;

42 b. A full-face, passport-type, color photograph of the
43 patient or caregiver, as appropriate, taken within the 90 days
44 immediately preceding registration;

45 c. Designation of the cardholder as a patient or caregiver;

46 d. A unique identification number for the patient or
47 caregiver which is matched to the identification number used for
48 such person in the department's compassionate use registry. A
49 caregiver's identification number and file in the compassionate
50 use registry must be linked to the file of the patient or
51 patients the caregiver is assisting so that the caregiver's
52 status may be verified for each patient individually;

53 e. The expiration date, which shall be 1 year after the
54 date of issuance of the identification card or the date
55 treatment ends, as provided in the patient's physician
56 certification, whichever occurs first; and

57 f. For caregivers who are assisting three or fewer
58

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

60 And the title is amended as follows:

61 Delete line 53

62 and insert:

63 registrants by a specific date; requiring the
64 department to make certain determinations before
65 issuing an identification card to a patient; providing
66 that a patient or the parent or legal guardian of a
67 patient must provide the department with certain
68 documentation to qualify for an identification card;



974884

69 requiring the department to adopt a rule listing
70 documents that a patient may provide to qualify for an
71 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:

- 1 **Senate Amendment**
- 2
- 3 Delete line 653
- 4 and insert:
- 5 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



368518

11 registration and contracts.

12 (i) The department shall Develop an application form for
13 registration as an MMTC and impose an initial application and
14 biennial renewal fee that is sufficient to cover the costs of
15 administering this section. To be registered as an MMTC, the an
16 applicant for approval as a dispensing organization must be able
17 to demonstrate:

18 1. That, for the 5 consecutive years before submitting the
19 application, the applicant has been registered to do business in
20 this state.

21 2.1. The technical and technological ability to cultivate
22 and produce low-THC cannabis and marijuana. The applicant must
23 possess a valid certificate of registration issued by the
24 Department of Agriculture and Consumer Services pursuant to s.
25 581.131 that is issued for the cultivation of more than 400,000
26 plants, be operated by a nurseryman as defined in s. 581.011,
27 and have been operated as a registered nursery in this state for
28 at least 30 continuous years.

29 3.2. The ability to secure the premises, resources, and
30 personnel necessary to operate as an MMTC a dispensing
31 organization.

32 4.3. The ability to maintain accountability of all raw
33 materials, finished products, and any byproducts to prevent
34 diversion or unlawful access to or possession of these
35 substances.

36 5.4. An infrastructure reasonably located to dispense low-
37 THC cannabis and marijuana to registered qualifying patients
38 statewide or regionally as determined by the department.

39 6.5. The financial ability to maintain operations for the



368518

40 duration of the 2-year approval cycle, including the provision
41 of certified financials to the department. Upon approval, the
42 applicant must post a \$5 million performance bond. However, upon
43 ~~an MMTC a dispensing organization's~~ serving at least 1,000
44 ~~qualifying qualified~~ patients, the ~~MMTC dispensing organization~~
45 is only required to maintain a \$2 million performance bond.

46 ~~7.6.~~ That all owners and managers have been fingerprinted
47 and have successfully passed a level 2 background screening
48 pursuant to s. 435.04.

49 8. The ability to implement a diversity plan that promotes
50 and ensures the involvement of minority persons and minority
51 business enterprises, as defined in s. 288.703, or veteran
52 business enterprises, as defined in s. 295.187, in ownership,
53 management, employment, and contracting opportunities.

54 a. A diversity plan must be submitted with an MMTC
55 application.

56 b. Upon registration renewal the MMTC must show the
57 effectiveness of the diversity plan by including the following:

58 (I) Representation of minority persons and veterans in the
59 MMTC's workforce;

60 (II) Efforts to recruit minority persons and veterans for
61 employment; and

62 (III) A record of contracts for services with minority
63 business enterprises and veteran business enterprises.

64 ~~9.7.~~ The employment of a medical director to supervise the
65 activities of the ~~MMTC dispensing organization~~.

66 ~~(c) Upon the registration of 250,000 active qualified~~
67 ~~patients in the compassionate use registry, approve three~~
68 ~~dispensing organizations, including, but not limited to, an~~



368518

69 ~~applicant that is a recognized class member of *Pigford v.*~~
70 ~~*Clickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers*~~
71 ~~*Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the~~
72 ~~Black Farmers and Agriculturalists Association, which must meet~~
73 ~~the requirements of subparagraphs (b)2.-7. and demonstrate the~~
74 ~~technical and technological ability to cultivate and produce~~
75 ~~low-THC cannabis.~~

76 ~~(j)(d) Allow an MMTC a dispensing organization to make a~~
77 ~~wholesale purchase of marijuana low-THC cannabis or medical~~
78 ~~cannabis from, or a distribution of marijuana low-THC cannabis~~
79 ~~or medical cannabis to, another MMTC dispensing organization.~~

80 ~~(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

11 before entering into any contract with any MMTC in this state.
12 The department shall develop an application form and impose an
13 initial application and biennial renewal fee in an amount
14 sufficient to cover the costs of administering this paragraph.
15 The department may conduct background screenings of certain
16 contracted employees based on the nature of the contracted
17 services provided.

18

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

20 And the title is amended as follows:

21 Delete line 100

22 and insert:

23 samples; prohibiting an MMTC from contracting with an
24 entity to perform certain services unless the entity
25 holds a permit issued by the department; requiring an
26 entity to apply for a permit and pay an application
27 fee before contracting with an MMTC; requiring the
28 department to develop such application; authorizing
29 the department to conduct background screenings of
30 certain employees; requiring the department to adopt
31 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

11 pursuant to s. 435.04. Individuals who seek or hold less than a
12 5 percent direct or indirect equity interest in the MMTC are not
13 required to be fingerprinted or pass the background check. A
14 request for a change in MMTC ownership, equity structure, or
15 transfer of registration is deemed approved if not denied by the
16 department within 15 days after receipt of the request. The
17 department shall adopt by rule a process which includes specific
18 criteria for the approval or denial of such requests.

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete lines 100 - 102

23 and insert:

24 samples; requiring the department to approve an MMTC's
25 request for a change in ownership, equity structure,
26 or transfer of registration to a new entity if certain
27 criteria are met; providing an exception to a
28 requirement regarding the submission of fingerprints
29 and passing of a background check; providing that a
30 request is deemed approved if not denied by the
31 department within a specified timeframe; requiring the
32 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

11 2. The amount of marijuana certified, and the recommended
12 length of time that the amount of marijuana is certified, for
13 the patient;

14 3. The route of administration of marijuana to the patient
15 and any delivery device for the administration of marijuana to
16 the patient; and

17 4. The patient's certifying physician.

18
19 The coalition shall review the data submitted by the department.
20 If, after review of the data, the coalition determines that
21 state law and rules should be modified to address abuse or fraud
22 of the system established in s. 29, Art. X of the State
23 Constitution, s. 381.986, and associated rules, the coalition
24 must include recommendations for changes to state law and rules
25 to address such abuse or fraud in the report submitted by the
26 board pursuant to paragraph (g).

27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete line 116

31 and insert:

32 a purpose for the coalition; requiring the department
33 to electronically submit to the coalition a data set
34 that includes certain information for each patient
35 registered with the compassionate use registry;
36 requiring the coalition to review the data submitted
37 by the department and to make certain determinations
38 and to potentially issue recommendations for changes
39 to state law and rules; establishing the Medical



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;



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57 requiring the department to register additional
58 medical marijuana treatment centers in accordance with
59 a specified schedule; deleting obsolete provisions;
60 revising the operational requirements for medical
61 marijuana treatment centers; authorizing the
62 department to waive certain requirements under
63 specified circumstances; requiring that certain
64 receptacles be childproof; requiring that additional
65 information be included on certain labels; requiring
66 that a medical marijuana treatment center comply with
67 certain standards in the production and dispensing of
68 edible or food products; requiring a medical marijuana
69 treatment center to enter additional information into
70 the compassionate use registry; restricting the number
71 of dispensing facilities that may dispense marijuana;
72 providing an exception; requiring a medical marijuana
73 treatment center to keep a copy of a transportation
74 manifest in certain vehicles at certain times;
75 requiring the department to establish a quality
76 control program that requires medical marijuana
77 treatment centers to submit samples from each batch or
78 lot of marijuana to an independent testing laboratory;
79 requiring a medical marijuana treatment center to
80 maintain records of all tests conducted; requiring the
81 department to adopt rules to create and oversee the
82 quality control program; providing that the department
83 must license independent testing laboratories;
84 authorizing an independent testing laboratory to
85 collect and accept samples of, possess, store,



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86 transport, and test marijuana; prohibiting a person
87 with an ownership interest in a medical marijuana
88 treatment center from owning an independent testing
89 laboratory; requiring the department to develop rules
90 and a process for licensing requirements; authorizing
91 the department to impose application and renewal fees;
92 specifying that an independent testing laboratory must
93 be certified to perform required tests; requiring the
94 department to suspend or reduce any mandatory testing
95 if the number of licensed and certified independent
96 testing laboratories is insufficient to process the
97 tests necessary to meet the patient demand for medical
98 marijuana treatment centers; providing that an
99 independent testing laboratory may only accept certain
100 samples; requiring the department to adopt rules
101 related to ownership changes or changes in an owner's
102 investment interest; requiring the department to
103 establish, maintain, and control a seed-to-sale
104 tracking system for marijuana; providing
105 applicability; conforming provisions to changes made
106 by the act; providing that certain research
107 institutions may possess, test, transport, and dispose
108 of marijuana subject to certain conditions and as
109 provided by department rule; providing for the use of
110 emergency rulemaking procedures by the department;
111 creating s. 1004.4351, F.S.; providing a short title;
112 providing legislative findings; defining terms;
113 establishing the Coalition for Medical Marijuana
114 Research and Education within the H. Lee Moffitt



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115 Cancer Center and Research Institute, Inc.; providing
116 a purpose for the coalition; establishing the Medical
117 Marijuana Research and Education Board to direct the
118 operations of the coalition; providing for the
119 appointment of board members; providing for terms of
120 office, reimbursement for certain expenses, and the
121 conduct of meetings of the board; authorizing the
122 board to appoint a coalition director; prescribing the
123 duties of the coalition director; requiring the board
124 to advise specified entities and officials regarding
125 medical marijuana research and education in this
126 state; requiring the board to annually adopt a Medical
127 Marijuana Research and Education Plan; providing
128 requirements for the plan; requiring the board to
129 issue an annual report to the Governor and the
130 Legislature by a specified date; specifying
131 responsibilities of the H. Lee Moffitt Cancer Center
132 and Research Institute, Inc.; amending ss. 381.987,
133 385.211, 499.0295, and 1004.441, F.S.; conforming
134 provisions to changes made by the act; providing a
135 directive to the Division of Law Revision and
136 Information; providing an effective date.

137
138 Be It Enacted by the Legislature of the State of Florida:

139
140 Section 1. Section 381.986, Florida Statutes, is amended to
141 read:
142 381.986 Compassionate use of low-THC ~~and medical cannabis~~
143 ~~and marijuana.~~-



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144 (1) LEGISLATIVE INTENT.-
145 (a) It is the intent of the Legislature to implement s. 29,
146 Art. X of the State Constitution by creating a unified
147 regulatory structure within the framework of this section for
148 the acquisition, cultivation, possession, processing, transfer,
149 transportation, sale, distribution, and dispensing of marijuana,
150 products containing marijuana, related supplies, and educational
151 materials to qualifying patients or their caregivers.
152 (b) The Legislature intends that all rules adopted by the
153 Department of Health to implement this section be adopted
154 pursuant to s. 120.536(1) or s. 120.54. The Legislature intends
155 that the department use emergency rulemaking procedures pursuant
156 to s. 120.54(4) to adopt rules under this section if necessary
157 to meet any deadline for rulemaking established in s. 29, Art. X
158 of the State Constitution.
159 (c) Further, the Legislature intends that all registrations
160 for the purposes specified in paragraph (a) be issued solely in
161 accordance with the requirements of this section and all rules
162 adopted under this section.
163 (2) DEFINITIONS.-As used in this section, the term:
164 (a) "Cannabis delivery device" means an object used,
165 intended for use, or designed for use in preparing, storing,
166 ingesting, inhaling, or otherwise introducing marijuana ~~low-THC~~
167 ~~cannabis or medical cannabis~~ into the human body.
168 (b) "Caregiver" has the same meaning as provided in s. 29,
169 Art. X of the State Constitution.
170 (c) "Chronic nonmalignant pain" means pain that is caused
171 by a debilitating medical condition or that originates from a
172 debilitating medical condition and persists beyond the usual



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173 course of that debilitating medical condition.

174 (d) "Close relative" means a spouse, parent, sibling,
175 grandparent, child, or grandchild, whether related by whole or
176 half blood, by marriage, or by adoption.

177 (e)(b) "Debilitating medical condition" has the same
178 meaning as provided in s. 29, Art. X of the State Constitution
179 "Dispensing organization" means an organization approved by the
180 department to cultivate, process, transport, and dispense low-
181 THC cannabis or medical cannabis pursuant to this section.

182 (f)(e) "Independent testing laboratory" means a laboratory,
183 including the managers, employees, or contractors of the
184 laboratory, which has no direct or indirect interest in a
185 medical marijuana treatment center a dispensing organization.

186 (g)(d) "Legal representative" means the qualifying
187 qualified patient's parent, legal guardian acting pursuant to a
188 court's authorization as required under s. 744.3215(4), health
189 care surrogate acting pursuant to the qualifying qualified
190 patient's written consent or a court's authorization as required
191 under s. 765.113, or an individual who is authorized under a
192 power of attorney to make health care decisions on behalf of the
193 qualifying qualified patient.

194 (h)(e) "Low-THC cannabis" means a plant of the genus
195 Cannabis, the dried flowers of which contain 0.8 percent or less
196 of tetrahydrocannabinol and more than 10 percent of cannabidiol
197 weight for weight; the seeds thereof; the resin extracted from
198 any part of such plant; or any compound, manufacture, salt,
199 derivative, mixture, or preparation of such plant or its seeds
200 or resin that is dispensed only by a medical marijuana treatment
201 center from a dispensing organization.



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202 (i)(f) "Marijuana" has the same meaning as provided in s.
203 29, Art. X of the State Constitution "Medical cannabis" means
204 all parts of any plant of the genus Cannabis, whether growing or
205 not; the seeds thereof; the resin extracted from any part of the
206 plant; and every compound, manufacture, sale, derivative,
207 mixture, or preparation of the plant or its seeds or resin that
208 is dispensed only from a dispensing organization for medical use
209 by an eligible patient as defined in s. 499.0295.

210 (j) "Medical marijuana treatment center" or "MMTC" has the
211 same meaning as provided in s. 29, Art. X of the State
212 Constitution.

213 (k)(g) "Medical use" has the same meaning as provided in s.
214 29, Art. X of the State Constitution means administration of the
215 ordered amount of low-THC cannabis or medical cannabis. The term
216 does not include the:

217 1. Possession, use, or administration of marijuana low-THC
218 cannabis or medical cannabis by smoking.

219 2. Possession, use, or administration of marijuana that was
220 not purchased or acquired from an MMTC registered with the
221 Department of Health.

222 3.2- Transfer of marijuana low-THC cannabis or medical
223 cannabis to a person other than the qualifying qualified patient
224 for whom it was ordered or the qualifying qualified patient's
225 caregiver legal representative on behalf of the qualifying
226 qualified patient.

227 4. Use or administration of any type or amount of marijuana
228 not specified on the qualifying patient's physician
229 certification.

230 5.3- Use or administration of marijuana low-THC cannabis or



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231 ~~medical cannabis:~~

- 232 a. On any form of public transportation.
- 233 b. In any public place.
- 234 c. In a qualifying ~~qualified~~ patient's place of employment,
- 235 if restricted by his or her employer.
- 236 d. In a state correctional institution as defined in s.
- 237 944.02 or a correctional institution as defined in s. 944.241.
- 238 e. On the grounds of a preschool, primary school, or
- 239 secondary school.
- 240 f. On a school bus or in a vehicle, aircraft, or motorboat.

241 (l)(h) "Qualifying ~~Qualified~~ patient" has the same meaning
 242 as provided in s. 29, Art. X of the State Constitution but also
 243 includes eligible patients, as that term is defined in s.
 244 499.0295, and patients who are issued a physician certification
 245 under subparagraph (3)(a)2. or subparagraph (3)(a)3. A patient
 246 is not a qualifying patient unless he or she is registered with
 247 the department and has been issued a compassionate use registry
 248 identification card means a resident of this state who has been
 249 added to the compassionate use registry by a physician licensed
 250 under chapter 458 or chapter 459 to receive low-THC cannabis or
 251 medical cannabis from a dispensing organization.

252 (m)(i) "Smoking" means burning or igniting a substance and
 253 inhaling the smoke. Smoking does not include the use of a
 254 vaporizer.

255 (3)(2) PHYSICIAN CERTIFICATION ORDERING.-

256 (a) A physician is authorized to issue a physician
 257 certification to:

- 258 1. A patient suffering from a debilitating medical
 259 condition, which allows the patient to receive marijuana for the



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260 patient's medical use;

261 2. A ~~order low-THC cannabis to treat a~~ qualified patient
 262 suffering from ~~cancer or~~ a physical medical condition that
 263 chronically produces symptoms of seizures or severe and
 264 persistent muscle spasms, which allows the patient to receive
 265 low-THC cannabis for the patient's medical use;

266 3. A patient suffering from chronic nonmalignant pain, if
 267 the physician has diagnosed an underlying debilitating medical
 268 condition as the cause of the pain, which allows the patient to
 269 receive marijuana for the patient's medical use ~~order low-THC~~
 270 cannabis to alleviate the patient's pain ~~symptoms of such~~
 271 disease, disorder, or condition, if no other satisfactory
 272 alternative treatment options exist for the qualified patient;

273 4. ~~order medical cannabis to treat~~ An eligible patient as
 274 defined in s. 499.0295, which allows the patient to receive
 275 marijuana for the patient's medical use; or

276 5. A patient who is not a resident of this state; who
 277 qualifies under subparagraph 1., subparagraph 2., subparagraph
 278 3., or subparagraph 4.; and who can lawfully obtain marijuana
 279 through a medical marijuana program in the state that he or she
 280 resides in.

281 (b) In the physician certification, the physician may also
 282 specify one or more ~~or order~~ a cannabis delivery devices to
 283 assist with ~~device for~~ the patient's medical use of marijuana.
 284 ~~low-THC cannabis or medical cannabis,~~

285 (c) A physician may certify a patient and specify a
 286 delivery device under paragraphs (a) and (b) only if the
 287 physician:

- 288 1.~~(a)~~ Holds an active, unrestricted license as a physician



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289 under chapter 458 or an osteopathic physician under chapter 459;
290 ~~(b) Has treated the patient for at least 3 months~~
291 ~~immediately preceding the patient's registration in the~~
292 ~~compassionate use registry;~~

293 ~~2.(e)~~ Has successfully completed the course and examination
294 required under paragraph (5) (a) (4)(a);

295 3. Has conducted a physical examination and made a full
296 assessment of the medical history of the patient;

297 4. Has determined that, in the physician's professional
298 opinion, the patient meets one or more of the criteria specified
299 in paragraph (a);

300 ~~5.(d)~~ Has determined that the medical use of marijuana
301 would likely outweigh the potential health risks to of treating
302 the patient with low-THC cannabis or medical cannabis are
303 reasonable in light of the potential benefit to the patient. If
304 a patient is younger than 18 years of age;

305 a. A second physician must concur with this determination,
306 and such determination must be documented in the patient's
307 medical record;

308 b. Only a parent, legal guardian, caregiver, or health care
309 provider may assist the qualifying patient in the purchasing and
310 administering of marijuana for medical use; and

311 c. The qualifying patient may not purchase marijuana;

312 ~~6.(e)~~ Registers as the patient's physician orderer of low-
313 ~~THC cannabis or medical cannabis for the named patient on the~~
314 ~~compassionate use registry maintained by the department and~~
315 ~~updates the registry to reflect the contents of the order,~~
316 ~~including the amount of marijuana low-THC cannabis or medical~~
317 ~~cannabis that will provide the patient with not more than a 90-~~



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318 ~~day 45-day~~ supply and a cannabis delivery device needed by the
319 patient for the medical use of ~~marijuana low-THC cannabis or~~
320 ~~medical cannabis. A physician may certify an amount greater than~~
321 ~~a 90-day supply of marijuana if the physician has a reasonable~~
322 ~~belief that the patient will use the additional marijuana in a~~
323 ~~medically appropriate way. If the physician's recommended amount~~
324 ~~of marijuana for a 90-day supply changes,~~ the physician must
325 ~~also~~ update the registry within 7 days after ~~the any~~ change is
326 made to the original order to reflect the change. The physician
327 shall deactivate the registration of the patient ~~and the~~
328 ~~patient's legal representative when the physician no longer~~
329 ~~recommends the medical use of marijuana for the patient~~
330 ~~treatment is discontinued;~~

331 7.(f) Maintains a patient treatment plan that includes the
332 dose, route of administration, planned duration, and monitoring
333 of the patient's symptoms and other indicators of tolerance or
334 reaction to the marijuana low-THC cannabis or medical cannabis;

335 ~~8.(g)~~ Submits the patient treatment plan quarterly to the
336 University of Florida College of Pharmacy for research on the
337 safety and efficacy of marijuana low-THC cannabis and medical
338 ~~cannabis~~ on patients; and

339 ~~9.(h)~~ Obtains the voluntary written informed consent of the
340 patient or the patient's legal representative to treatment with
341 marijuana low-THC cannabis after sufficiently explaining the
342 current state of knowledge in the medical community of the
343 effectiveness of treatment of the patient's condition with
344 marijuana low-THC cannabis, the medically acceptable
345 ~~alternatives,~~ and the potential risks and side effects. If the
346 patient is a minor, the patient's parent or legal guardian must



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347 consent to treatment in writing. If the patient is an eligible
348 patient as defined in s. 499.0295, the physician must obtain
349 written informed consent as defined in and required by s.
350 499.0295.

351 (d) At least annually, a physician must recertify the
352 qualifying patient pursuant to paragraph (c).

353 (i) Obtains written informed consent as defined in and
354 required under s. 499.0295, if the physician is ordering medical
355 cannabis for an eligible patient pursuant to that section; and

356 (e)-(j) A physician may not issue a physician certification
357 if the physician is not a medical director employed by an MMTC a
358 dispensing organization.

359 (f) An order for low-THC cannabis or medical cannabis
360 issued pursuant to former s. 381.986, Florida Statutes 2016, and
361 registered with the compassionate use registry on the effective
362 date of this act, shall be considered a physician certification
363 issued pursuant to this subsection. The details and expiration
364 date of such certification must be identical to the details and
365 expiration date of the order as logged in the compassionate use
366 registry. Until the department begins issuing compassionate use
367 registry identification cards, all patients with such orders
368 shall be considered qualifying patients, notwithstanding the
369 requirement that a qualifying patient have a compassionate use
370 registry identification card.

371 (4)-(3) PROHIBITED ACTS PENALTIES.-

372 (a) A physician commits a misdemeanor of the first degree,
373 punishable as provided in s. 775.082 or s. 775.083, if the
374 physician issues a physician certification for marijuana to
375 orders low-THC cannabis for a patient in a manner other than as



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376 required in subsection (3) without a reasonable belief that the
377 patient is suffering from:

378 1. Cancer or A physical medical condition that chronically
379 produces symptoms of seizures or severe and persistent muscle
380 spasms that can be treated with low-THC cannabis; or

381 2. Symptoms of cancer or a physical medical condition that
382 chronically produces symptoms of seizures or severe and
383 persistent muscle spasms that can be alleviated with low-THC
384 cannabis.

385 (b) A physician commits a misdemeanor of the first degree,
386 punishable as provided in s. 775.082 or s. 775.083, if the
387 physician orders medical cannabis for a patient without a
388 reasonable belief that the patient has a terminal condition as
389 defined in s. 499.0295.

390 (b)-(e) A person who fraudulently represents that he or she
391 has a debilitating medical condition ~~cancer~~, a physical medical
392 condition that chronically produces symptoms of seizures or
393 severe and persistent muscle spasms, chronic nonmalignant pain,
394 or a terminal condition as defined in s. 499.0295 to a physician
395 for the purpose of being issued a physician certification for
396 marijuana ordered low-THC cannabis, medical cannabis, or a
397 cannabis delivery device by such physician commits a misdemeanor
398 of the first degree, punishable as provided in s. 775.082 or s.
399 775.083.

400 (c)-(d) A qualifying patient an eligible patient as defined
401 in s. 499.0295 who uses marijuana medical cannabis, and such
402 patient's caregiver legal representative who administers
403 marijuana medical cannabis, in plain view of or in a place open
404 to the general public, on the grounds of a school, or in a



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405 school bus, vehicle, aircraft, or motorboat, commits a
406 misdemeanor of the first degree, punishable as provided in s.
407 775.082 or s. 775.083.

408 (d) A qualifying patient or caregiver who cultivates
409 marijuana or who purchases or acquires marijuana from any person
410 or entity other than an MMTC commits a misdemeanor of the first
411 degree, punishable as provided in s. 775.082 or s. 775.083.

412 (e) A caregiver who violates any of the applicable
413 provisions of this section or applicable department rules
414 commits, upon the first offense, a misdemeanor of the second
415 degree, punishable as provided in s. 775.082 or s. 775.083, and,
416 upon the second and subsequent offenses, a misdemeanor of the
417 first degree, punishable as provided in s. 775.082 or s.
418 775.083.

419 (f)(e) A physician who issues a physician certification for
420 marijuana ~~orders low-THC cannabis, medical cannabis,~~ or a
421 cannabis delivery device and receives compensation from an MMTC
422 a ~~dispensing organization~~ related to issuing the physician
423 certification for marijuana ~~the ordering of low-THC cannabis,~~
424 ~~medical cannabis,~~ or a cannabis delivery device is subject to
425 disciplinary action under the applicable practice act and s.
426 456.072(1)(n).

427 (g) An MMTC that advertises or holds out to the public that
428 it may provide services other than services for which it is
429 registered to provide violates this section, and the department
430 may impose a fine on the MMTC pursuant to paragraph (10)(h).

431 (h) A person or entity that offers or advertises services
432 as an MMTC without registering as an MMTC with the department
433 violates this section. The operation or maintenance of a



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434 facility as an MMTC, or the performance of a service that
435 requires registration, without proper registration is a
436 violation of this section.

437 1. If after receiving notification from the department,
438 such person or entity fails to cease operation, the department
439 may impose an administrative fine of up to \$10,000 per
440 violation. Each day of continued operation is a separate
441 offense.

442 2. The department or any state attorney may, in addition to
443 other remedies provided in this section, bring an action for an
444 injunction to restrain any unauthorized activity or to enjoin
445 the future operation or maintenance of the unauthorized
446 dispensing organization or entity or the performance of any
447 service in violation of this section until compliance with this
448 section and department rules has been demonstrated to the
449 satisfaction of the department.

450 3. If found to be in violation of this paragraph, the
451 department may assess reasonable investigative and legal costs
452 for prosecution of the violation against the person or entity.

453 (5)(4) PHYSICIAN EDUCATION.—

454 (a) Before a physician may issue a physician certification
455 pursuant to subsection (3) ~~ordering low-THC cannabis, medical~~
456 ~~cannabis, or a cannabis delivery device for medical use by a~~
457 ~~patient in this state,~~ the appropriate board shall require the
458 ~~ordering~~ physician to successfully complete a 4-hour ~~an 8-hour~~
459 course and subsequent examination offered by the Florida Medical
460 Association or the Florida Osteopathic Medical Association which
461 ~~that~~ encompasses the clinical indications for the appropriate
462 use of marijuana ~~low-THC cannabis and medical cannabis,~~ the



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463 appropriate cannabis delivery devices, the contraindications for
464 such use, and the relevant state and federal laws governing the
465 issuance of physician certifications ordering, as well as
466 dispensing, and possessing of these substances and devices. The
467 course and examination shall be administered at least quarterly
468 ~~annually~~. Successful completion of the course may be used by a
469 physician to satisfy 4 hours ~~8 hours~~ of the continuing medical
470 education requirements required by his or her respective board
471 for licensure renewal. This course may be offered in a distance
472 learning format, including an electronic, online format that is
473 available on request. Physicians who have completed an 8-hour
474 course and subsequent examination offered by the Florida Medical
475 Association or the Florida Osteopathic Medical Association which
476 encompasses the clinical indications for the appropriate use of
477 marijuana and who are registered in the compassionate use
478 registry on the effective date of this act are deemed to meet
479 the requirements of this paragraph.

480 (b) The appropriate board shall require the medical
481 director of each ~~MMTC dispensing organization~~ to hold an active,
482 unrestricted license as a physician under chapter 458 or as an
483 osteopathic physician under chapter 459 and successfully
484 complete a 2-hour course and subsequent examination offered by
485 the Florida Medical Association or the Florida Osteopathic
486 Medical Association which that encompasses appropriate safety
487 procedures and knowledge of marijuana ~~low-THC cannabis, medical~~
488 ~~cannabis,~~ and cannabis delivery devices.

489 (c) Successful completion of the course and examination
490 specified in paragraph (a) is required for every physician who
491 issues a physician certification for marijuana ~~orders low-THC~~



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492 ~~cannabis, medical cannabis, or a cannabis delivery device~~ each
493 time such physician renews his or her license. ~~In addition,~~
494 ~~successful completion of the course and examination specified in~~
495 ~~paragraph (b) is required for the medical director of each~~
496 ~~dispensing organization each time such physician renews his or~~
497 ~~her license.~~

498 (d) A physician who fails to comply with this subsection
499 and issues a physician certification for marijuana ~~who orders~~
500 ~~low-THC cannabis, medical cannabis, or a cannabis delivery~~
501 device may be subject to disciplinary action under the
502 applicable practice act and under s. 456.072(1)(k).

503 (6) CAREGIVERS.—

504 (a) During the course of registration with the department
505 for inclusion on the compassionate use registry, or at any time
506 while registered, a qualifying patient may designate an
507 individual as his or her caregiver to assist him or her with the
508 medical use of marijuana. The designated caregiver must be 21
509 years of age or older, unless the patient is a close relative of
510 the caregiver; must agree in writing to be the qualifying
511 patient's caregiver; may not receive compensation, other than
512 actual expenses incurred, for assisting the qualifying patient
513 with the medical use of marijuana, unless the caregiver is
514 acting pursuant to employment in a licensed facility in
515 accordance with subparagraph (c)2.; and must pass a level 2
516 screening pursuant to chapter 435, unless the patient is a close
517 relative of the caregiver.

518 (b) A qualifying patient may have only one designated
519 caregiver at any given time unless all of the patient's
520 caregivers are his or her close relatives or legal



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521 representatives.

522 (c) A caregiver may assist only one qualifying patient at
523 any given time unless:

524 1. All qualifying patients the caregiver is assisting are
525 close relatives of each other and the caregiver is the legal
526 representative of at least one of the patients; or

527 2. All qualifying patients the caregiver is assisting are
528 receiving hospice services, or are residents, in the same
529 assisted living facility, nursing home, or other licensed
530 facility and have requested the assistance of that caregiver
531 with the medical use of marijuana; the caregiver is an employee
532 of the hospice or licensed facility; and the caregiver provides
533 personal care or services directly to clients of the hospice or
534 licensed facility as a part of his or her employment duties at
535 the hospice or licensed facility.

536 (d) The department must register a caregiver on the
537 compassionate use registry and issue him or her a caregiver
538 identification card if he or she is designated by a qualifying
539 patient pursuant to paragraph (a) and meets all of the
540 requirements of this subsection and department rule.

541 (e) A nursing home or assisted living facility may not
542 prevent a qualifying patient residing in the nursing home or
543 assisted living facility from hiring a caregiver. A nursing home
544 or assisted living facility may prohibit its employees from
545 acting as caregivers to residents of the nursing home or
546 assisted living facility. A nursing home or assisted living
547 facility is not required to provide a caregiver to a resident
548 who is a qualifying patient.

549 (7)(5) DUTIES OF THE DEPARTMENT.—The department shall:



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550 (a) Create and maintain a secure, electronic, and online
551 compassionate use registry for the registration of physicians,
552 patients, and caregivers the legal representatives of patients
553 as provided under this section. The registry must be accessible
554 to:

555 1. Practitioners licensed under chapter 458 or chapter 459,
556 to ensure proper care for patients requesting physician
557 certifications;

558 2. Practitioners licensed to prescribe prescription drugs,
559 to ensure proper care for patients before prescribing
560 medications that may interact with the medical use of marijuana;

561 3. Law enforcement agencies, to verify the authorization of
562 a qualifying patient or a patient's caregiver to possess
563 marijuana or a cannabis delivery device; and

564 4. MMTCs, to a dispensing organization to verify the
565 authorization of a qualifying patient or a patient's caregiver
566 legal representative to possess marijuana low-THC cannabis,
567 medical cannabis, or a cannabis delivery device and to record
568 the marijuana low-THC cannabis, medical cannabis, or cannabis
569 delivery device dispensed.

570
571 The registry must prevent an active registration of a patient by
572 multiple physicians.

573 (b) By July 3, 2017, adopt rules establishing procedures
574 for the issuance, annual renewal, suspension, and revocation of
575 compassionate use registry identification cards for patients and
576 caregivers. The department may charge a reasonable fee
577 associated with the issuance and renewal of patient and
578 caregiver identification cards. By October 3, 2017, the



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579 department shall begin issuing identification cards to adult
580 patients who have a physician certification that meets the
581 requirements of subsection (3); minor patients who have a
582 physician certification that meets the requirements of
583 subsection (3) and the written consent of a parent or legal
584 guardian; and caregivers registered pursuant to subsection (6).
585 In addition to the other requirements of this section, the
586 department may issue a compassionate use registry identification
587 card to a patient who is not a resident of this state only after
588 the department has verified that the patient can lawfully obtain
589 marijuana through a medical marijuana program in the state that
590 he or she resides in. Patient and caregiver identification cards
591 must be resistant to counterfeiting and tampering and must
592 include at least the following:

593 1. The name, address, and date of birth of the patient or
594 caregiver, as appropriate;

595 2. A full-face, passport-type, color photograph of the
596 patient or caregiver, as appropriate, taken within the 90 days
597 immediately preceding registration;

598 3. Designation of the cardholder as a patient or caregiver;

599 4. A unique identification number for the patient or
600 caregiver which is matched to the identification number used for
601 such person in the department's compassionate use registry. A
602 caregiver's identification number and file in the compassionate
603 use registry must be linked to the file of the patient or
604 patients the caregiver is assisting so that the caregiver's
605 status may be verified for each patient individually;

606 5. The expiration date, which shall be 1 year after the
607 date of issuance of the identification card or the date



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608 treatment ends as provided in the patient's physician
609 certification, whichever occurs first; and

610 6. For caregivers who are assisting three or fewer
611 qualifying patients, the names and identification number of the
612 qualifying patient or patients that the caregiver is assisting.

613 (c) As soon as practicable after the effective date of this
614 act, update its records by registering each dispensing
615 organization approved pursuant to chapter 2014-157, Laws of
616 Florida, or chapter 2016-123, Laws of Florida, as an MMTC with
617 an effective registration date that coincides with that
618 dispensing organization's date of approval as a dispensing
619 organization. On the effective date of this act, all dispensing
620 organizations approved pursuant to chapter 2014-157, Laws of
621 Florida, or chapter 2016-123, Laws of Florida, are deemed to be
622 registered MMTCs. The department may not require a dispensing
623 organization approved pursuant to chapter 2014-157, Laws of
624 Florida, or chapter 2016-123, Laws of Florida, to submit an
625 application and may not charge the dispensing organization an
626 application or registration fee for the initial registration of
627 that dispensing organization as an MMTC pursuant to this
628 section. For purposes of the requirement that an MMTC comply
629 with the representations made in its application pursuant to
630 subsection (8), an MMTC registered pursuant to this paragraph
631 shall continue to comply with the representations made in its
632 application for approval as a dispensing organization, including
633 any revision authorized by the department before the effective
634 date of this act. After the effective date of this act, the
635 department may grant variances from the representations made in
636 a dispensing organization's application for approval pursuant to



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637 subsection (8). For purposes of the definition of the term
638 "marijuana" in s. 29, of Art. X of the State Constitution, an
639 MMTC is deemed to be a dispensing organization as that term is
640 defined in former s. 381.986(1)(a), Florida Statutes 2014
641 ~~Authorize the establishment of five dispensing organizations to~~
642 ~~ensure reasonable statewide accessibility and availability as~~
643 ~~necessary for patients registered in the compassionate use~~
644 ~~registry and who are ordered low-THC cannabis, medical cannabis,~~
645 ~~or a cannabis delivery device under this section, one in each of~~
646 ~~the following regions: northwest Florida, northeast Florida,~~
647 ~~central Florida, southeast Florida, and southwest Florida.~~

648 (d) By October 3, 2017, register five additional MMTCs with
649 at least one of the MMTCs being an applicant that is a
650 recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82
651 (D.D.C. 1999), or *In re Black Farmers Litig.*, 856 F. Supp. 2d 1
652 (D.D.C. 2011), and a member of the Black Farmers and
653 Agriculturalists Association.

654 (e) Within 6 months after each instance of the registration
655 of 75,000 qualifying patients with the compassionate use
656 registry, register four additional MMTCs if a sufficient number
657 of MMTC applicants meet the registration requirements
658 established in this section and by department rule.

659 (f) Not issue more than one registration as an MMTC to a
660 person or an entity.

661 (g) ~~The department shall~~ Develop an application form for
662 registration as an MMTC and impose an initial application and
663 biennial renewal fee that is sufficient to cover the costs of
664 administering this section. ~~To be registered as an MMTC, the an~~
665 applicant ~~for approval as a dispensing organization~~ must be able



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666 to demonstrate:

667 1. That the applicant has been registered to do business in
668 this state for the previous 5 consecutive years before
669 submitting the application.

670 ~~2.1-~~ The technical and technological ability to cultivate
671 and produce low-THC cannabis and marijuana. ~~The applicant must~~
672 ~~possess a valid certificate of registration issued by the~~
673 ~~Department of Agriculture and Consumer Services pursuant to s.~~
674 ~~581.131 that is issued for the cultivation of more than 400,000~~
675 ~~plants, be operated by a nurseryman as defined in s. 581.011,~~
676 ~~and have been operated as a registered nursery in this state for~~
677 ~~at least 30 continuous years.~~

678 ~~3.2-~~ The ability to secure the premises, resources, and
679 personnel necessary to operate as an MMTC ~~a dispensing~~
680 ~~organization.~~

681 ~~4.3-~~ The ability to maintain accountability of all raw
682 materials, finished products, and any byproducts to prevent
683 diversion or unlawful access to or possession of these
684 substances.

685 ~~5.4-~~ An infrastructure reasonably located to dispense low-
686 THC cannabis and marijuana to registered qualifying patients
687 statewide ~~or regionally as determined by the department.~~

688 ~~6.5-~~ The financial ability to maintain operations for the
689 duration of the 2-year approval cycle, including the provision
690 of certified financials to the department. Upon approval, the
691 applicant must post a \$5 million performance bond. However, upon
692 ~~an MMTC a dispensing organization's~~ serving at least 1,000
693 qualifying ~~qualified~~ patients, the ~~MMTC dispensing organization~~
694 is only required to maintain a \$2 million performance bond.



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695 ~~7.6-~~ That all owners and managers have been fingerprinted
696 and have successfully passed a level 2 background screening
697 pursuant to s. 435.04.

698 ~~8.7-~~ The employment of a medical director to supervise the
699 activities of the MMTC dispensing organization.

700 ~~(e) Upon the registration of 250,000 active qualified~~
701 ~~patients in the compassionate use registry, approve three~~
702 ~~dispensing organizations, including, but not limited to, an~~
703 ~~applicant that is a recognized class member of *Pigford v.*~~
704 ~~*Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers*~~
705 ~~*Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the~~
706 ~~Black Farmers and Agriculturalists Association, which must meet~~
707 ~~the requirements of subparagraphs (b)2.-7. and demonstrate the~~
708 ~~technical and technological ability to cultivate and producee~~
709 ~~low-THC cannabis.~~

710 ~~(h)(d) Allow an MMTC a dispensing organization to make a~~
711 ~~wholesale purchase of marijuana low-THC cannabis or medical~~
712 ~~cannabis from, or a distribution of marijuana low-THC cannabis~~
713 ~~or medical cannabis to, another MMTC dispensing organization.~~

714 ~~(i)(e) Monitor physician registration in the compassionate~~
715 ~~use registry and the issuance of physician certifications~~
716 ~~pursuant to subsection (3) ordering of low-THC cannabis, medical~~
717 ~~cannabis, or a cannabis delivery device for ordering practices~~
718 ~~that could facilitate unlawful diversion or misuse of marijuana~~
719 ~~low-THC cannabis, medical cannabis, or a cannabis delivery~~
720 ~~devices device and take disciplinary action as indicated.~~

721 ~~(8)(6) MEDICAL MARIJUANA TREATMENT CENTERS DISPENSING~~
722 ~~ORGANIZATION.-Each MMTC must register with the department. A~~
723 ~~registered MMTC An approved dispensing organization must, at all~~



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724 times, maintain compliance with paragraph (7)(g), the criteria
725 ~~demonstrated for selection and approval as a dispensing~~
726 ~~organization under subsection(5) and the criteria required in~~
727 ~~this subsection, and all representations made to the department~~
728 ~~in the MMTC's application for registration. Upon request, the~~
729 ~~department may grant an MMTC one or more variances from the~~
730 ~~representations made in the MMTC's application. Consideration of~~
731 ~~such a variance shall be based upon the individual facts and~~
732 ~~circumstances surrounding the request. A variance may not be~~
733 ~~granted unless the requesting MMTC can demonstrate to the~~
734 ~~department that it has a proposed alternative to the specific~~
735 ~~representation made in its application which fulfills the same~~
736 ~~or a similar purpose as the specific representation in a way~~
737 ~~that the department can reasonably determine will not be a lower~~
738 ~~standard than the specific representation in the application.~~

739 ~~(a) When growing marijuana low-THC cannabis or medical~~
740 ~~cannabis, an MMTC a dispensing organization:~~

741 1. May use pesticides determined by the department, after
742 consultation with the Department of Agriculture and Consumer
743 Services, to be safely applied to plants intended for human
744 consumption, but may not use pesticides designated as
745 restricted-use pesticides pursuant to s. 487.042.

746 2. Must grow ~~marijuana low-THC cannabis or medical cannabis~~
747 within an enclosed structure and in a room separate from any
748 other plant.

749 3. Must inspect seeds and growing plants for plant pests
750 that endanger or threaten the horticultural and agricultural
751 interests of the state, notify the Department of Agriculture and
752 Consumer Services within 10 calendar days after a determination



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753 that a plant is infested or infected by such plant pest, and
754 implement and maintain phytosanitary policies and procedures.

755 4. Must perform fumigation or treatment of plants, or the
756 removal and destruction of infested or infected plants, in
757 accordance with chapter 581 and any rules adopted thereunder.

758 (b) When processing marijuana ~~low-THC cannabis or medical~~
759 ~~cannabis~~, an MMTC a dispensing organization must:

760 1. Process the marijuana ~~low-THC cannabis or medical~~
761 ~~cannabis~~ within an enclosed structure and in a room separate
762 from other plants or products.

763 2. Have the marijuana tested by an independent testing
764 laboratory to ensure it meets the standards established by the
765 department's quality control program ~~Test the processed low-THC~~
766 ~~cannabis and medical cannabis before it is they are dispensed.~~
767 ~~Results must be verified and signed by two dispensing~~
768 ~~organization employees. Before dispensing low-THC cannabis, the~~
769 ~~dispensing organization must determine that the test results~~
770 ~~indicate that the low-THC cannabis meets the definition of low-~~
771 ~~THC cannabis and, for medical cannabis and low-THC cannabis,~~
772 ~~that all medical cannabis and low-THC cannabis is safe for human~~
773 ~~consumption and free from contaminants that are unsafe for human~~
774 ~~consumption. The dispensing organization must retain records of~~
775 ~~all testing and samples of each homogenous batch of cannabis and~~
776 ~~low-THC cannabis for at least 9 months. The dispensing~~
777 ~~organization must contract with an independent testing~~
778 ~~laboratory to perform audits on the dispensing organization's~~
779 ~~standard operating procedures, testing records, and samples and~~
780 ~~provide the results to the department to confirm that the low-~~
781 ~~THC cannabis or medical cannabis meets the requirements of this~~



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782 ~~section and that the medical cannabis and low-THC cannabis is~~
783 ~~safe for human consumption.~~

784 3. Package the marijuana ~~low-THC cannabis or medical~~
785 ~~cannabis~~ in compliance with the United States Poison Prevention
786 Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

787 4. Package the marijuana ~~low-THC cannabis or medical~~
788 ~~cannabis~~ in a childproof receptacle that has a firmly affixed
789 and legible label stating the following information:

790 a. A statement that the marijuana ~~low-THC cannabis or~~
791 ~~medical cannabis~~ meets the requirements of subparagraph 2.;

792 b. The name of the MMTC dispensing organization from which
793 the marijuana ~~medical cannabis or low-THC cannabis~~ originates;
794 and

795 c. The batch number and harvest number from which the
796 marijuana ~~medical cannabis or low-THC cannabis~~ originates; and

797 d. The concentration of tetrahydrocannabinol and
798 cannabidiol in the product.

799 e. Any other information required by department rule

800 5. ~~Reserve two processed samples from each batch and retain~~
801 ~~such samples for at least 9 months for the purpose of testing~~
802 ~~pursuant to the audit required under subparagraph 2.~~

803 (c) When dispensing marijuana ~~low-THC cannabis~~, ~~medical~~
804 ~~cannabis~~, or a marijuana ~~cannabis~~ delivery device, an MMTC a
805 dispensing organization:

806 1. May not dispense more than the a-45-day supply of
807 marijuana authorized by a qualifying patient's physician
808 certification ~~low-THC cannabis or medical cannabis~~ to a
809 qualifying patient or caregiver ~~the patient's legal~~
810 ~~representative.~~



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811 2. Must ~~ensure that the have the dispensing organization's~~
812 ~~employee who dispenses the marijuana low-THC cannabis, medical~~
813 ~~cannabis, or marijuana a cannabis delivery device enters enter~~
814 ~~into the compassionate use registry his or her name or unique~~
815 ~~employee identifier.~~

816 3. Must verify that the qualifying patient and the
817 caregiver, if applicable, both have an active and valid
818 compassionate use registry identification card and that the
819 amount and type of marijuana dispensed match the physician
820 certification in the compassionate use registry for that
821 qualifying patient that a physician has ordered the low-THC
822 cannabis, medical cannabis, or a specific type of a cannabis
823 delivery device for the patient.

824 4. Must label the marijuana with the recommended dose for
825 the qualifying patient receiving the marijuana.

826 ~~5.4.~~ May not dispense or sell any other type of marijuana
827 ~~cannabis, alcohol, or illicit drug-related product, including~~
828 ~~pipes, bongs, or wrapping papers, other than a physician ordered~~
829 ~~cannabis delivery device required for the medical use of~~
830 ~~marijuana which is specified in a physician certification low-~~
831 ~~THC cannabis or medical cannabis, while dispensing low-THC~~
832 ~~cannabis or medical cannabis. An MMTC may produce and dispense~~
833 ~~marijuana as an edible or food product but may not produce such~~
834 ~~items in a format designed to be attractive to children. In~~
835 ~~addition to the requirements of this section and department~~
836 ~~rule, food products produced by an MMTC must meet all food~~
837 ~~safety standards established in state and federal law,~~
838 ~~including, but not limited to, the identification of the serving~~
839 ~~size and the amount of tetrahydrocannabinol in each serving.~~



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840 5. ~~Must verify that the patient has an active registration~~
841 ~~in the compassionate use registry, the patient or patient's~~
842 ~~legal representative holds a valid and active registration card,~~
843 ~~the order presented matches the order contents as recorded in~~
844 ~~the registry, and the order has not already been filled.~~

845 6. Must, upon dispensing the marijuana low-THC cannabis,
846 ~~medical cannabis, or marijuana cannabis~~ delivery device, record
847 in the registry the date, time, quantity, and form of marijuana
848 low-THC cannabis or medical cannabis dispensed; and the type of
849 marijuana cannabis delivery device dispensed; and the name and
850 compassionate use registry identification number of the
851 qualifying patient or caregiver to whom the marijuana delivery
852 device was dispensed.

853 7. May not dispense marijuana from more than three
854 dispensing facilities. This subparagraph does not apply to MMTC
855 retail facilities that only dispense low-THC cannabis and sell
856 marijuana delivery devices to qualified patients.

857 (d) To ensure the safety and security of its premises and
858 any off-site storage facilities, and to maintain adequate
859 controls against the diversion, theft, and loss of marijuana
860 low-THC cannabis, medical cannabis, or marijuana cannabis
861 delivery devices, an MMTC a dispensing organization shall:

862 1.a. Maintain a fully operational security alarm system
863 that secures all entry points and perimeter windows and is
864 equipped with motion detectors; pressure switches; and duress,
865 panic, and hold-up alarms; or

866 b. Maintain a video surveillance system that records
867 continuously 24 hours each day and meets at least one of the
868 following criteria:



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869 (I) Cameras are fixed in a place that allows for the clear
870 identification of persons and activities in controlled areas of
871 the premises. Controlled areas include grow rooms, processing
872 rooms, storage rooms, disposal rooms or areas, and point-of-sale
873 rooms;

874 (II) Cameras are fixed in entrances and exits to the
875 premises, which shall record from both indoor and outdoor, or
876 ingress and egress, vantage points;

877 (III) Recorded images must clearly and accurately display
878 the time and date; or

879 (IV) Retain video surveillance recordings for a minimum of
880 45 days, or longer upon the request of a law enforcement agency.

881 2. Ensure that the MMTC's organization's outdoor premises
882 have sufficient lighting from dusk until dawn.

883 3. Implement ~~Establish and maintain~~ a tracking system using
884 a vendor approved by the department which that traces the
885 marijuana low-THC cannabis or medical cannabis from seed to
886 sale. The tracking system must ~~shall~~ include notification of key
887 events as determined by the department, including when cannabis
888 seeds are planted, when cannabis plants are harvested and
889 destroyed, and when marijuana low-THC cannabis or medical
890 cannabis is transported, sold, stolen, diverted, or lost.

891 4. Not dispense from its premises marijuana low-THC
892 cannabis, medical cannabis, or a cannabis delivery device
893 between the hours of 9 p.m. and 7 a.m., but may perform all
894 other operations and deliver marijuana low-THC cannabis and
895 medical cannabis to qualifying ~~qualified~~ patients 24 hours each
896 day.

897 5. Store marijuana low-THC cannabis or medical cannabis in



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898 a secured, locked room or a vault.

899 6. Require at least two of its employees, or two employees
900 of a security agency with whom it contracts, to be on the
901 premises at all times.

902 7. Require each employee or contractor to wear a photo
903 identification badge at all times while on the premises.

904 8. Require each visitor to wear a visitor's pass at all
905 times while on the premises.

906 9. Implement an alcohol and drug-free workplace policy.

907 10. Report to local law enforcement within 24 hours after
908 it is notified or becomes aware of the theft, diversion, or loss
909 of marijuana low-THC cannabis or medical cannabis.

910 (e) To ensure the safe transport of marijuana low-THC
911 cannabis or medical cannabis to MMTC dispensing organization
912 facilities, independent testing laboratories, or qualifying
913 patients, the MMTC dispensing organization must:

914 1. Maintain a transportation manifest, which must be
915 retained for at least 1 year. A copy of the manifest must be in
916 the vehicle at all times when transporting marijuana.

917 2. Ensure only vehicles in good working order are used to
918 transport marijuana low-THC cannabis or medical cannabis.

919 3. Lock marijuana low-THC cannabis or medical cannabis in a
920 separate compartment or container within the vehicle.

921 4. Require at least two persons to be in a vehicle
922 transporting marijuana low-THC cannabis or medical cannabis, and
923 require at least one person to remain in the vehicle while the
924 marijuana low-THC cannabis or medical cannabis is being
925 delivered.

926 5. Provide specific safety and security training to



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927 employees transporting or delivering marijuana ~~low-THC cannabis~~
928 ~~or medical cannabis~~.

929 (9) MARIJUANA QUALITY CONTROL PROGRAM AND INDEPENDENT
930 TESTING LABORATORY LICENSURE.-

931 (a) The department shall establish a quality control
932 program requiring marijuana to be tested by an independent
933 testing laboratory for potency and contaminants before sale to
934 qualifying patients and caregivers.

935 1. The quality control program must require MMTCs to submit
936 samples from each batch or lot of marijuana harvested or
937 processed to an independent testing laboratory for testing to
938 ensure, at a minimum, that the labeling of the potency of
939 tetrahydrocannabinol and all other marketed cannabinoids or
940 terpenes is accurate and that the marijuana dispensed to
941 qualifying patients is safe for human consumption.

942 2. An MMTC must maintain records of all tests conducted,
943 including the results of each test and any additional
944 information, as required by the department.

945 3. The department shall adopt all rules necessary to create
946 and oversee the quality control program, which must include, at
947 a minimum:

948 a. Permissible levels of variation in potency labeling and
949 standards requiring tetrahydrocannabinol in edible marijuana
950 products to be distributed consistently throughout the product;

951 b. Permissible levels of contaminants and mandatory testing
952 for contaminants to confirm that the tested marijuana is safe
953 for human consumption. This testing must include, but is not
954 limited to, testing for microbiological impurity, residual
955 solvents, and pesticide residues;



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956 c. The destruction of marijuana determined to be
957 inaccurately labeled or unsafe for human consumption after the
958 MMTC has an opportunity to take remedial action;

959 d. The collection, storage, handling, recording, and
960 destruction of samples of marijuana by independent testing
961 laboratories; and

962 e. Security, inventory tracking, and record retention.

963 (b) The department must license all independent testing
964 laboratories to ensure that all marijuana is tested for potency
965 and contaminants in accordance with the department's quality
966 control program. An independent testing laboratory may collect
967 and accept samples of, and possess, store, transport, and test
968 marijuana. An independent testing laboratory may not be owned by
969 a person who also possesses an ownership interest in an MMTC. A
970 clinical laboratory that is licensed by the Agency for Health
971 Care Administration pursuant to part I of chapter 483 and that
972 performs nonwaived clinical tests is exempt from the requirement
973 to be licensed by the department pursuant to this paragraph but
974 must be certified to perform all required tests pursuant to
975 subparagraph 2.

976 1. The department shall develop rules establishing
977 independent testing laboratory license requirements and a
978 process for licensing independent testing laboratories; develop
979 an application form for an independent testing laboratory
980 license; and impose an initial application fee and a biennial
981 renewal fee sufficient to cover the costs of administering this
982 subsection.

983 2. In addition to licensure, an independent testing
984 laboratory must be certified to perform all required tests by



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985 the department. The department must issue a certification to an
986 independent testing laboratory that has been certified by a
987 third-party laboratory certification body approved by the
988 department. The department shall establish reasonable rules for
989 the certification and operation of independent testing
990 laboratories. Rules for certification must, at a minimum,
991 address standards relating to:
992 a. Personnel qualifications;
993 b. Equipment and methodology;
994 c. Proficiency testing;
995 d. Tracking;
996 e. Sampling;
997 f. Chain of custody;
998 g. Record and sample retention;
999 h. Reporting;
1000 i. Audit and inspection; and
1001 j. Security.
1002 3. The department shall suspend or reduce any mandatory
1003 testing requirement specified in its quality control program if
1004 the number of licensed and certified independent testing
1005 laboratories is insufficient to process the tests necessary to
1006 meet the patients' demand for marijuana.
1007 4. An independent testing laboratory may accept only
1008 samples composed of marijuana which are obtained from a sample
1009 source approved by the department. At a minimum, these sources
1010 must include an MMTC, a researcher affiliated with an accredited
1011 university or research hospital, a qualifying patient, and a
1012 caregiver.
1013 (10)(7) DEPARTMENT AUTHORITY AND RESPONSIBILITIES.-



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1014 (a) The department may conduct announced or unannounced
1015 inspections of ~~MMTCs dispensing organizations~~ to determine
1016 compliance with this section or rules adopted pursuant to this
1017 section.
1018 (b) The department shall inspect ~~an MMTC a dispensing~~
1019 ~~organization~~ upon complaint or notice provided to the department
1020 that the ~~MMTC dispensing organization~~ has dispensed marijuana
1021 ~~low-THC cannabis or medical cannabis~~ containing any mold,
1022 bacteria, or other contaminant that may cause or has caused an
1023 adverse effect to human health or the environment.
1024 (c) The department shall conduct at least a biennial
1025 inspection of each ~~MMTC dispensing organization~~ to evaluate the
1026 ~~MMTC's dispensing organization's~~ records, personnel, equipment,
1027 processes, security measures, sanitation practices, and quality
1028 assurance practices.
1029 (d) The department shall adopt by rule a process for
1030 approving changes in MMTC ownership or a change in an MMTC
1031 owner's investment interest. This process must include specific
1032 criteria for the approval or denial of an application for change
1033 of ownership or a change in investment interest and procedures
1034 for screening applicants' criminal and financial histories.
1035 (e) The department shall establish, maintain, and control a
1036 computer software tracking system that traces marijuana from
1037 seed to sale and allows real-time, 24-hour access by the
1038 department to data from all MMTCs and independent testing
1039 laboratories. The tracking system must, at a minimum, include
1040 notification of when marijuana seeds are planted, when marijuana
1041 plants are harvested and destroyed, and when marijuana is
1042 transported, sold, stolen, diverted, or lost. Each MMTC shall



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1043 use the seed-to-sale tracking system selected by the department.

1044 ~~(f)(d)~~ The department may enter into interagency agreements
1045 with the Department of Agriculture and Consumer Services, the
1046 Department of Business and Professional Regulation, the
1047 Department of Transportation, the Department of Highway Safety
1048 and Motor Vehicles, and the Agency for Health Care
1049 Administration, and such agencies are authorized to enter into
1050 an interagency agreement with the department, to conduct
1051 inspections or perform other responsibilities assigned to the
1052 department under this section.

1053 ~~(g)(e)~~ The department must make a list of all approved
1054 MMTCs, dispensing organizations and qualified ordering
1055 physicians who are qualified to issue physician certifications,
1056 and medical directors publicly available on its website.

1057 ~~(f)~~ The department may establish a system for issuing and
1058 ~~renewing registration cards for patients and their legal~~
1059 ~~representatives, establish the circumstances under which the~~
1060 ~~cards may be revoked by or must be returned to the department,~~
1061 ~~and establish fees to implement such system. The department must~~
1062 ~~require, at a minimum, the registration cards to:~~

- 1063 ~~1. Provide the name, address, and date of birth of the~~
1064 ~~patient or legal representative.~~
- 1065 ~~2. Have a full-face, passport-type, color photograph of the~~
1066 ~~patient or legal representative taken within the 90 days~~
1067 ~~immediately preceding registration.~~
- 1068 ~~3. Identify whether the cardholder is a patient or legal~~
1069 ~~representative.~~
- 1070 ~~4. List a unique numeric identifier for the patient or~~
1071 ~~legal representative that is matched to the identifier used for~~



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1072 ~~such person in the department's compassionate use registry.~~

1073 ~~5. Provide the expiration date, which shall be 1 year after~~
1074 ~~the date of the physician's initial order of low THC cannabis or~~
1075 ~~medical cannabis.~~

1076 ~~6. For the legal representative, provide the name and~~
1077 ~~unique numeric identifier of the patient that the legal~~
1078 ~~representative is assisting.~~

1079 ~~7. Be resistant to counterfeiting or tampering.~~

1080 ~~(h)(g)~~ The department may impose reasonable fines not to
1081 exceed \$10,000 on an MMTC a dispensing organization for any of
1082 the following violations:

- 1083 1. Violating this section, s. 499.0295, or department rule.
- 1084 2. Failing to maintain qualifications for registration with
1085 the department approval.
- 1086 3. Endangering the health, safety, or security of a
1087 qualifying qualified patient.
- 1088 4. Improperly disclosing personal and confidential
1089 information of a qualifying the qualified patient.
- 1090 5. Attempting to procure MMTC registration with the
1091 department dispensing organization approval by bribery,
1092 fraudulent misrepresentation, or extortion.
- 1093 6. Any owner or manager of the MMTC being convicted or
1094 found guilty of, or entering a plea of guilty or nolo contendere
1095 to, regardless of adjudication, a crime in any jurisdiction
1096 which directly relates to the business of an MMTC a dispensing
1097 organization.
- 1098 7. Making or filing a report or record that the MMTC
1099 dispensing organization knows to be false.
- 1100 8. Willfully failing to maintain a record required by this



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1101 section or department rule.

1102 9. Willfully impeding or obstructing an employee or agent
1103 of the department in the furtherance of his or her official
1104 duties.

1105 10. Engaging in fraud or deceit, negligence, incompetence,
1106 or misconduct in the business practices of an MMTC ~~a dispensing~~
1107 ~~organization~~.

1108 11. Making misleading, deceptive, or fraudulent
1109 representations in or related to the business practices of an
1110 MMTC ~~a dispensing organization~~.

1111 12. Having a license or the authority to engage in any
1112 regulated profession, occupation, or business that is related to
1113 the business practices of an MMTC ~~a dispensing organization~~
1114 suspended, revoked, or otherwise acted against by the licensing
1115 authority of any jurisdiction, including its agencies or
1116 subdivisions, for a violation that would constitute a violation
1117 under Florida law.

1118 13. Violating a lawful order of the department or an agency
1119 of the state, or failing to comply with a lawfully issued
1120 subpoena of the department or an agency of the state.

1121 ~~(i) (h)~~ The department may suspend, revoke, or refuse to
1122 renew an MMTC's registration with the department ~~a dispensing~~
1123 ~~organization's approval~~ if the MMTC ~~a dispensing organization~~
1124 commits a violation specified ~~any of the violations~~ in paragraph

1125 ~~(h) (g)~~.

1126 ~~(j) (i)~~ The department shall renew an MMTC's registration
1127 with the department ~~the approval of a dispensing organization~~
1128 biennially if the MMTC ~~dispensing organization~~ meets the
1129 requirements of this section and pays the biennial renewal fee.



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1130 ~~(k) (j)~~ The department may adopt rules necessary to
1131 implement this section.

1132 ~~(11) (8)~~ PREEMPTION.—

1133 (a) All matters regarding the regulation of the cultivation
1134 and processing of marijuana ~~medical cannabis or low-THC cannabis~~
1135 by MMTCs ~~dispensing organizations~~ are preempted to the state.

1136 (b) A municipality may determine by ordinance the criteria
1137 for the number and location of, and other permitting
1138 requirements that do not conflict with state law or department
1139 rule for, dispensing facilities of MMTCs ~~dispensing~~
1140 ~~organizations~~ located within its municipal boundaries. A county
1141 may determine by ordinance the criteria for the number,
1142 location, and other permitting requirements that do not conflict
1143 with state law or department rule for all dispensing facilities
1144 of MMTCs ~~dispensing organizations~~ located within the
1145 unincorporated areas of that county.

1146 ~~(12) (9)~~ EXCEPTIONS TO OTHER LAWS.—

1147 (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
1148 any other provision of law, but subject to the requirements of
1149 this section, a qualifying qualified patient, or a caregiver who
1150 has obtained a valid compassionate use registry identification
1151 card from the department, and the qualified patient's legal
1152 ~~representative~~ may purchase from an MMTC, and possess for the
1153 qualifying patient's medical use, up to the amount of marijuana
1154 in the physician certification ~~low-THC cannabis or medical~~
1155 ~~cannabis ordered for the patient~~, but not more than a 90-day ~~45-~~
1156 ~~day~~ supply, and a cannabis delivery device specified in the
1157 physician certification ~~ordered~~ for the qualifying patient.

1158 (b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or



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1159 any other provision of law, but subject to the requirements of
1160 this section, an MMTC an approved dispensing organization and
1161 its owners, managers, contractors, and employees may
1162 manufacture, possess, sell, deliver, distribute, dispense,
1163 administer, and lawfully dispose of reasonable quantities, as
1164 established by department rule, of marijuana low-THC cannabis,
1165 medical cannabis, or a cannabis delivery device. For purposes of
1166 this subsection, the terms "manufacture," "possession,"
1167 "deliver," "distribute," and "dispense" have the same meanings
1168 as provided in s. 893.02.

1169 (c) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
1170 any other provision of law, but subject to the requirements of
1171 this section, an approved independent testing laboratory may
1172 possess, test, transport, and lawfully dispose of marijuana low-
1173 THC cannabis or medical cannabis as provided by department rule.

1174 (d) An MMTC approved dispensing organization and its
1175 owners, managers, contractors, and employees are not subject to
1176 licensure or regulation under chapter 465 or chapter 499 for
1177 manufacturing, possessing, selling, delivering, distributing,
1178 dispensing, or lawfully disposing of reasonable quantities, as
1179 established by department rule, of marijuana low-THC cannabis,
1180 medical cannabis, or a cannabis delivery device.

1181 (e) Exercise by an MMTC of An approved dispensing
1182 organization that continues to meet the requirements for
1183 approval is presumed to be registered with the department and to
1184 meet the regulations adopted by the department or its successor
1185 agency for the purpose of dispensing medical cannabis or low-THC
1186 cannabis under Florida law. Additionally, the authority provided
1187 to MMTCs a dispensing organization in s. 499.0295 does not



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1188 impair its registration with the department the approval of a
1189 dispensing organization.

1190 (f) This subsection does not exempt a person from
1191 prosecution for a criminal offense related to impairment or
1192 intoxication resulting from the medical use of marijuana low-THC
1193 cannabis or medical cannabis or relieve a person from any
1194 requirement under law to submit to a breath, blood, urine, or
1195 other test to detect the presence of a controlled substance.

1196 (g) This section does not limit the ability of an employer
1197 to establish, continue, or enforce a drug-free workplace program
1198 or substance abuse policy. Notwithstanding any other provision
1199 of law, this section does not require an employer to accommodate
1200 the ingestion of marijuana in any workplace or any employee
1201 working while under the influence of marijuana. Notwithstanding
1202 any other provision of law, this section does not create a cause
1203 of action against an employer for wrongful discharge or
1204 discrimination.

1205 (h) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
1206 any other provision of law, but subject to the requirements of
1207 this section, a research institute established by a public
1208 postsecondary educational institution, such as the H. Lee
1209 Moffitt Cancer Center and Research Institute established under
1210 s. 1004.43, or a state university that has achieved the
1211 preeminent state research university designation pursuant to s.
1212 1001.7065 may possess, test, transport, and lawfully dispose of
1213 marijuana for research purposes as provided by department rule.

1214 (13) RULEMAKING.-

1215 (a) The department and the applicable boards shall adopt
1216 emergency rules pursuant to s. 120.54(4) and this subsection



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1217 necessary to implement this section. If an emergency rule
1218 adopted under this subsection is held to be unconstitutional or
1219 an invalid exercise of delegated legislative authority and
1220 becomes void, the department and the applicable boards may adopt
1221 an emergency rule to replace the rule that has become void. If
1222 the emergency rule adopted to replace the void emergency rule is
1223 also held to be unconstitutional or an invalid exercise of
1224 delegated legislative authority and becomes void, the department
1225 and the applicable boards must follow the nonemergency
1226 rulemaking procedures of the Administrative Procedures Act to
1227 replace the rule that has become void.

1228 (b) For emergency rules adopted under this subsection, the
1229 department and the applicable boards need not make the findings
1230 required by s. 120.54(4)(a). Emergency rules adopted under this
1231 subsection are exempt from ss. 120.54(3)(b) and 120.541. The
1232 department and the applicable boards shall meet the procedural
1233 requirements in s. 120.54(2)(a) if the department or the
1234 applicable boards have, before the effective date of this act,
1235 held any public workshops or hearings on the subject matter of
1236 emergency rules adopted under this subsection. Challenges to
1237 emergency rules adopted under this subsection are subject to the
1238 time schedules provided in s. 120.56(5).

1239 (c) Emergency rules adopted under this section are exempt
1240 from s. 120.54(4)(c) and shall remain in effect until replaced
1241 by rules adopted under the nonemergency rulemaking procedures of
1242 the Administrative Procedures Act. By January 1, 2018, the
1243 department and the applicable boards shall initiate nonemergency
1244 rulemaking pursuant to the Administrative Procedures Act by
1245 publishing a notice of rule development in the Florida



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1246 Administrative Register. Except as provided in paragraph (a),
1247 after January 1, 2018, the department and applicable boards may
1248 not adopt rules pursuant to the emergency rulemaking procedures
1249 provided in this subsection.

1250 Section 2. Section 1004.4351, Florida Statutes, is created
1251 to read:

1252 1004.4351 Medical marijuana research and education.—

1253 (1) SHORT TITLE.—This section shall be known and may be
1254 cited as the “Medical Marijuana Research and Education Act.”

1255 (2) LEGISLATIVE FINDINGS.—The Legislature finds that:

1256 (a) The present state of knowledge concerning the use of
1257 marijuana to alleviate pain and treat illnesses is limited
1258 because permission to perform clinical studies on marijuana is
1259 difficult to obtain, with access to research-grade marijuana so
1260 restricted that little or no unbiased studies have been
1261 performed.

1262 (b) Under the State Constitution, marijuana is available
1263 for the treatment of certain debilitating medical conditions.

1264 (c) Additional clinical studies are needed to ensure that
1265 the residents of this state obtain the correct dosing,
1266 formulation, route, modality, frequency, quantity, and quality
1267 of marijuana for specific illnesses.

1268 (d) An effective medical marijuana research and education
1269 program would mobilize the scientific, educational, and medical
1270 resources that presently exist in this state to determine the
1271 appropriate and best use of marijuana to treat illness.

1272 (3) DEFINITIONS.—As used in this section, the term:

1273 (a) “Board” means the Medical Marijuana Research and
1274 Education Board.



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1275 (b) "Coalition" means the Coalition for Medical Marijuana
1276 Research and Education.

1277 (c) "Marijuana" has the same meaning as provided in s. 29,
1278 Art. X of the State Constitution.

1279 (4) COALITION FOR MEDICAL MARIJUANA RESEARCH AND
1280 EDUCATION.—

1281 (a) There is established within the H. Lee Moffitt Cancer
1282 Center and Research Institute, Inc., the Coalition for Medical
1283 Marijuana Research and Education. The purpose of the coalition
1284 is to conduct rigorous scientific research, provide education,
1285 disseminate research, and guide policy for the adoption of a
1286 statewide policy on ordering and dosing practices for the
1287 medicinal use of marijuana. The coalition shall be physically
1288 located at the H. Lee Moffitt Cancer Center and Research
1289 Institute, Inc.

1290 (b) The Medical Marijuana Research and Education Board is
1291 established to direct the operations of the coalition. The board
1292 shall be composed of seven members appointed by the chief
1293 executive officer of the H. Lee Moffitt Cancer Center and
1294 Research Institute, Inc. Board members must have experience in a
1295 variety of scientific and medical fields, including, but not
1296 limited to, oncology, neurology, psychology, pediatrics,
1297 nutrition, and addiction. Members shall be appointed to 4-year
1298 terms and may be reappointed to serve additional terms. The
1299 chair shall be elected by the board from among its members to
1300 serve a 2-year term. The board shall meet no less than
1301 semiannually, at the call of the chair or, in his or her absence
1302 or incapacity, the vice chair. Four members constitute a quorum.
1303 A majority vote of the members present is required for all



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1304 actions of the board. The board may prescribe, amend, and repeal
1305 a charter governing the manner in which it conducts its
1306 business. A board member shall serve without compensation but is
1307 entitled to be reimbursed for travel expenses by the coalition
1308 or the organization he or she represents in accordance with s.
1309 112.061.

1310 (c) The coalition shall be administered by a coalition
1311 director, who shall be appointed by and serve at the pleasure of
1312 the board. The coalition director shall, subject to the approval
1313 of the board:

1314 1. Propose a budget for the coalition.

1315 2. Foster the collaboration of scientists, researchers, and
1316 other appropriate personnel in accordance with the coalition's
1317 charter.

1318 3. Identify and prioritize the research to be conducted by
1319 the coalition.

1320 4. Prepare the Medical Marijuana Research and Education
1321 Plan for submission to the board.

1322 5. Apply for grants to obtain funding for research
1323 conducted by the coalition.

1324 6. Perform other duties as determined by the board.

1325 (d) The board shall advise the Board of Governors, the
1326 State Surgeon General, the Governor, and the Legislature with
1327 respect to medical marijuana research and education in this
1328 state. The board shall explore methods of implementing and
1329 enforcing medical marijuana laws in relation to cancer control,
1330 research, treatment, and education.

1331 (e) The board shall annually adopt a plan for medical
1332 marijuana research, known as the "Medical Marijuana Research and



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1333 Education Plan," which must be in accordance with state law and
1334 coordinate with existing programs in this state. The plan must
1335 include recommendations for the coordination and integration of
1336 medical, nursing, paramedical, community, and other resources
1337 connected with the treatment of debilitating medical conditions,
1338 research related to the treatment of such medical conditions,
1339 and education.

1340 (f) By February 15 of each year, the board shall issue a
1341 report to the Governor, the President of the Senate, and the
1342 Speaker of the House of Representatives on research projects,
1343 community outreach initiatives, and future plans for the
1344 coalition.

1345 (5) RESPONSIBILITIES OF THE H. LEE MOFFITT CANCER CENTER
1346 AND RESEARCH INSTITUTE, INC.-The H. Lee Moffitt Cancer Center
1347 and Research Institute, Inc., shall allocate staff and provide
1348 information and assistance, as the coalition's budget permits,
1349 to assist the board in fulfilling its responsibilities.

1350 Section 3. Paragraph (b) of subsection (3) of section
1351 381.987, Florida Statutes, is amended to read:

1352 381.987 Public records exemption for personal identifying
1353 information in the compassionate use registry.-

1354 (3) The department shall allow access to the registry,
1355 including access to confidential and exempt information, to:

1356 (b) A medical marijuana treatment center registered with
1357 dispensing organization approved by the department pursuant to
1358 s. 381.986 which is attempting to verify the authenticity of a
1359 physician certification ~~physician's order~~ for marijuana low-THC
1360 cannabis, including whether the physician certification order
1361 had been previously filled and whether the physician



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1362 certification order was written for the person attempting to
1363 have it filled.

1364 Section 4. Subsection (1) of section 385.211, Florida
1365 Statutes, is amended to read:

1366 385.211 Refractory and intractable epilepsy treatment and
1367 research at recognized medical centers.-

1368 (1) As used in this section, the term "low-THC cannabis"
1369 means "low-THC cannabis" as defined in s. 381.986 which ~~that~~ is
1370 dispensed only from a medical marijuana treatment center
1371 dispensing organization as defined in s. 381.986.

1372 Section 5. Present paragraphs (b) and (c) of subsection (2)
1373 of section 499.0295, Florida Statutes, are redesignated as
1374 paragraphs (a) and (b), respectively, present paragraphs (a) and
1375 (c) of that subsection are amended, a new paragraph (c) is added
1376 to that subsection, and subsection (3) of that section is
1377 amended, to read:

1378 499.0295 Experimental treatments for terminal conditions.-

1379 (2) As used in this section, the term:

1380 ~~(a) "Dispensing organization" means an organization~~
1381 ~~approved by the Department of Health under s. 381.986(5) to~~
1382 ~~cultivate, process, transport, and dispense low-THC cannabis,~~
1383 ~~medical cannabis, and cannabis delivery devices.~~

1384 (b)-(c) "Investigational drug, biological product, or
1385 device" means:

1386 1. A drug, biological product, or device that has
1387 successfully completed phase 1 of a clinical trial but has not
1388 been approved for general use by the United States Food and Drug
1389 Administration and remains under investigation in a clinical
1390 trial approved by the United States Food and Drug



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1391 Administration; or

1392 2. ~~Marijuana Medical cannabis~~ that is manufactured and sold
1393 by ~~an MMTC a dispensing organization~~.

1394 (c) "Medical marijuana treatment center" or "MMTC" means an
1395 organization registered with the Department of Health under s.
1396 381.986.

1397 (3) Upon the request of an eligible patient, a manufacturer
1398 may, or upon the issuance of a physician certification a
1399 ~~physician's order~~ pursuant to s. 381.986, an MMTC a dispensing
1400 ~~organization~~ may:

1401 (a) Make its investigational drug, biological product, or
1402 device available under this section.

1403 (b) Provide an investigational drug, biological product,
1404 device, or cannabis delivery device as defined in s. 381.986 to
1405 an eligible patient without receiving compensation.

1406 (c) Require an eligible patient to pay the costs of, or the
1407 costs associated with, the manufacture of the investigational
1408 drug, biological product, device, or cannabis delivery device as
1409 defined in s. 381.986.

1410 Section 6. Subsection (1) of section 1004.441, Florida
1411 Statutes, is amended to read:

1412 1004.441 Refractory and intractable epilepsy treatment and
1413 research.—

1414 (1) As used in this section, the term "low-THC cannabis"
1415 means "low-THC cannabis" as defined in s. 381.986 which that is
1416 dispensed only from a medical marijuana treatment center
1417 ~~dispensing organization~~ as defined in s. 381.986.

1418 Section 7. The Division of Law Revision and Information is
1419 directed to replace the phrase "the effective date of this act"



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1420 wherever it occurs in this act with the date the act becomes a
1421 law.

1422 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.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Fournier/Loe</u>	<u>Williams</u>	<u>AHS</u>	<u>Recommend: Fav/CS</u>
3.	<u>Fournier/Loe</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 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 allopathic¹ and osteopathic² 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 misdemeanor⁹ up to a first-degree felony with a mandatory minimum sentence of 15 years in state prison and a \$200,000 fine.¹⁰ Paraphernalia¹¹ 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 2014¹³ (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)¹⁴ for medical use¹⁵ 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 training¹⁶ 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 patients¹⁹ 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 cannabis²² 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 physician²³ 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 workshops²⁷ 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.

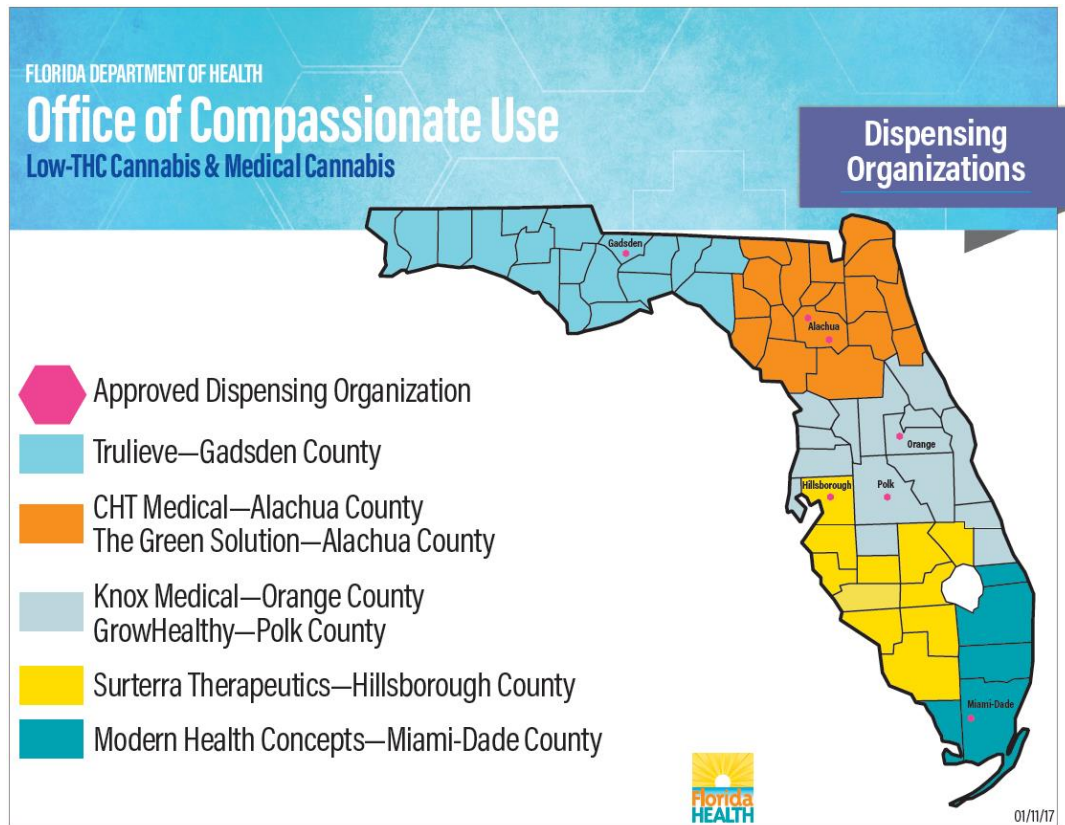
³⁰ Proposed Rule ch. 64-4, F.A.C., ID 15645147, (Feb. 2, 2015).

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;”

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 *supra* 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/3052013829132756857467.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:

- Confirms 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-Marine-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 MMTC⁵⁹ 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 businesses⁶⁴ 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

finances 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.

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

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1 A bill to be entitled
2 An act relating to compassionate use of low-THC
3 cannabis and marijuana; amending s. 381.986, F.S.;
4 providing legislative intent; defining and redefining
5 terms; authorizing physicians to issue physician
6 certifications to specified patients who meet certain
7 conditions; authorizing physicians to make specific
8 determinations in certifications; requiring physicians
9 to meet certain conditions to be authorized to issue
10 and make determinations in physician certifications;
11 specifying certain persons who may assist a qualifying
12 patient under the age of 18 in the purchasing and
13 administering of marijuana; prohibiting qualifying
14 patients under the age of 18 from purchasing
15 marijuana; providing that a physician may in certain
16 circumstances certify an amount greater than a 90-day
17 supply; requiring written consent of a parent or legal
18 guardian for the treatment of minors; requiring that
19 certain physicians annually reexamine and reassess
20 patients and update patient information in the
21 compassionate use registry; revising criminal
22 penalties; prohibiting a medical marijuana treatment
23 center from advertising services it is not authorized
24 to provide; providing fines; prohibiting a person or
25 entity from advertising or providing medical marijuana
26 treatment center services without being registered
27 with the department as a medical marijuana treatment
28 center; providing penalties; authorizing a distance
29 learning format for a specified course and reducing

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30 the number of hours required for the course; providing
31 that physicians who meet specified requirements are
32 grandfathered for the purpose of specified education
33 requirements; authorizing qualifying patients to
34 designate caregivers; requiring caregivers to meet
35 specified requirements; prohibiting a qualifying
36 patient from designating more than one caregiver at
37 any given time; providing exceptions; requiring the
38 Department of Health to register caregivers meeting
39 certain requirements on the compassionate use
40 registry; revising the entities to which the
41 compassionate use registry must be accessible;
42 requiring the department to adopt certain rules by a
43 specified date; authorizing the department to charge a
44 fee for identification cards; requiring the department
45 to begin issuing identification cards to qualified
46 registrants by a specific date; providing requirements
47 for the identification cards; requiring the department
48 to register certain dispensing organizations as
49 medical marijuana treatment centers by a certain date;
50 requiring the department to register additional
51 medical marijuana treatment centers in accordance with
52 a specified schedule; deleting obsolete provisions;
53 revising the operational requirements for medical
54 marijuana treatment centers; authorizing the
55 department to waive certain requirements under
56 specified circumstances; requiring that certain
57 receptacles be childproof; requiring that additional
58 information be included on certain labels; requiring

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59 that a medical marijuana treatment center comply with
 60 certain standards in the production and dispensing of
 61 edible or food products; requiring a medical marijuana
 62 treatment center to enter additional information into
 63 the compassionate use registry; requiring a medical
 64 marijuana treatment center to keep a copy of a
 65 transportation manifest in certain vehicles at certain
 66 times; requiring the department to establish a quality
 67 control program that requires medical marijuana
 68 treatment centers to submit samples from each batch or
 69 lot of marijuana to an independent testing laboratory;
 70 requiring a medical marijuana treatment center to
 71 maintain records of all tests conducted; requiring the
 72 department to adopt rules to create and oversee the
 73 quality control program; providing that the department
 74 must license independent testing laboratories;
 75 authorizing an independent testing laboratory to
 76 collect and accept samples of, possess, store,
 77 transport, and test marijuana; prohibiting a person
 78 with an ownership interest in a medical marijuana
 79 treatment center from owning an independent testing
 80 laboratory; requiring the department to develop rules
 81 and a process for licensing requirements; authorizing
 82 the department to impose application and renewal fees;
 83 specifying that an independent testing laboratory must
 84 be certified to perform required tests; requiring the
 85 department to suspend or reduce any mandatory testing
 86 if the number of licensed and certified independent
 87 testing laboratories is insufficient to process the

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88 tests necessary to meet the patient demand for medical
 89 marijuana treatment centers; providing that an
 90 independent testing laboratory may only accept certain
 91 samples; requiring the department to adopt rules
 92 related to ownership changes or changes in an owner's
 93 investment interest; requiring the department to
 94 establish, maintain, and control a seed-to-sale
 95 tracking system for marijuana; providing
 96 applicability; conforming provisions to changes made
 97 by the act; providing that certain research
 98 institutions may possess, test, transport, and dispose
 99 of marijuana subject to certain conditions and as
 100 provided by department rule; providing for the use of
 101 emergency rulemaking procedures by the department;
 102 creating s. 1004.4351, F.S.; providing a short title;
 103 providing legislative findings; defining terms;
 104 establishing the Coalition for Medical Marijuana
 105 Research and Education within the H. Lee Moffitt
 106 Cancer Center and Research Institute, Inc.; providing
 107 a purpose for the coalition; establishing the Medical
 108 Marijuana Research and Education Board to direct the
 109 operations of the coalition; providing for the
 110 appointment of board members; providing for terms of
 111 office, reimbursement for certain expenses, and the
 112 conduct of meetings of the board; authorizing the
 113 board to appoint a coalition director; prescribing the
 114 duties of the coalition director; requiring the board
 115 to advise specified entities and officials regarding
 116 medical marijuana research and education in this

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117 state; requiring the board to annually adopt a Medical
 118 Marijuana Research and Education Plan; providing
 119 requirements for the plan; requiring the board to
 120 issue an annual report to the Governor and the
 121 Legislature by a specified date; specifying
 122 responsibilities of the H. Lee Moffitt Cancer Center
 123 and Research Institute, Inc.; amending ss. 381.987,
 124 385.211, 499.0295, and 1004.441, F.S.; conforming
 125 provisions to changes made by the act; providing a
 126 directive to the Division of Law Revision and
 127 Information; providing an effective date.

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

131 Section 1. Section 381.986, Florida Statutes, is amended to
 132 read:

133 381.986 Compassionate use of low-THC ~~and medical~~ cannabis
 134 ~~and marijuana.~~

135 (1) LEGISLATIVE INTENT.

136 (a) It is the intent of the Legislature to implement s. 29,
 137 Art. X of the State Constitution by creating a unified
 138 regulatory structure within the framework of this section for
 139 the acquisition, cultivation, possession, processing, transfer,
 140 transportation, sale, distribution, and dispensing of marijuana,
 141 products containing marijuana, related supplies, and educational
 142 materials to qualifying patients or their caregivers.

143 (b) The Legislature intends that all rules adopted by the
 144 Department of Health to implement this section be adopted
 145 pursuant to s. 120.536(1) or s. 120.54. The Legislature intends

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146 that the department use emergency rulemaking procedures pursuant
 147 to s. 120.54(4) to adopt rules under this section if necessary
 148 to meet any deadline for rulemaking established in s. 29, Art. X
 149 of the State Constitution.

150 (c) Further, the Legislature intends that all registrations
 151 for the purposes specified in paragraph (a) be issued solely in
 152 accordance with the requirements of this section and all rules
 153 adopted under this section.

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

155 (a) "Cannabis delivery device" means an object used,
 156 intended for use, or designed for use in preparing, storing,
 157 ingesting, inhaling, or otherwise introducing marijuana ~~low-THC~~
 158 ~~cannabis or medical cannabis~~ into the human body.

159 (b) "Caregiver" has the same meaning as provided in s. 29,
 160 Art. X of the State Constitution.

161 (c) "Chronic nonmalignant pain" means pain that is caused
 162 by a debilitating medical condition or that originates from a
 163 debilitating medical condition and persists beyond the usual
 164 course of that debilitating medical condition.

165 (d) "Close relative" means a spouse, parent, sibling,
 166 grandparent, child, or grandchild, whether related by whole or
 167 half blood, by marriage, or by adoption.

168 (e) ~~(b)~~ "Debilitating medical condition" has the same
 169 meaning as provided in s. 29, Art. X of the State Constitution
 170 "Dispensing organization" means an organization approved by the
 171 department to cultivate, process, transport, and dispense ~~low-~~
 172 ~~THC cannabis or medical cannabis pursuant to this section.~~

173 (f) ~~(e)~~ "Independent testing laboratory" means a laboratory,
 174 including the managers, employees, or contractors of the

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175 laboratory, which has no direct or indirect interest in a
 176 medical marijuana treatment center ~~a dispensing organization.~~

177 (g)(d) "Legal representative" means the qualifying
 178 ~~qualified~~ patient's parent, legal guardian acting pursuant to a
 179 court's authorization as required under s. 744.3215(4), health
 180 care surrogate acting pursuant to the qualifying qualified
 181 patient's written consent or a court's authorization as required
 182 under s. 765.113, or an individual who is authorized under a
 183 power of attorney to make health care decisions on behalf of the
 184 qualifying qualified patient.

185 (h)(e) "Low-THC cannabis" means a plant of the genus
 186 *Cannabis*, the dried flowers of which contain 0.8 percent or less
 187 of tetrahydrocannabinol and more than 10 percent of cannabidiol
 188 weight for weight; the seeds thereof; the resin extracted from
 189 any part of such plant; or any compound, manufacture, salt,
 190 derivative, mixture, or preparation of such plant or its seeds
 191 or resin that is dispensed only by a medical marijuana treatment
 192 center ~~from a dispensing organization.~~

193 (i)(f) "Marijuana" has the same meaning as provided in s.
 194 29, Art. X of the State Constitution ~~"Medical cannabis" means~~
 195 ~~all parts of any plant of the genus Cannabis, whether growing or~~
 196 ~~not; the seeds thereof; the resin extracted from any part of the~~
 197 ~~plant; and every compound, manufacture, sale, derivative,~~
 198 ~~mixture, or preparation of the plant or its seeds or resin that~~
 199 ~~is dispensed only from a dispensing organization for medical use~~
 200 ~~by an eligible patient as defined in s. 499.0295.~~

201 (j) "Medical marijuana treatment center" or "MMTC" has the
 202 same meaning as provided in s. 29, Art. X of the State
 203 Constitution.

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204 (k)(g) "Medical use" has the same meaning as provided in s.
 205 29, Art. X of the State Constitution ~~means administration of the~~
 206 ~~ordered amount of low-THC cannabis or medical cannabis.~~ The term
 207 does not include the:

208 1. Possession, use, or administration of marijuana ~~low-THC~~
 209 ~~cannabis or medical cannabis~~ by smoking.

210 2. Possession, use, or administration of marijuana that was
 211 not purchased or acquired from an MMTC registered with the
 212 Department of Health.

213 ~~3.2.~~ Transfer of marijuana ~~low-THC cannabis or medical~~
 214 ~~cannabis~~ to a person other than the qualifying qualified patient
 215 ~~for whom it was ordered or the~~ qualifying qualified patient's
 216 ~~caregiver legal representative~~ on behalf of the qualifying
 217 qualified patient.

218 4. Use or administration of any type or amount of marijuana
 219 not specified on the qualifying patient's physician
 220 certification.

221 ~~5.3.~~ Use or administration of marijuana ~~low-THC cannabis or~~
 222 ~~medical cannabis:~~

223 a. On any form of public transportation.

224 b. In any public place.

225 c. In a qualifying qualified patient's place of employment,
 226 if restricted by his or her employer.

227 d. In a state correctional institution as defined in s.
 228 944.02 or a correctional institution as defined in s. 944.241.

229 e. On the grounds of a preschool, primary school, or
 230 secondary school.

231 f. On a school bus or in a vehicle, aircraft, or motorboat.

232 (l)(h) "Qualifying ~~Qualified~~ patient" has the same meaning

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233 as provided in s. 29, Art. X of the State Constitution but also
 234 includes eligible patients, as that term is defined in s.
 235 499.0295, and patients who are issued a physician certification
 236 under subparagraph (3)(a)2. or subparagraph (3)(a)3. A patient
 237 is not a qualifying patient unless he or she is registered with
 238 the department and has been issued a compassionate use registry
 239 identification card means a resident of this state who has been
 240 added to the compassionate use registry by a physician licensed
 241 under chapter 458 or chapter 459 to receive low-THC cannabis or
 242 medical cannabis from a dispensing organization.

243 (m)(i) "Smoking" means burning or igniting a substance and
 244 inhaling the smoke. Smoking does not include the use of a
 245 vaporizer.

246 (3)(2) PHYSICIAN CERTIFICATION ORDERING.-

247 (a) A physician is authorized to issue a physician
 248 certification to:

249 1. A patient suffering from a debilitating medical
 250 condition, which allows the patient to receive marijuana for the
 251 patient's medical use;

252 2. A ~~order low-THC cannabis to treat a qualified~~ patient
 253 suffering from ~~cancer or~~ a physical medical condition that
 254 chronically produces symptoms of seizures or severe and
 255 persistent muscle spasms, which allows the patient to receive
 256 low-THC cannabis for the patient's medical use;

257 3. A patient suffering from chronic nonmalignant pain, if
 258 the physician has diagnosed an underlying debilitating medical
 259 condition as the cause of the pain, which allows the patient to
 260 receive marijuana for the patient's medical use ~~order low-THC~~
 261 cannabis to alleviate the patient's pain symptoms of such

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262 ~~disease, disorder, or condition, if no other satisfactory~~
 263 ~~alternative treatment options exist for the qualified patient;~~
 264 4. ~~order medical cannabis to treat~~ An eligible patient as
 265 defined in s. 499.0295, which allows the patient to receive
 266 marijuana for the patient's medical use; or

267 5. A patient who is not a resident of this state; who
 268 qualifies under subparagraph 1., subparagraph 2., subparagraph
 269 3., or subparagraph 4.; and who can lawfully obtain marijuana
 270 through a medical marijuana program in the state that he or she
 271 resides in.

272 (b) In the physician certification, the physician may also
 273 specify one or more ~~or order a~~ cannabis delivery devices to
 274 assist with device for the patient's medical use of marijuana.
 275 low-THC cannabis or medical cannabis,

276 (c) A physician may certify a patient and specify a
 277 delivery device under paragraphs (a) and (b) only if the
 278 physician:

279 1. ~~(a)~~ Holds an active, unrestricted license as a physician
 280 under chapter 458 or an osteopathic physician under chapter 459;
 281 ~~(b)~~ Has treated the patient for at least 3 months
 282 immediately preceding the patient's registration in the
 283 compassionate use registry;

284 2. ~~(c)~~ Has successfully completed the course and examination
 285 required under paragraph (5)(a) ~~(4)(a)~~;

286 3. Has conducted a physical examination and made a full
 287 assessment of the medical history of the patient;

288 4. Has determined that, in the physician's professional
 289 opinion, the patient meets one or more of the criteria specified
 290 in paragraph (a);

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291 ~~5.(d)~~ Has determined that the medical use of marijuana
 292 would likely outweigh the potential health risks to of treating
 293 the patient with low-THC cannabis or medical cannabis are
 294 reasonable in light of the potential benefit to the patient. If
 295 a patient is younger than 18 years of age;
 296 a. A second physician must concur with this determination,
 297 and such determination must be documented in the patient's
 298 medical record;
 299 b. Only a parent, legal guardian, caregiver, or health care
 300 provider may assist the qualifying patient in the purchasing and
 301 administering of marijuana for medical use; and
 302 c. The qualifying patient may not purchase marijuana;
 303 6.(e) Registers as the patient's physician orderer of low-
 304 THC cannabis or medical cannabis for the named patient on the
 305 compassionate use registry maintained by the department and
 306 updates the registry to reflect the contents of the order,
 307 including the amount of marijuana low-THC cannabis or medical
 308 cannabis that will provide the patient with not more than a 90-
 309 day 45-day supply and a cannabis delivery device needed by the
 310 patient for the medical use of marijuana low-THC cannabis or
 311 medical cannabis. A physician may certify an amount greater than
 312 a 90-day supply of marijuana if the physician has a reasonable
 313 belief that the patient will use the additional marijuana in a
 314 medically appropriate way. If the physician's recommended amount
 315 of marijuana for a 90-day supply changes, the physician must
 316 also update the registry within 7 days after the any change is
 317 made to the original order to reflect the change. The physician
 318 shall deactivate the registration of the patient and the
 319 patient's legal representative when the physician no longer

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320 recommends the medical use of marijuana for the patient
 321 treatment is discontinued;
 322 7.(f) Maintains a patient treatment plan that includes the
 323 dose, route of administration, planned duration, and monitoring
 324 of the patient's symptoms and other indicators of tolerance or
 325 reaction to the marijuana low-THC cannabis or medical cannabis;
 326 8.(g) Submits the patient treatment plan quarterly to the
 327 University of Florida College of Pharmacy for research on the
 328 safety and efficacy of marijuana low-THC cannabis and medical
 329 cannabis on patients; and
 330 9.(h) Obtains the voluntary written informed consent of the
 331 patient or the patient's legal representative to treatment with
 332 marijuana low-THC cannabis after sufficiently explaining the
 333 current state of knowledge in the medical community of the
 334 effectiveness of treatment of the patient's condition with
 335 marijuana low-THC cannabis, the medically acceptable
 336 alternatives, and the potential risks and side effects. If the
 337 patient is a minor, the patient's parent or legal guardian must
 338 consent to treatment in writing. If the patient is an eligible
 339 patient as defined in s. 499.0295, the physician must obtain
 340 written informed consent as defined in and required by s.
 341 499.0295.
 342 (d) At least annually, a physician must recertify the
 343 qualifying patient pursuant to paragraph (c).
 344 ~~(i) Obtains written informed consent as defined in and~~
 345 ~~required under s. 499.0295, if the physician is ordering medical~~
 346 ~~cannabis for an eligible patient pursuant to that section; and~~
 347 (e)(j) A physician may not issue a physician certification
 348 if the physician is ~~not~~ a medical director employed by an MMTc a

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349 dispensing organization.

350 (f) An order for low-THC cannabis or medical cannabis
 351 issued pursuant to former s. 381.986, Florida Statutes 2016, and
 352 registered with the compassionate use registry on the effective
 353 date of this act, shall be considered a physician certification
 354 issued pursuant to this subsection. The details and expiration
 355 date of such certification must be identical to the details and
 356 expiration date of the order as logged in the compassionate use
 357 registry. Until the department begins issuing compassionate use
 358 registry identification cards, all patients with such orders
 359 shall be considered qualifying patients, notwithstanding the
 360 requirement that a qualifying patient have a compassionate use
 361 registry identification card.

362 (4)(3) PROHIBITED ACTS PENALTIES.-

363 (a) A physician commits a misdemeanor of the first degree,
 364 punishable as provided in s. 775.082 or s. 775.083, if the
 365 physician issues a physician certification for marijuana to
 366 orders low-THC cannabis for a patient in a manner other than as
 367 required in subsection (3) without a reasonable belief that the
 368 patient is suffering from:

369 1. Cancer or a physical medical condition that chronically
 370 produces symptoms of seizures or severe and persistent muscle
 371 spasms that can be treated with low-THC cannabis; or

372 2. Symptoms of cancer or a physical medical condition that
 373 chronically produces symptoms of seizures or severe and
 374 persistent muscle spasms that can be alleviated with low-THC
 375 cannabis.

376 ~~(b) A physician commits a misdemeanor of the first degree,~~
 377 ~~punishable as provided in s. 775.082 or s. 775.083, if the~~

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378 ~~physician orders medical cannabis for a patient without a~~
 379 ~~reasonable belief that the patient has a terminal condition as~~
 380 ~~defined in s. 499.0295.~~

381 (b)(e) A person who fraudulently represents that he or she
 382 has a debilitating medical condition ~~cancer~~, a physical medical
 383 condition that chronically produces symptoms of seizures or
 384 severe and persistent muscle spasms, chronic nonmalignant pain,
 385 or a terminal condition as defined in s. 499.0295 to a physician
 386 for the purpose of being issued a physician certification for
 387 marijuana ordered low-THC cannabis, medical cannabis, or a
 388 cannabis delivery device by such physician commits a misdemeanor
 389 of the first degree, punishable as provided in s. 775.082 or s.
 390 775.083.

391 (c)(d) A qualifying patient ~~an eligible patient as defined~~
 392 in s. 499.0295 who uses marijuana ~~medical cannabis~~, and such
 393 patient's caregiver legal representative who administers
 394 marijuana ~~medical cannabis~~, in plain view of or in a place open
 395 to the general public, on the grounds of a school, or in a
 396 school bus, vehicle, aircraft, or motorboat, commits a
 397 misdemeanor of the first degree, punishable as provided in s.
 398 775.082 or s. 775.083.

399 (d) A qualifying patient or caregiver who cultivates
 400 marijuana or who purchases or acquires marijuana from any person
 401 or entity other than an MMTC commits a misdemeanor of the first
 402 degree, punishable as provided in s. 775.082 or s. 775.083.

403 (e) A caregiver who violates any of the applicable
 404 provisions of this section or applicable department rules
 405 commits, upon the first offense, a misdemeanor of the second
 406 degree, punishable as provided in s. 775.082 or s. 775.083, and,

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407 upon the second and subsequent offenses, a misdemeanor of the
 408 first degree, punishable as provided in s. 775.082 or s.
 409 775.083.

410 (f)(e) A physician who issues a physician certification for
 411 marijuana orders low THC cannabis, medical cannabis, or a
 412 cannabis delivery device and receives compensation from an MMTC
 413 a dispensing organization related to issuing the physician
 414 certification for marijuana the ordering of low-THC cannabis,
 415 medical cannabis, or a cannabis delivery device is subject to
 416 disciplinary action under the applicable practice act and s.
 417 456.072(1)(n).

418 (g) An MMTC that advertises or holds out to the public that
 419 it may provide services other than services for which it is
 420 registered to provide violates this section, and the department
 421 may impose a fine on the MMTC pursuant to paragraph (10)(h).

422 (h) A person or entity that offers or advertises services
 423 as an MMTC without registering as an MMTC with the department
 424 violates this section. The operation or maintenance of a
 425 facility as an MMTC, or the performance of a service that
 426 requires registration, without proper registration is a
 427 violation of this section.

428 1. If after receiving notification from the department,
 429 such person or entity fails to cease operation, the department
 430 may impose an administrative fine of up to \$10,000 per
 431 violation. Each day of continued operation is a separate
 432 offense.

433 2. The department or any state attorney may, in addition to
 434 other remedies provided in this section, bring an action for an
 435 injunction to restrain any unauthorized activity or to enjoin

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436 the future operation or maintenance of the unauthorized
 437 dispensing organization or entity or the performance of any
 438 service in violation of this section until compliance with this
 439 section and department rules has been demonstrated to the
 440 satisfaction of the department.

441 3. If found to be in violation of this paragraph, the
 442 department may assess reasonable investigative and legal costs
 443 for prosecution of the violation against the person or entity.

444 (5)(4) PHYSICIAN EDUCATION.—

445 (a) Before a physician may issue a physician certification
 446 pursuant to subsection (3) ordering low-THC cannabis, medical
 447 cannabis, or a cannabis delivery device for medical use by a
 448 patient in this state, the appropriate board shall require the
 449 ordering physician to successfully complete a 4-hour ~~an 8-hour~~
 450 course and subsequent examination offered by the Florida Medical
 451 Association or the Florida Osteopathic Medical Association which
 452 that encompasses the clinical indications for the appropriate
 453 use of marijuana low-THC cannabis and medical cannabis, the
 454 appropriate cannabis delivery devices, the contraindications for
 455 such use, and the relevant state and federal laws governing the
 456 issuance of physician certifications ordering, as well as
 457 dispensing, and possessing of these substances and devices. The
 458 course and examination shall be administered at least quarterly
 459 annually. Successful completion of the course may be used by a
 460 physician to satisfy 4 hours ~~8 hours~~ of the continuing medical
 461 education requirements required by his or her respective board
 462 for licensure renewal. This course may be offered in a distance
 463 learning format, including an electronic, online format that is
 464 available on request. Physicians who have completed an 8-hour

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465 course and subsequent examination offered by the Florida Medical
 466 Association or the Florida Osteopathic Medical Association which
 467 encompasses the clinical indications for the appropriate use of
 468 marijuana and who are registered in the compassionate use
 469 registry on the effective date of this act are deemed to meet
 470 the requirements of this paragraph.

471 (b) The appropriate board shall require the medical
 472 director of each ~~MMTC dispensing organization~~ to hold an active,
 473 unrestricted license as a physician under chapter 458 or as an
 474 osteopathic physician under chapter 459 and successfully
 475 complete a 2-hour course and subsequent examination offered by
 476 the Florida Medical Association or the Florida Osteopathic
 477 Medical Association which that encompasses appropriate safety
 478 procedures and knowledge of marijuana low-THC cannabis, medical
 479 ~~cannabis~~, and cannabis delivery devices.

480 ~~(c) Successful completion of the course and examination~~
 481 ~~specified in paragraph (a) is required for every physician who~~
 482 ~~orders low-THC cannabis, medical cannabis, or a cannabis~~
 483 ~~delivery device each time such physician renews his or her~~
 484 ~~license. In addition, successful completion of the course and~~
 485 ~~examination specified in paragraph (b) is required for the~~
 486 ~~medical director of each dispensing organization each time such~~
 487 ~~physician renews his or her license.~~

488 ~~(c)(d)~~ A physician who fails to comply with this subsection
 489 and issues a physician certification for marijuana who orders
 490 ~~low-THC cannabis, medical cannabis, or a cannabis delivery~~
 491 ~~device may be subject to disciplinary action under the~~
 492 ~~applicable practice act and under s. 456.072(1)(k).~~

493 (6) CAREGIVERS.—

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494 (a) During the course of registration with the department
 495 for inclusion on the compassionate use registry, or at any time
 496 while registered, a qualifying patient may designate an
 497 individual as his or her caregiver to assist him or her with the
 498 medical use of marijuana. The designated caregiver must be 21
 499 years of age or older, unless the patient is a close relative of
 500 the caregiver; must agree in writing to be the qualifying
 501 patient's caregiver; may not receive compensation, other than
 502 actual expenses incurred, for assisting the qualifying patient
 503 with the medical use of marijuana, unless the caregiver is
 504 acting pursuant to employment in a licensed facility in
 505 accordance with subparagraph (c)2.; and must pass a level 2
 506 screening pursuant to chapter 435, unless the patient is a close
 507 relative of the caregiver.

508 (b) A qualifying patient may have only one designated
 509 caregiver at any given time unless all of the patient's
 510 caregivers are his or her close relatives or legal
 511 representatives.

512 (c) A caregiver may assist only one qualifying patient at
 513 any given time unless:

514 1. All qualifying patients the caregiver is assisting are
 515 close relatives of each other and the caregiver is the legal
 516 representative of at least one of the patients; or

517 2. All qualifying patients the caregiver is assisting are
 518 receiving hospice services, or are residents, in the same
 519 assisted living facility, nursing home, or other licensed
 520 facility and have requested the assistance of that caregiver
 521 with the medical use of marijuana; the caregiver is an employee
 522 of the hospice or licensed facility; and the caregiver provides

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523 personal care or services directly to clients of the hospice or
 524 licensed facility as a part of his or her employment duties at
 525 the hospice or licensed facility.

526 (d) The department must register a caregiver on the
 527 compassionate use registry and issue him or her a caregiver
 528 identification card if he or she is designated by a qualifying
 529 patient pursuant to paragraph (a) and meets all of the
 530 requirements of this subsection and department rule.

531 (7)-(5) DUTIES OF THE DEPARTMENT.—The department shall:

532 (a) Create and maintain a secure, electronic, and online
 533 compassionate use registry for the registration of physicians,
 534 patients, and caregivers ~~the legal representatives of patients~~
 535 as provided under this section. The registry must be accessible
 536 to:

537 1. Practitioners licensed under chapter 458 or chapter 459,
 538 to ensure proper care for patients requesting physician
 539 certifications;

540 2. Practitioners licensed to prescribe prescription drugs,
 541 to ensure proper care for patients before prescribing
 542 medications that may interact with the medical use of marijuana;

543 3. Law enforcement agencies, to verify the authorization of
 544 a qualifying patient or a patient's caregiver to possess
 545 marijuana or a cannabis delivery device; and

546 4. MMTCs, to a dispensing organization to verify the
 547 authorization of a qualifying patient or a patient's caregiver
 548 legal representative to possess marijuana ~~low-THC cannabis,~~
 549 medical cannabis, or a cannabis delivery device and to record
 550 the marijuana ~~low-THC cannabis, medical cannabis,~~ or cannabis
 551 delivery device dispensed.

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552
 553 The registry must prevent ~~an~~ active registration of a patient by
 554 multiple physicians.

555 (b) By July 3, 2017, adopt rules establishing procedures
 556 for the issuance, annual renewal, suspension, and revocation of
 557 compassionate use registry identification cards for patients and
 558 caregivers. The department may charge a reasonable fee
 559 associated with the issuance and renewal of patient and
 560 caregiver identification cards. By October 3, 2017, the
 561 department shall begin issuing identification cards to adult
 562 patients who have a physician certification that meets the
 563 requirements of subsection (3); minor patients who have a
 564 physician certification that meets the requirements of
 565 subsection (3) and the written consent of a parent or legal
 566 guardian; and caregivers registered pursuant to subsection (6).
 567 In addition to the other requirements of this section, the
 568 department may issue a compassionate use registry identification
 569 card to a patient who is not a resident of this state only after
 570 the department has verified that the patient can lawfully obtain
 571 marijuana through a medical marijuana program in the state that
 572 he or she resides in. Patient and caregiver identification cards
 573 must be resistant to counterfeiting and tampering and must
 574 include at least the following:

575 1. The name, address, and date of birth of the patient or
 576 caregiver, as appropriate;

577 2. A full-face, passport-type, color photograph of the
 578 patient or caregiver, as appropriate, taken within the 90 days
 579 immediately preceding registration;

580 3. Designation of the cardholder as a patient or caregiver;

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581 4. A unique identification number for the patient or
 582 caregiver which is matched to the identification number used for
 583 such person in the department's compassionate use registry. A
 584 caregiver's identification number and file in the compassionate
 585 use registry must be linked to the file of the patient or
 586 patients the caregiver is assisting so that the caregiver's
 587 status may be verified for each patient individually;

588 5. The expiration date, which shall be 1 year after the
 589 date of issuance of the identification card or the date
 590 treatment ends as provided in the patient's physician
 591 certification, whichever occurs first; and

592 6. For caregivers who are assisting three or fewer
 593 qualifying patients, the names and identification number of the
 594 qualifying patient or patients that the caregiver is assisting.

595 (c) As soon as practicable after the effective date of this
 596 act, update its records by registering each dispensing
 597 organization approved pursuant to chapter 2014-157, Laws of
 598 Florida, or chapter 2016-123, Laws of Florida, as an MMTC with
 599 an effective registration date that coincides with that
 600 dispensing organization's date of approval as a dispensing
 601 organization. On the effective date of this act, all dispensing
 602 organizations approved pursuant to chapter 2014-157, Laws of
 603 Florida, or chapter 2016-123, Laws of Florida, are deemed to be
 604 registered MMTCs. The department may not require a dispensing
 605 organization approved pursuant to chapter 2014-157, Laws of
 606 Florida, or chapter 2016-123, Laws of Florida, to submit an
 607 application and may not charge the dispensing organization an
 608 application or registration fee for the initial registration of
 609 that dispensing organization as an MMTC pursuant to this

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610 section. For purposes of the requirement that an MMTC comply
 611 with the representations made in its application pursuant to
 612 subsection (8), an MMTC registered pursuant to this paragraph
 613 shall continue to comply with the representations made in its
 614 application for approval as a dispensing organization, including
 615 any revision authorized by the department before the effective
 616 date of this act. After the effective date of this act, the
 617 department may grant variances from the representations made in
 618 a dispensing organization's application for approval pursuant to
 619 subsection (8). For purposes of the definition of the term
 620 "marijuana" in s. 29, of Art. X of the State Constitution, an
 621 MMTC is deemed to be a dispensing organization as that term is
 622 defined in former s. 381.986(1)(a), Florida Statutes 2014
 623 Authorize the establishment of five dispensing organizations to
 624 ensure reasonable statewide accessibility and availability as
 625 necessary for patients registered in the compassionate use
 626 registry and who are ordered low-THC cannabis, medical cannabis,
 627 or a cannabis delivery device under this section, one in each of
 628 the following regions: northwest Florida, northeast Florida,
 629 central Florida, southeast Florida, and southwest Florida.

630 (d) By October 3, 2017, register five additional MMTCs with
 631 at least one of the MMTCs being an applicant that is a
 632 recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82
 633 (D.D.C. 1999), or *In re Black Farmers Litig.*, 856 F. Supp. 2d 1
 634 (D.D.C. 2011), and a member of the Black Farmers and
 635 Agriculturalists Association.

636 (e) Within 6 months after each instance of the registration
 637 of 75,000 qualifying patients with the compassionate use
 638 registry, register four additional MMTCs if a sufficient number

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639 of MMTC applicants meet the registration requirements
 640 established in this section and by department rule.

641 (f) Not issue more than one registration as an MMTC to a
 642 person or an entity.

643 (g) ~~The department shall~~ Develop an application form for
 644 registration as an MMTC and impose an initial application and
 645 biennial renewal fee that is sufficient to cover the costs of
 646 administering this section. ~~To be registered as an MMTC, the an~~
 647 applicant ~~for approval as a dispensing organization~~ must be able
 648 to demonstrate:

649 1. That the applicant has been registered to do business in
 650 this state for the previous 5 consecutive years before
 651 submitting the application.

652 2.1- The technical and technological ability to cultivate
 653 and produce low-THC cannabis and marijuana. ~~The applicant must~~
 654 possess a valid certificate of registration issued by the
 655 Department of Agriculture and Consumer Services pursuant to s.
 656 581.131 that is issued for the cultivation of more than 400,000
 657 plants, be operated by a nurseryman as defined in s. 581.011,
 658 and have been operated as a registered nursery in this state for
 659 at least 30 continuous years.

660 3.2- The ability to secure the premises, resources, and
 661 personnel necessary to operate as ~~an MMTC a dispensing~~
 662 organization.

663 4.3- The ability to maintain accountability of all raw
 664 materials, finished products, and any byproducts to prevent
 665 diversion or unlawful access to or possession of these
 666 substances.

667 5.4- An infrastructure reasonably located to dispense low-

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668 THC cannabis and marijuana to registered qualifying patients
 669 statewide ~~or regionally as determined by the department.~~

670 ~~6.5-~~ The financial ability to maintain operations for the
 671 duration of the 2-year approval cycle, including the provision
 672 of certified financials to the department. Upon approval, the
 673 applicant must post a \$5 million performance bond. However, upon
 674 an MMTC a dispensing organization's serving at least 1,000
 675 qualifying qualified patients, the ~~MMTC dispensing organization~~
 676 is only required to maintain a \$2 million performance bond.

677 ~~7.6-~~ That all owners and managers have been fingerprinted
 678 and have successfully passed a level 2 background screening
 679 pursuant to s. 435.04.

680 ~~8.7-~~ The employment of a medical director to supervise the
 681 activities of the ~~MMTC dispensing organization.~~

682 ~~(e) Upon the registration of 250,000 active qualified~~
 683 ~~patients in the compassionate use registry, approve three~~
 684 ~~dispensing organizations, including, but not limited to, an~~
 685 ~~applicant that is a recognized class member of *Pigford v.*~~
 686 ~~*Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers*~~
 687 ~~*Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the~~
 688 ~~Black Farmers and Agriculturalists Association, which must meet~~
 689 ~~the requirements of subparagraphs (b)2.-7. and demonstrate the~~
 690 ~~technical and technological ability to cultivate and produce~~
 691 ~~low-THC cannabis.~~

692 ~~(h)-(d)~~ Allow an MMTC a dispensing organization to make a
 693 wholesale purchase of marijuana low-THC cannabis or medical
 694 cannabis from, or a distribution of marijuana low-THC cannabis
 695 or medical cannabis to, another ~~MMTC dispensing organization.~~

696 ~~(i)-(e)~~ Monitor physician registration in the compassionate

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697 use registry and the issuance of physician certifications
 698 pursuant to subsection (3) ordering of low-THC cannabis, medical
 699 cannabis, or a cannabis delivery device for ordering practices
 700 that could facilitate unlawful diversion or misuse of marijuana
 701 low-THC cannabis, medical cannabis, or a cannabis delivery
 702 devices device and take disciplinary action as indicated.

703 (8)(6) MEDICAL MARIJUANA TREATMENT CENTERS DISPENSING
 704 ORGANIZATION.—Each MMTC must register with the department. A
 705 registered MMTC An approved dispensing organization must, at all
 706 times, maintain compliance with paragraph (7)(g), the criteria
 707 demonstrated for selection and approval as a dispensing
 708 organization under subsection(5) and the criteria required in
 709 this subsection, and all representations made to the department
 710 in the MMTC's application for registration. Upon request, the
 711 department may grant an MMTC one or more variances from the
 712 representations made in the MMTC's application. Consideration of
 713 such a variance shall be based upon the individual facts and
 714 circumstances surrounding the request. A variance may not be
 715 granted unless the requesting MMTC can demonstrate to the
 716 department that it has a proposed alternative to the specific
 717 representation made in its application which fulfills the same
 718 or a similar purpose as the specific representation in a way
 719 that the department can reasonably determine will not be a lower
 720 standard than the specific representation in the application.

721 (a) When growing marijuana ~~low-THC cannabis or medical~~
 722 ~~cannabis, an MMTC a dispensing organization:~~

723 1. May use pesticides determined by the department, after
 724 consultation with the Department of Agriculture and Consumer
 725 Services, to be safely applied to plants intended for human

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726 consumption, but may not use pesticides designated as
 727 restricted-use pesticides pursuant to s. 487.042.

728 2. Must grow marijuana ~~low-THC cannabis or medical cannabis~~
 729 ~~within an enclosed structure and in a room separate from any~~
 730 ~~other plant.~~

731 3. Must inspect seeds and growing plants for plant pests
 732 that endanger or threaten the horticultural and agricultural
 733 interests of the state, notify the Department of Agriculture and
 734 Consumer Services within 10 calendar days after a determination
 735 that a plant is infested or infected by such plant pest, and
 736 implement and maintain phytosanitary policies and procedures.

737 4. Must perform fumigation or treatment of plants, or the
 738 removal and destruction of infested or infected plants, in
 739 accordance with chapter 581 and any rules adopted thereunder.

740 (b) When processing marijuana ~~low-THC cannabis or medical~~
 741 ~~cannabis, an MMTC a dispensing organization must:~~

742 1. Process the marijuana ~~low-THC cannabis or medical~~
 743 ~~cannabis within an enclosed structure and in a room separate~~
 744 ~~from other plants or products.~~

745 2. Have the marijuana tested by an independent testing
 746 laboratory to ensure it meets the standards established by the
 747 department's quality control program ~~Test the processed low-THC~~
 748 ~~cannabis and medical cannabis before it is they are dispensed.~~
 749 ~~Results must be verified and signed by two dispensing~~
 750 ~~organization employees. Before dispensing low-THC cannabis, the~~
 751 ~~dispensing organization must determine that the test results~~
 752 ~~indicate that the low-THC cannabis meets the definition of low-~~
 753 ~~THC cannabis and, for medical cannabis and low-THC cannabis,~~
 754 ~~that all medical cannabis and low-THC cannabis is safe for human~~

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755 ~~consumption and free from contaminants that are unsafe for human~~
 756 ~~consumption. The dispensing organization must retain records of~~
 757 ~~all testing and samples of each homogenous batch of cannabis and~~
 758 ~~low-THC cannabis for at least 9 months. The dispensing~~
 759 ~~organization must contract with an independent testing~~
 760 ~~laboratory to perform audits on the dispensing organization's~~
 761 ~~standard operating procedures, testing records, and samples and~~
 762 ~~provide the results to the department to confirm that the low-~~
 763 ~~THC cannabis or medical cannabis meets the requirements of this~~
 764 ~~section and that the medical cannabis and low-THC cannabis is~~
 765 ~~safe for human consumption.~~

766 3. Package the marijuana low-THC cannabis or medical
 767 cannabis in compliance with the United States Poison Prevention
 768 Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

769 4. Package the marijuana low-THC cannabis or medical
 770 cannabis in a childproof receptacle that has a firmly affixed
 771 and legible label stating the following information:

772 a. A statement that the marijuana low-THC cannabis or
 773 medical cannabis meets the requirements of subparagraph 2.;

774 b. The name of the MMTC dispensing organization from which
 775 the marijuana medical cannabis or low-THC cannabis originates;
 776 and

777 c. The batch number and harvest number from which the
 778 marijuana medical cannabis or low-THC cannabis originates; and

779 d. The concentration of tetrahydrocannabinol and
 780 cannabidiol in the product.

781 e. Any other information required by department rule

782 5. ~~Reserve two processed samples from each batch and retain~~
 783 ~~such samples for at least 9 months for the purpose of testing~~

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784 ~~pursuant to the audit required under subparagraph 2.~~

785 (c) When dispensing marijuana low-THC cannabis, medical
 786 cannabis, or a marijuana cannabis delivery device, an MMTC a
 787 dispensing organization:

788 1. May not dispense more than ~~the a 45 day~~ supply of
 789 marijuana authorized by a qualifying patient's physician
 790 certification low-THC cannabis or medical cannabis to a
 791 qualifying patient or caregiver ~~the patient's legal~~
 792 ~~representative.~~

793 2. Must ensure that the ~~have the~~ dispensing organization's
 794 employee who dispenses the marijuana low-THC cannabis, medical
 795 cannabis, or marijuana a cannabis delivery device enters ~~enter~~
 796 into the compassionate use registry his or her name or unique
 797 employee identifier.

798 3. Must verify that the qualifying patient and the
 799 caregiver, if applicable, both have an active and valid
 800 compassionate use registry identification card and that the
 801 amount and type of marijuana dispensed match the physician
 802 certification in the compassionate use registry for that
 803 qualifying patient that a physician has ordered the low-THC
 804 cannabis, medical cannabis, or a specific type of a cannabis
 805 delivery device for the patient.

806 4. Must label the marijuana with the recommended dose for
 807 the qualifying patient receiving the marijuana.

808 ~~5.4-~~ May not dispense or sell any other type of marijuana
 809 cannabis, alcohol, or illicit drug-related product, including
 810 pipes, bongs, or wrapping papers, other than a physician-ordered
 811 cannabis delivery device required for the medical use of
 812 marijuana which is specified in a physician certification low-

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813 ~~THC cannabis or medical cannabis, while dispensing low-THC~~
 814 ~~cannabis or medical cannabis. An MMTC may produce and dispense~~
 815 ~~marijuana as an edible or food product but may not produce such~~
 816 ~~items in a format designed to be attractive to children. In~~
 817 ~~addition to the requirements of this section and department~~
 818 ~~rule, food products produced by an MMTC must meet all food~~
 819 ~~safety standards established in state and federal law,~~
 820 ~~including, but not limited to, the identification of the serving~~
 821 ~~size and the amount of tetrahydrocannabinol in each serving.~~

822 5. ~~Must verify that the patient has an active registration~~
 823 ~~in the compassionate use registry, the patient or patient's~~
 824 ~~legal representative holds a valid and active registration card,~~
 825 ~~the order presented matches the order contents as recorded in~~
 826 ~~the registry, and the order has not already been filled.~~

827 6. Must, upon dispensing the marijuana ~~low-THC cannabis,~~
 828 ~~medical cannabis, or marijuana cannabis~~ delivery device, record
 829 in the registry the date, time, quantity, and form of marijuana
 830 ~~low-THC cannabis or medical cannabis~~ dispensed; and the type of
 831 marijuana cannabis ~~delivery device~~ dispensed; and the name and
 832 compassionate use registry identification number of the
 833 qualifying patient or caregiver to whom the marijuana delivery
 834 device was dispensed.

835 (d) To ensure the safety and security of its premises and
 836 any off-site storage facilities, and to maintain adequate
 837 controls against the diversion, theft, and loss of marijuana
 838 ~~low-THC cannabis, medical cannabis, or marijuana cannabis~~
 839 delivery devices, ~~an MMTC a dispensing organization~~ shall:

840 1.a. Maintain a fully operational security alarm system
 841 that secures all entry points and perimeter windows and is

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842 equipped with motion detectors; pressure switches; and duress,
 843 panic, and hold-up alarms; or

844 b. Maintain a video surveillance system that records
 845 continuously 24 hours each day and meets at least one of the
 846 following criteria:

847 (I) Cameras are fixed in a place that allows for the clear
 848 identification of persons and activities in controlled areas of
 849 the premises. Controlled areas include grow rooms, processing
 850 rooms, storage rooms, disposal rooms or areas, and point-of-sale
 851 rooms;

852 (II) Cameras are fixed in entrances and exits to the
 853 premises, which shall record from both indoor and outdoor, or
 854 ingress and egress, vantage points;

855 (III) Recorded images must clearly and accurately display
 856 the time and date; or

857 (IV) Retain video surveillance recordings for a minimum of
 858 45 days, or longer upon the request of a law enforcement agency.

859 2. Ensure that the MMTC's ~~organization's~~ outdoor premises
 860 have sufficient lighting from dusk until dawn.

861 3. Implement ~~Establish and maintain~~ a tracking system using
 862 a vendor approved by the department which ~~that~~ traces the
 863 marijuana ~~low-THC cannabis or medical cannabis~~ from seed to
 864 sale. The tracking system must ~~shall~~ include notification of key
 865 events as determined by the department, including when cannabis
 866 seeds are planted, when cannabis plants are harvested and
 867 destroyed, and when marijuana ~~low-THC cannabis or medical~~
 868 ~~cannabis~~ is transported, sold, stolen, diverted, or lost.

869 4. Not dispense from its premises marijuana ~~low-THC~~
 870 ~~cannabis, medical cannabis,~~ or a cannabis delivery device

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871 between the hours of 9 p.m. and 7 a.m., but may perform all
872 other operations and deliver ~~marijuana low-THC cannabis and~~
873 ~~medical cannabis~~ to qualifying ~~qualified~~ patients 24 hours each
874 day.

875 5. Store ~~marijuana low-THC cannabis or medical cannabis~~ in
876 a secured, locked room or a vault.

877 6. Require at least two of its employees, or two employees
878 of a security agency with whom it contracts, to be on the
879 premises at all times.

880 7. Require each employee or contractor to wear a photo
881 identification badge at all times while on the premises.

882 8. Require each visitor to wear a visitor's pass at all
883 times while on the premises.

884 9. Implement an alcohol and drug-free workplace policy.

885 10. Report to local law enforcement within 24 hours after
886 it is notified or becomes aware of the theft, diversion, or loss
887 of ~~marijuana low-THC cannabis or medical cannabis~~.

888 (e) To ensure the safe transport of ~~marijuana low-THC~~
889 ~~cannabis or medical cannabis~~ to ~~MMTC dispensing organization~~
890 facilities, independent testing laboratories, or qualifying
891 patients, the ~~MMTC dispensing organization~~ must:

892 1. Maintain a transportation manifest, which must be
893 retained for at least 1 year. A copy of the manifest must be in
894 the vehicle at all times when transporting marijuana.

895 2. Ensure only vehicles in good working order are used to
896 transport ~~marijuana low-THC cannabis or medical cannabis~~.

897 3. Lock ~~marijuana low-THC cannabis or medical cannabis~~ in a
898 separate compartment or container within the vehicle.

899 4. Require at least two persons to be in a vehicle

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900 transporting ~~marijuana low-THC cannabis or medical cannabis~~, and
901 require at least one person to remain in the vehicle while the
902 ~~marijuana low-THC cannabis or medical cannabis~~ is being
903 delivered.

904 5. Provide specific safety and security training to
905 employees transporting or delivering ~~marijuana low-THC cannabis~~
906 ~~or medical cannabis~~.

907 (9) MARIJUANA QUALITY CONTROL PROGRAM AND INDEPENDENT
908 TESTING LABORATORY LICENSURE.-

909 (a) The department shall establish a quality control
910 program requiring marijuana to be tested by an independent
911 testing laboratory for potency and contaminants before sale to
912 qualifying patients and caregivers.

913 1. The quality control program must require MMTCs to submit
914 samples from each batch or lot of marijuana harvested or
915 processed to an independent testing laboratory for testing to
916 ensure, at a minimum, that the labeling of the potency of
917 tetrahydrocannabinol and all other marketed cannabinoids or
918 terpenes is accurate and that the marijuana dispensed to
919 qualifying patients is safe for human consumption.

920 2. An MMTC must maintain records of all tests conducted,
921 including the results of each test and any additional
922 information, as required by the department.

923 3. The department shall adopt all rules necessary to create
924 and oversee the quality control program, which must include, at
925 a minimum:

926 a. Permissible levels of variation in potency labeling and
927 standards requiring tetrahydrocannabinol in edible marijuana
928 products to be distributed consistently throughout the product;

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929 b. Permissible levels of contaminants and mandatory testing
 930 for contaminants to confirm that the tested marijuana is safe
 931 for human consumption. This testing must include, but is not
 932 limited to, testing for microbiological impurity, residual
 933 solvents, and pesticide residues;
 934 c. The destruction of marijuana determined to be
 935 inaccurately labeled or unsafe for human consumption after the
 936 MMTC has an opportunity to take remedial action;
 937 d. The collection, storage, handling, recording, and
 938 destruction of samples of marijuana by independent testing
 939 laboratories; and
 940 e. Security, inventory tracking, and record retention.
 941 (b) The department must license all independent testing
 942 laboratories to ensure that all marijuana is tested for potency
 943 and contaminants in accordance with the department's quality
 944 control program. An independent testing laboratory may collect
 945 and accept samples of, and possess, store, transport, and test
 946 marijuana. An independent testing laboratory may not be owned by
 947 a person who also possesses an ownership interest in an MMTC. A
 948 clinical laboratory that is licensed by the Agency for Health
 949 Care Administration pursuant to part I of chapter 483 and that
 950 performs nonwaived clinical tests is exempt from the requirement
 951 to be licensed by the department pursuant to this paragraph but
 952 must be certified to perform all required tests pursuant to
 953 subparagraph 2.
 954 1. The department shall develop rules establishing
 955 independent testing laboratory license requirements and a
 956 process for licensing independent testing laboratories; develop
 957 an application form for an independent testing laboratory

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958 license; and impose an initial application fee and a biennial
 959 renewal fee sufficient to cover the costs of administering this
 960 subsection.
 961 2. In addition to licensure, an independent testing
 962 laboratory must be certified to perform all required tests by
 963 the department. The department must issue a certification to an
 964 independent testing laboratory that has been certified by a
 965 third-party laboratory certification body approved by the
 966 department. The department shall establish reasonable rules for
 967 the certification and operation of independent testing
 968 laboratories. Rules for certification must, at a minimum,
 969 address standards relating to:
 970 a. Personnel qualifications;
 971 b. Equipment and methodology;
 972 c. Proficiency testing;
 973 d. Tracking;
 974 e. Sampling;
 975 f. Chain of custody;
 976 g. Record and sample retention;
 977 h. Reporting;
 978 i. Audit and inspection; and
 979 j. Security.
 980 3. The department shall suspend or reduce any mandatory
 981 testing requirement specified in its quality control program if
 982 the number of licensed and certified independent testing
 983 laboratories is insufficient to process the tests necessary to
 984 meet the patients' demand for marijuana.
 985 4. An independent testing laboratory may accept only
 986 samples composed of marijuana which are obtained from a sample

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987 source approved by the department. At a minimum, these sources
 988 must include an MMTC, a researcher affiliated with an accredited
 989 university or research hospital, a qualifying patient, and a
 990 caregiver.

991 ~~(10)(7)~~ DEPARTMENT AUTHORITY AND RESPONSIBILITIES.—

992 (a) The department may conduct announced or unannounced
 993 inspections of ~~MMTCs dispensing organizations~~ to determine
 994 compliance with this section or rules adopted pursuant to this
 995 section.

996 (b) The department shall inspect an MMTC ~~a dispensing~~
 997 ~~organization~~ upon complaint or notice provided to the department
 998 that the MMTC dispensing organization has dispensed marijuana
 999 ~~low THC cannabis or medical cannabis~~ containing any mold,
 1000 bacteria, or other contaminant that may cause or has caused an
 1001 adverse effect to human health or the environment.

1002 (c) The department shall conduct at least a biennial
 1003 inspection of each MMTC dispensing organization to evaluate the
 1004 MMTC's dispensing organization's records, personnel, equipment,
 1005 processes, security measures, sanitation practices, and quality
 1006 assurance practices.

1007 (d) The department shall adopt by rule a process for
 1008 approving changes in MMTC ownership or a change in an MMTC
 1009 owner's investment interest. This process must include specific
 1010 criteria for the approval or denial of an application for change
 1011 of ownership or a change in investment interest and procedures
 1012 for screening applicants' criminal and financial histories.

1013 (e) The department shall establish, maintain, and control a
 1014 computer software tracking system that traces marijuana from
 1015 seed to sale and allows real-time, 24-hour access by the

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1016 department to data from all MMTCs and independent testing
 1017 laboratories. The tracking system must, at a minimum, include
 1018 notification of when marijuana seeds are planted, when marijuana
 1019 plants are harvested and destroyed, and when marijuana is
 1020 transported, sold, stolen, diverted, or lost. Each MMTC shall
 1021 use the seed-to-sale tracking system selected by the department.

1022 ~~(f)(d)~~ The department may enter into interagency agreements
 1023 with the Department of Agriculture and Consumer Services, the
 1024 Department of Business and Professional Regulation, the
 1025 Department of Transportation, the Department of Highway Safety
 1026 and Motor Vehicles, and the Agency for Health Care
 1027 Administration, and such agencies are authorized to enter into
 1028 an interagency agreement with the department, to conduct
 1029 inspections or perform other responsibilities assigned to the
 1030 department under this section.

1031 ~~(g)(e)~~ The department must make a list of all approved
 1032 MMTCs, dispensing organizations and qualified ordering
 1033 physicians who are qualified to issue physician certifications,
 1034 and medical directors publicly available on its website.

1035 ~~(f)~~ The department may establish a system for issuing and
 1036 ~~renewing registration cards for patients and their legal~~
 1037 ~~representatives, establish the circumstances under which the~~
 1038 ~~cards may be revoked by or must be returned to the department,~~
 1039 ~~and establish fees to implement such system. The department must~~
 1040 ~~require, at a minimum, the registration cards to:~~

1041 ~~1. Provide the name, address, and date of birth of the~~
 1042 ~~patient or legal representative.~~

1043 ~~2. Have a full face, passport type, color photograph of the~~
 1044 ~~patient or legal representative taken within the 90 days~~

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1045 ~~immediately preceding registration.~~

1046 ~~3. Identify whether the cardholder is a patient or legal~~
 1047 ~~representative.~~

1048 ~~4. List a unique numeric identifier for the patient or~~
 1049 ~~legal representative that is matched to the identifier used for~~
 1050 ~~such person in the department's compassionate use registry.~~

1051 ~~5. Provide the expiration date, which shall be 1 year after~~
 1052 ~~the date of the physician's initial order of low-THC cannabis or~~
 1053 ~~medical cannabis.~~

1054 ~~6. For the legal representative, provide the name and~~
 1055 ~~unique numeric identifier of the patient that the legal~~
 1056 ~~representative is assisting.~~

1057 ~~7. Be resistant to counterfeiting or tampering.~~

1058 ~~(h)(g)~~ The department may impose reasonable fines not to
 1059 exceed \$10,000 on an MMTC a dispensing organization for any of
 1060 the following violations:

1061 1. Violating this section, s. 499.0295, or department rule.

1062 2. Failing to maintain qualifications for registration with
 1063 the department approval.

1064 3. Endangering the health, safety, or security of a
 1065 qualifying ~~qualified~~ patient.

1066 4. Improperly disclosing personal and confidential
 1067 information of a qualifying ~~the qualified~~ patient.

1068 5. Attempting to procure MMTC registration with the
 1069 department dispensing organization approval by bribery,
 1070 fraudulent misrepresentation, or extortion.

1071 6. Any owner or manager of the MMTC being convicted or
 1072 found guilty of, or entering a plea of guilty or nolo contendere
 1073 to, regardless of adjudication, a crime in any jurisdiction

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1074 which directly relates to the business of an MMTC a dispensing
 1075 organization.

1076 7. Making or filing a report or record that the MMTC
 1077 dispensing organization knows to be false.

1078 8. Willfully failing to maintain a record required by this
 1079 section or department rule.

1080 9. Willfully impeding or obstructing an employee or agent
 1081 of the department in the furtherance of his or her official
 1082 duties.

1083 10. Engaging in fraud or deceit, negligence, incompetence,
 1084 or misconduct in the business practices of an MMTC a dispensing
 1085 organization.

1086 11. Making misleading, deceptive, or fraudulent
 1087 representations in or related to the business practices of an
 1088 MMTC a dispensing organization.

1089 12. Having a license or the authority to engage in any
 1090 regulated profession, occupation, or business that is related to
 1091 the business practices of an MMTC a dispensing organization
 1092 suspended, revoked, or otherwise acted against by the licensing
 1093 authority of any jurisdiction, including its agencies or
 1094 subdivisions, for a violation that would constitute a violation
 1095 under Florida law.

1096 13. Violating a lawful order of the department or an agency
 1097 of the state, or failing to comply with a lawfully issued
 1098 subpoena of the department or an agency of the state.

1099 ~~(i)(h)~~ The department may suspend, revoke, or refuse to
 1100 renew an MMTC's registration with the department a dispensing
 1101 organization's approval if the MMTC a dispensing organization
 1102 commits a violation specified any of the violations in paragraph

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1103 (h) ~~(g)~~.

1104 (j) ~~(i)~~ The department shall renew an MMTC's registration
 1105 with the department the approval of a dispensing organization
 1106 biennially if the MMTC dispensing organization meets the
 1107 requirements of this section and pays the biennial renewal fee.

1108 (k) ~~(j)~~ The department may adopt rules necessary to
 1109 implement this section.

1110 (11) ~~(8)~~ PREEMPTION.—

1111 (a) All matters regarding the regulation of the cultivation
 1112 and processing of marijuana ~~medical cannabis or low-THC cannabis~~
 1113 by MMTCs dispensing organizations are preempted to the state.

1114 (b) A municipality may determine by ordinance the criteria
 1115 for the number and location of, and other permitting
 1116 requirements that do not conflict with state law or department
 1117 rule for, dispensing facilities of MMTCs dispensing
 1118 ~~organizations~~ located within its municipal boundaries. A county
 1119 may determine by ordinance the criteria for the number,
 1120 location, and other permitting requirements that do not conflict
 1121 with state law or department rule for all dispensing facilities
 1122 of MMTCs dispensing organizations located within the
 1123 unincorporated areas of that county.

1124 (12) ~~(9)~~ EXCEPTIONS TO OTHER LAWS.—

1125 (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
 1126 any other provision of law, but subject to the requirements of
 1127 this section, a qualifying qualified patient, or a caregiver who
 1128 has obtained a valid compassionate use registry identification
 1129 card from the department, and the qualified patient's legal
 1130 representative may purchase from an MMTC, and possess for the
 1131 qualifying patient's medical use, up to the amount of marijuana

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1132 in the physician certification ~~low-THC cannabis or medical~~
 1133 ~~cannabis ordered for the patient~~, but not more than a 90-day ~~45-~~
 1134 ~~day~~ supply, and a cannabis delivery device specified in the
 1135 physician certification ~~ordered~~ for the qualifying patient.

1136 (b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
 1137 any other provision of law, but subject to the requirements of
 1138 this section, an MMTC ~~an approved dispensing organization~~ and
 1139 its owners, managers, contractors, and employees may
 1140 manufacture, possess, sell, deliver, distribute, dispense,
 1141 administer, and lawfully dispose of reasonable quantities, as
 1142 established by department rule, of marijuana ~~low-THC cannabis,~~
 1143 ~~medical cannabis,~~ or a cannabis delivery device. For purposes of
 1144 this subsection, the terms "manufacture," "possession,"
 1145 "deliver," "distribute," and "dispense" have the same meanings
 1146 as provided in s. 893.02.

1147 (c) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
 1148 any other provision of law, but subject to the requirements of
 1149 this section, an approved independent testing laboratory may
 1150 possess, test, transport, and lawfully dispose of marijuana ~~low-~~
 1151 ~~THC cannabis or medical cannabis~~ as provided by department rule.

1152 (d) An MMTC ~~approved dispensing organization~~ and its
 1153 owners, managers, contractors, and employees are not subject to
 1154 licensure or regulation under chapter 465 or chapter 499 for
 1155 manufacturing, possessing, selling, delivering, distributing,
 1156 dispensing, or lawfully disposing of reasonable quantities, as
 1157 established by department rule, of marijuana ~~low-THC cannabis,~~
 1158 ~~medical cannabis,~~ or a cannabis delivery device.

1159 (e) Exercise by an MMTC of ~~An approved dispensing~~
 1160 ~~organization that continues to meet the requirements for~~

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 1161 ~~approval is presumed to be registered with the department and to~~
 1162 ~~meet the regulations adopted by the department or its successor~~
 1163 ~~agency for the purpose of dispensing medical cannabis or low-THC~~
 1164 ~~cannabis under Florida law. Additionally, the authority provided~~
 1165 ~~to MMTCs a dispensing organization in s. 499.0295 does not~~
 1166 ~~impair its registration with the department the approval of a~~
 1167 ~~dispensing organization.~~

1168 (f) This subsection does not exempt a person from
 1169 prosecution for a criminal offense related to impairment or
 1170 intoxication resulting from the medical use of marijuana low-THC
 1171 ~~cannabis or medical cannabis~~ or relieve a person from any
 1172 requirement under law to submit to a breath, blood, urine, or
 1173 other test to detect the presence of a controlled substance.

1174 (g) This section does not limit the ability of an employer
 1175 to establish, continue, or enforce a drug-free workplace program
 1176 or substance abuse policy. Notwithstanding any other provision
 1177 of law, this section does not require an employer to accommodate
 1178 the ingestion of marijuana in any workplace or any employee
 1179 working while under the influence of marijuana. Notwithstanding
 1180 any other provision of law, this section does not create a cause
 1181 of action against an employer for wrongful discharge or
 1182 discrimination.

1183 (h) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
 1184 any other provision of law, but subject to the requirements of
 1185 this section, a research institute established by a public
 1186 postsecondary educational institution, such as the H. Lee
 1187 Moffitt Cancer Center and Research Institute established under
 1188 s. 1004.43, or a state university that has achieved the
 1189 preeminent state research university designation pursuant to s.

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 1190 1001.7065 may possess, test, transport, and lawfully dispose of
 1191 marijuana for research purposes as provided by department rule.

1192 (13) RULEMAKING.-

1193 (a) The department and the applicable boards shall adopt
 1194 emergency rules pursuant to s. 120.54(4) and this subsection
 1195 necessary to implement this section. If an emergency rule
 1196 adopted under this subsection is held to be unconstitutional or
 1197 an invalid exercise of delegated legislative authority and
 1198 becomes void, the department and the applicable boards may adopt
 1199 an emergency rule to replace the rule that has become void. If
 1200 the emergency rule adopted to replace the void emergency rule is
 1201 also held to be unconstitutional or an invalid exercise of
 1202 delegated legislative authority and becomes void, the department
 1203 and the applicable boards must follow the nonemergency
 1204 rulemaking procedures of the Administrative Procedures Act to
 1205 replace the rule that has become void.

1206 (b) For emergency rules adopted under this subsection, the
 1207 department and the applicable boards need not make the findings
 1208 required by s. 120.54(4)(a). Emergency rules adopted under this
 1209 subsection are exempt from ss. 120.54(3)(b) and 120.541. The
 1210 department and the applicable boards shall meet the procedural
 1211 requirements in s. 120.54(2)(a) if the department or the
 1212 applicable boards have, before the effective date of this act,
 1213 held any public workshops or hearings on the subject matter of
 1214 emergency rules adopted under this subsection. Challenges to
 1215 emergency rules adopted under this subsection are subject to the
 1216 time schedules provided in s. 120.56(5).

1217 (c) Emergency rules adopted under this section are exempt
 1218 from s. 120.54(4)(c) and shall remain in effect until replaced

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1219 by rules adopted under the nonemergency rulemaking procedures of
 1220 the Administrative Procedures Act. By January 1, 2018, the
 1221 department and the applicable boards shall initiate nonemergency
 1222 rulemaking pursuant to the Administrative Procedures Act by
 1223 publishing a notice of rule development in the Florida
 1224 Administrative Register. Except as provided in paragraph (a),
 1225 after January 1, 2018, the department and applicable boards may
 1226 not adopt rules pursuant to the emergency rulemaking procedures
 1227 provided in this subsection.

1228 Section 2. Section 1004.4351, Florida Statutes, is created
 1229 to read:

1230 1004.4351 Medical marijuana research and education.-

1231 (1) SHORT TITLE.-This section shall be known and may be
 1232 cited as the "Medical Marijuana Research and Education Act."

1233 (2) LEGISLATIVE FINDINGS.-The Legislature finds that:

1234 (a) The present state of knowledge concerning the use of
 1235 marijuana to alleviate pain and treat illnesses is limited
 1236 because permission to perform clinical studies on marijuana is
 1237 difficult to obtain, with access to research-grade marijuana so
 1238 restricted that little or no unbiased studies have been
 1239 performed.

1240 (b) Under the State Constitution, marijuana is available
 1241 for the treatment of certain debilitating medical conditions.

1242 (c) Additional clinical studies are needed to ensure that
 1243 the residents of this state obtain the correct dosing,
 1244 formulation, route, modality, frequency, quantity, and quality
 1245 of marijuana for specific illnesses.

1246 (d) An effective medical marijuana research and education
 1247 program would mobilize the scientific, educational, and medical

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1248 resources that presently exist in this state to determine the
 1249 appropriate and best use of marijuana to treat illness.

1250 (3) DEFINITIONS.-As used in this section, the term:

1251 (a) "Board" means the Medical Marijuana Research and
 1252 Education Board.

1253 (b) "Coalition" means the Coalition for Medical Marijuana
 1254 Research and Education.

1255 (c) "Marijuana" has the same meaning as provided in s. 29,
 1256 Art. X of the State Constitution.

1257 (4) COALITION FOR MEDICAL MARIJUANA RESEARCH AND
 1258 EDUCATION.-

1259 (a) There is established within the H. Lee Moffitt Cancer
 1260 Center and Research Institute, Inc., the Coalition for Medical
 1261 Marijuana Research and Education. The purpose of the coalition
 1262 is to conduct rigorous scientific research, provide education,
 1263 disseminate research, and guide policy for the adoption of a
 1264 statewide policy on ordering and dosing practices for the
 1265 medicinal use of marijuana. The coalition shall be physically
 1266 located at the H. Lee Moffitt Cancer Center and Research
 1267 Institute, Inc.

1268 (b) The Medical Marijuana Research and Education Board is
 1269 established to direct the operations of the coalition. The board
 1270 shall be composed of seven members appointed by the chief
 1271 executive officer of the H. Lee Moffitt Cancer Center and
 1272 Research Institute, Inc. Board members must have experience in a
 1273 variety of scientific and medical fields, including, but not
 1274 limited to, oncology, neurology, psychology, pediatrics,
 1275 nutrition, and addiction. Members shall be appointed to 4-year
 1276 terms and may be reappointed to serve additional terms. The

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1277 chair shall be elected by the board from among its members to
 1278 serve a 2-year term. The board shall meet no less than
 1279 semiannually, at the call of the chair or, in his or her absence
 1280 or incapacity, the vice chair. Four members constitute a quorum.
 1281 A majority vote of the members present is required for all
 1282 actions of the board. The board may prescribe, amend, and repeal
 1283 a charter governing the manner in which it conducts its
 1284 business. A board member shall serve without compensation but is
 1285 entitled to be reimbursed for travel expenses by the coalition
 1286 or the organization he or she represents in accordance with s.
 1287 112.061.

1288 (c) The coalition shall be administered by a coalition
 1289 director, who shall be appointed by and serve at the pleasure of
 1290 the board. The coalition director shall, subject to the approval
 1291 of the board:

1292 1. Propose a budget for the coalition.

1293 2. Foster the collaboration of scientists, researchers, and
 1294 other appropriate personnel in accordance with the coalition's
 1295 charter.

1296 3. Identify and prioritize the research to be conducted by
 1297 the coalition.

1298 4. Prepare the Medical Marijuana Research and Education
 1299 Plan for submission to the board.

1300 5. Apply for grants to obtain funding for research
 1301 conducted by the coalition.

1302 6. Perform other duties as determined by the board.

1303 (d) The board shall advise the Board of Governors, the
 1304 State Surgeon General, the Governor, and the Legislature with
 1305 respect to medical marijuana research and education in this

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1306 state. The board shall explore methods of implementing and
 1307 enforcing medical marijuana laws in relation to cancer control,
 1308 research, treatment, and education.

1309 (e) The board shall annually adopt a plan for medical
 1310 marijuana research, known as the "Medical Marijuana Research and
 1311 Education Plan," which must be in accordance with state law and
 1312 coordinate with existing programs in this state. The plan must
 1313 include recommendations for the coordination and integration of
 1314 medical, nursing, paramedical, community, and other resources
 1315 connected with the treatment of debilitating medical conditions,
 1316 research related to the treatment of such medical conditions,
 1317 and education.

1318 (f) By February 15 of each year, the board shall issue a
 1319 report to the Governor, the President of the Senate, and the
 1320 Speaker of the House of Representatives on research projects,
 1321 community outreach initiatives, and future plans for the
 1322 coalition.

1323 (5) RESPONSIBILITIES OF THE H. LEE MOFFITT CANCER CENTER
 1324 AND RESEARCH INSTITUTE, INC.—The H. Lee Moffitt Cancer Center
 1325 and Research Institute, Inc., shall allocate staff and provide
 1326 information and assistance, as the coalition's budget permits,
 1327 to assist the board in fulfilling its responsibilities.

1328 Section 3. Paragraph (b) of subsection (3) of section
 1329 381.987, Florida Statutes, is amended to read:

1330 381.987 Public records exemption for personal identifying
 1331 information in the compassionate use registry.—

1332 (3) The department shall allow access to the registry,
 1333 including access to confidential and exempt information, to:

1334 (b) A medical marijuana treatment center registered with

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1335 ~~dispensing organization approved by~~ the department pursuant to
 1336 s. 381.986 which is attempting to verify the authenticity of a
 1337 physician certification ~~physician's order~~ for marijuana low-THC
 1338 ~~cannabis~~, including whether the physician certification order
 1339 had been previously filled and whether the physician
 1340 certification order was written for the person attempting to
 1341 have it filled.

1342 Section 4. Subsection (1) of section 385.211, Florida
 1343 Statutes, is amended to read:

1344 385.211 Refractory and intractable epilepsy treatment and
 1345 research at recognized medical centers.—

1346 (1) As used in this section, the term "low-THC cannabis"
 1347 means "low-THC cannabis" as defined in s. 381.986 which that is
 1348 dispensed only from a medical marijuana treatment center
 1349 ~~dispensing organization~~ as defined in s. 381.986.

1350 Section 5. Present paragraphs (b) and (c) of subsection (2)
 1351 of section 499.0295, Florida Statutes, are redesignated as
 1352 paragraphs (a) and (b), respectively, present paragraphs (a) and
 1353 (c) of that subsection are amended, a new paragraph (c) is added
 1354 to that subsection, and subsection (3) of that section is
 1355 amended, to read:

1356 499.0295 Experimental treatments for terminal conditions.—

1357 (2) As used in this section, the term:

1358 ~~(a) "Dispensing organization" means an organization~~
 1359 ~~approved by the Department of Health under s. 381.986(5) to~~
 1360 ~~cultivate, process, transport, and dispense low-THC cannabis,~~
 1361 ~~medical cannabis, and cannabis delivery devices.~~

1362 (b)(c) "Investigational drug, biological product, or
 1363 device" means:

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1364 1. A drug, biological product, or device that has
 1365 successfully completed phase 1 of a clinical trial but has not
 1366 been approved for general use by the United States Food and Drug
 1367 Administration and remains under investigation in a clinical
 1368 trial approved by the United States Food and Drug
 1369 Administration; or

1370 2. Marijuana Medical cannabis that is manufactured and sold
 1371 by an MMTC a dispensing organization.

1372 (c) "Medical marijuana treatment center" or "MMTC" means an
 1373 organization registered with the Department of Health under s.
 1374 381.986.

1375 (3) Upon the request of an eligible patient, a manufacturer
 1376 may, or upon the issuance of a physician certification a
 1377 physician's order pursuant to s. 381.986, an MMTC a dispensing
 1378 organization may:

1379 (a) Make its investigational drug, biological product, or
 1380 device available under this section.

1381 (b) Provide an investigational drug, biological product,
 1382 device, or cannabis delivery device as defined in s. 381.986 to
 1383 an eligible patient without receiving compensation.

1384 (c) Require an eligible patient to pay the costs of, or the
 1385 costs associated with, the manufacture of the investigational
 1386 drug, biological product, device, or cannabis delivery device as
 1387 defined in s. 381.986.

1388 Section 6. Subsection (1) of section 1004.441, Florida
 1389 Statutes, is amended to read:

1390 1004.441 Refractory and intractable epilepsy treatment and
 1391 research.—

1392 (1) As used in this section, the term "low-THC cannabis"

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1393 means "low-THC cannabis" as defined in s. 381.986 which ~~that~~ is
1394 dispensed only from a medical marijuana treatment center
1395 ~~dispensing organization~~ as defined in s. 381.986.

1396 Section 7. The Division of Law Revision and Information is
1397 directed to replace the phrase "the effective date of this act"
1398 wherever it occurs in this act with the date the act becomes a
1399 law.

1400 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.

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 5

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)

427690

Amendment Barcode (if applicable)

Meeting Date

Topic Compassionate Use Amendment

Name Roz McCarthy

Job Title PRESIDENT

Address 1335 BROKEN OAK DRIVE

Phone 407 879 1302

Street

ORLANDO

FL

State

34787

Zip

Email ROZSMITH69@grator.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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/25/17

406

Meeting Date

Bill Number (if applicable)

225574

Amendment Barcode (if applicable)

Topic Cannabis

Name John Hightower

Job Title paralegal

Address 2807 Sweetbriar Drive

Phone 8505190363

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 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.

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

406
Bill Number (if applicable)

308518
Amendment Barcode (if applicable)

Topic Compassionate Use Amendment

Name Roz McCarthy

Job Title President

Address 1335 Broken Oak Dr

Phone 407891302

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25/17
Meeting Date

406
Bill Number (if applicable)

Topic Medical Marijuana

368518
Amendment Barcode (if applicable)

Name Ben Pollara

Job Title Executive Director

Address 801 Arthur Godfrey Rd, Suite 204A

Phone 305-989-4901

Miami Beach FL 33140
City State Zip

Email Ben@floridaforcare.org

Speaking: 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 No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/25/17
Meeting Date

406
Bill Number (if applicable)

Topic Compassionate Care Amendment

900914
Amendment Barcode (if applicable)

Name Roz McCarthy

Job Title President

Address 1335 Broken Oak Dr.

Phone 4078791302

ORLANDO FL 32737
City State Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-2017

Meeting Date

SB 406

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

25 Apr 17
Meeting Date

406
Bill Number (if applicable)

Topic Medical Marijuana

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.

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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)

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

Phone 850-219-3631

Street

Tallahassee FL 32308

Email showard@spla.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.

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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

406

Bill Number (if applicable)

Topic Medical Marijuana

Amendment Barcode (if applicable)

Name Ron Watson

Job Title hobbyist

Address 3738 Mendon Way

Phone 850 567-1202

Street Tallahassee

State FL

Zip 32309

Email watson.strategies@comcast.net

City

State

Zip

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

04/25/17

Meeting Date

406

Bill Number (if applicable)

24894.0

Amendment Barcode (if applicable)

Topic Cannabis

Name John Hightower

Job Title paralegal

Address 2807 Sweetbriar Drive

Phone 8505190363

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 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)

04/25/17

406

Meeting Date

Bill Number (if applicable)

504066

Topic Cannabis

Amendment Barcode (if applicable)

Name John Hightower

Job Title paralegal

Address 2807 Sweetbriar Drive

Phone 8505190363

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 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)

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 _____
Street

Phone _____

City _____ State _____ Zip _____

Email w4wplc@gmail.com

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

406

Bill Number (if applicable)

Meeting Date

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

04/25

Meeting Date

406

Bill Number (if applicable)

Topic Cannabis

Amendment Barcode (if applicable)

Name JARED BAMBIS

Job Title MASTER CULTIVATOR / CAREGIVER

Address 9991 N. Abingdon Circle

Phone (954) 531-9782

Street

Dovic

City

FL

State

33328

Zip

Email JARED.BAMBIS@LMAZLE

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

4106
Bill Number (if applicable)

Topic Medical Marijuana

Amendment Barcode (if applicable)

Name Ben Pollara

Job Title Executive Director

Address 301 Arthur Godfrey Rd, Suite 402A

Phone 305-829-4111

Street

Miami Beach
City

FL
State

33140
Zip

Email Ben@floridaforcare.org

Speaking: 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 No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

SB406
Bill Number (if applicable)

Topic MEDICAL MARIJUANA

Amendment Barcode (if applicable)

Name ROZ MCCARTHY

Job Title

Address 1335 BROKEN OAK DR.

Phone 407-879-1302

Street
City ORLANDO State FL Zip 32787

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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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 Cannabis

Amendment Barcode (if applicable)

Name LOUIS ROTUNDO

Job Title _____

Address 302 Pine straw Circle
Street

Phone 407-699-9361

Altamonte Springs 32714
City State Zip

Email lcr5002@aol.com

Speaking: For Against Information

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

Representing CB5Y 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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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)

Topic Medical Marijuana

Amendment Barcode (if applicable)

Name Michael Bowen

Job Title Director

Address 6008 Paulding Ave

Phone 616-422-9736

Dunwoody GA 32507
City State Zip

Email BowenSog@Gmail.com

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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THE FLORIDA SENATE
APPEARANCE RECORD

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4-25-2016

Meeting Date

SB 406

Bill Number (if applicable)

Topic Medical Marijuana

Amendment Barcode (if applicable)

Name Stephani Scruggs Bowen

Job Title _____

Address 608 Parkside Ave

Phone 850-530-1871

Street Pensacola FL 32507

Email Stephani.Scruggs@bushwhacker.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

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

04/25/17

406

Meeting Date

Bill Number (if applicable)

Topic Cannabis

Amendment Barcode (if applicable)

Name John Hightower

Job Title paralegal

Address 2807 Sweetbriar Drive

Phone 8505190363

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 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)

4 125 / 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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

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)

N/A

Amendment Barcode (if applicable)

Topic COMPASSIONATE USE

Name DENNIS DECKERHOFF

Job Title PARENT + PATIENT ADVOCATE

Address 5704 VICTOR BROWN TRAIL

Street

Phone _____

TALL

FL.

32303

Email _____

City

State

Zip

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

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

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APPEARANCE RECORD

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

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 169 Sinclair Rd

Phone (850) 284-2090

Street

Tallahassee

City

FL

State

32312

Zip

Email norml@tallahassee.orgmail.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

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

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APPEARANCE RECORD

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

406

Meeting Date

Bill Number (if applicable)

Topic Medical Access

Amendment Barcode (if applicable)

Name Nosi James

Job Title Executive Director

Address 1375 Cypress

Phone 321 890 7302

Street

Melbourne FL

32935

Email James Florida@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Cannabis Action Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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 32781

City

State

Zip

Phone 4078791302

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.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/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.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	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

1 A bill to be entitled
 2 An act relating to compensation of victims of wrongful
 3 incarceration; reordering and amending s. 961.02,
 4 F.S.; making technical changes; defining the term
 5 "violent felony"; amending s. 961.04, F.S.; revising
 6 the circumstances under which a wrongfully
 7 incarcerated person is not eligible for compensation
 8 under the Victims of Wrongful Incarceration
 9 Compensation Act; amending s. 961.06, F.S.; providing
 10 that a wrongfully incarcerated person who commits a
 11 violent felony, rather than a felony law violation,
 12 which results in revocation of parole or community
 13 supervision is ineligible for compensation; reenacting
 14 s. 961.03(1)(a), (2), (3), and (4), F.S., relating to
 15 determination of status as a wrongfully incarcerated
 16 person and of eligibility for compensation, to
 17 incorporate the amendment made to s. 961.04, F.S., in
 18 references thereto; reenacting ss. 961.05(6),
 19 961.055(1), and 961.056(4), F.S., relating to
 20 determination of entitlement to compensation,
 21 application for compensation for a wrongfully
 22 incarcerated person, and an alternative application
 23 for compensation for a wrongfully incarcerated person,
 24 respectively, to incorporate the amendment made to s.
 25 961.06, F.S., in references thereto; providing an
 26 effective date.

27
 28 Be It Enacted by the Legislature of the State of Florida:
 29

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

590-02191-17

2017494c1

30 Section 1. Section 961.02, Florida Statutes, is reordered
 31 and amended to read:
 32 961.02 Definitions.—As used in ss. 961.01-961.07, the term:
 33 (1) "Act" means the Victims of Wrongful Incarceration
 34 Compensation Act.
 35 (2) "Department" means the Department of Legal Affairs.
 36 (3) "Division" means the Division of Administrative
 37 Hearings.
 38 ~~(7)-(4)~~ "Wrongfully incarcerated person" means a person
 39 whose felony conviction and sentence have been vacated by a
 40 court of competent jurisdiction and who is the subject of an
 41 order issued by the original sentencing court pursuant to s.
 42 961.03, ~~with respect to whom pursuant to the requirements of s.~~
 43 ~~961.03, the original sentencing court has issued its order~~
 44 finding that the person did not commit ~~neither committed~~ the act
 45 or ~~nor~~ the offense that served as the basis for the conviction
 46 and incarceration and that the person did not aid, abet, or act
 47 as an accomplice or accessory to a person who committed the act
 48 or offense.
 49 ~~(4)-(5)~~ "Eligible for compensation" means that a person
 50 meets the definition of the term "wrongfully incarcerated
 51 person" and is not disqualified from seeking compensation under
 52 the criteria prescribed in s. 961.04.
 53 ~~(5)-(6)~~ "Entitled to compensation" means that a person meets
 54 the definition of the term "eligible for compensation" and
 55 satisfies the application requirements prescribed in s. 961.05,
 56 and may receive compensation pursuant to s. 961.06.
 57 (6) "Violent felony" means a felony listed in s.
 58 775.084(1)(c)1. or s. 948.06(8)(c).

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590-02191-17

2017494c1

59 Section 2. Section 961.04, Florida Statutes, is amended to
60 read:

61 961.04 Eligibility for compensation for wrongful
62 incarceration.—A wrongfully incarcerated person is not eligible
63 for compensation under the act if:

64 ~~(1) Before the person's wrongful conviction and~~
65 ~~incarceration, the person was convicted of, or pled guilty or~~
66 ~~nolo contendere to, regardless of adjudication, any felony~~
67 ~~offense, or a crime committed in another jurisdiction the~~
68 ~~elements of which would constitute a felony in this state, or a~~
69 ~~crime committed against the United States which is designated a~~
70 ~~felony, excluding any delinquency disposition;~~

71 (1)(2) During the person's wrongful incarceration, the
72 person was convicted of, or pled guilty or nolo contendere to,
73 regardless of adjudication, any violent felony offense; or

74 (2)(3) During the person's wrongful incarceration, the
75 person was also serving a concurrent sentence for another felony
76 for which the person was not wrongfully convicted.

77 Section 3. Subsection (2) of section 961.06, Florida
78 Statutes, is amended to read:

79 961.06 Compensation for wrongful incarceration.—

80 (2) In calculating monetary compensation under paragraph
81 (1) (a), a wrongfully incarcerated person who is placed on parole
82 or community supervision while serving the sentence resulting
83 from the wrongful conviction and who commits anything less than
84 a violent felony law violation that results in revocation of the
85 parole or community supervision is eligible for compensation for
86 the total number of years incarcerated. A wrongfully
87 incarcerated person who commits a violent felony law violation

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88 that results in revocation of the parole or community
89 supervision is ineligible for any compensation under subsection
90 (1).

91 Section 4. For the purpose of incorporating the amendment
92 made by this act to section 961.04, Florida Statutes, in
93 references thereto, paragraph (a) of subsection (1) and
94 subsections (2), (3), and (4) of section 961.03, Florida
95 Statutes, are reenacted to read:

96 961.03 Determination of status as a wrongfully incarcerated
97 person; determination of eligibility for compensation.—

98 (1) (a) In order to meet the definition of a "wrongfully
99 incarcerated person" and "eligible for compensation," upon entry
100 of an order, based upon exonerating evidence, vacating a
101 conviction and sentence, a person must set forth the claim of
102 wrongful incarceration under oath and with particularity by
103 filing a petition with the original sentencing court, with a
104 copy of the petition and proper notice to the prosecuting
105 authority in the underlying felony for which the person was
106 incarcerated. At a minimum, the petition must:

107 1. State that verifiable and substantial evidence of actual
108 innocence exists and state with particularity the nature and
109 significance of the verifiable and substantial evidence of
110 actual innocence; and

111 2. State that the person is not disqualified, under the
112 provisions of s. 961.04, from seeking compensation under this
113 act.

114 (2) The prosecuting authority must respond to the petition
115 within 30 days. The prosecuting authority may respond:

116 (a) By certifying to the court that, based upon the

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117 petition and verifiable and substantial evidence of actual
 118 innocence, no further criminal proceedings in the case at bar
 119 can or will be initiated by the prosecuting authority, that no
 120 questions of fact remain as to the petitioner's wrongful
 121 incarceration, and that the petitioner is not ineligible from
 122 seeking compensation under the provisions of s. 961.04; or

123 (b) By contesting the nature, significance, or effect of
 124 the evidence of actual innocence, the facts related to the
 125 petitioner's alleged wrongful incarceration, or whether the
 126 petitioner is ineligible from seeking compensation under the
 127 provisions of s. 961.04.

128 (3) If the prosecuting authority responds as set forth in
 129 paragraph (2) (a), the original sentencing court, based upon the
 130 evidence of actual innocence, the prosecuting authority's
 131 certification, and upon the court's finding that the petitioner
 132 has presented clear and convincing evidence that the petitioner
 133 committed neither the act nor the offense that served as the
 134 basis for the conviction and incarceration, and that the
 135 petitioner did not aid, abet, or act as an accomplice to a
 136 person who committed the act or offense, shall certify to the
 137 department that the petitioner is a wrongfully incarcerated
 138 person as defined by this act. Based upon the prosecuting
 139 authority's certification, the court shall also certify to the
 140 department that the petitioner is eligible for compensation
 141 under the provisions of s. 961.04.

142 (4) (a) If the prosecuting authority responds as set forth
 143 in paragraph (2) (b), the original sentencing court shall make a
 144 determination from the pleadings and supporting documentation
 145 whether, by a preponderance of the evidence, the petitioner is

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146 ineligible for compensation under the provisions of s. 961.04,
 147 regardless of his or her claim of wrongful incarceration. If the
 148 court finds the petitioner ineligible under the provisions of s.
 149 961.04, it shall dismiss the petition.

150 (b) If the prosecuting authority responds as set forth in
 151 paragraph (2) (b), and the court determines that the petitioner
 152 is eligible under the provisions of s. 961.04, but the
 153 prosecuting authority contests the nature, significance or
 154 effect of the evidence of actual innocence, or the facts related
 155 to the petitioner's alleged wrongful incarceration, the court
 156 shall set forth its findings and transfer the petition by
 157 electronic means through the division's website to the division
 158 for findings of fact and a recommended determination of whether
 159 the petitioner has established that he or she is a wrongfully
 160 incarcerated person who is eligible for compensation under this
 161 act.

162 Section 5. For the purpose of incorporating the amendment
 163 made by this act to section 961.06, Florida Statutes, in a
 164 reference thereto, subsection (6) of section 961.05, Florida
 165 Statutes, is reenacted to read:

166 961.05 Application for compensation for wrongful
 167 incarceration; administrative expunction; determination of
 168 entitlement to compensation.—

169 (6) If the department determines that a claimant meets the
 170 requirements of this act, the wrongfully incarcerated person who
 171 is the subject of the claim becomes entitled to compensation,
 172 subject to the provisions in s. 961.06.

173 Section 6. For the purpose of incorporating the amendment
 174 made by this act to section 961.06, Florida Statutes, in a

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175 reference thereto, subsection (1) of section 961.055, Florida
176 Statutes, is reenacted to read:

177 961.055 Application for compensation for a wrongfully
178 incarcerated person; exemption from application by nolle
179 prosequi.—

180 (1) A person alleged to be a wrongfully incarcerated person
181 who was convicted and sentenced to death on or before December
182 31, 1979, is exempt from the application provisions of ss.
183 961.03, 961.04, and 961.05 in the determination of wrongful
184 incarceration and eligibility to receive compensation pursuant
185 to s. 961.06 if:

186 (a) The Governor issues an executive order appointing a
187 special prosecutor to review the defendant's conviction; and

188 (b) The special prosecutor thereafter enters a nolle
189 prosequi for the charges for which the defendant was convicted
190 and sentenced to death.

191 Section 7. For the purpose of incorporating the amendment
192 made by this act to section 961.06, Florida Statutes, in a
193 reference thereto, subsection (4) of section 961.056, Florida
194 Statutes, is reenacted to read:

195 961.056 Alternative application for compensation for a
196 wrongfully incarcerated person.—

197 (4) If the department determines that a claimant making
198 application under this section meets the requirements of this
199 chapter, the wrongfully incarcerated person is entitled to
200 compensation under s. 961.06.

201 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.

A handwritten signature in black ink, appearing to read "Rob Bradley", written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 5

THE FLORIDA SENATE
APPEARANCE RECORD

(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 Phone 850-561-6767
Street

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

(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)

Topic Compensation - Wrongful Victims

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
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 Herman Lindsey

Job Title _____

Address 5301 N.E. 17th Ave

Phone 954-991-8731

Street

Pompano Beach FL 33064

City

State

Zip

Email Herm4Justice@gmail.com

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)

Topic Compensation of Victims of Wrongful Incarceration

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

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.

The Florida Senate
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.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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

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 2014²⁴ (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)²⁵ for medical use²⁶ 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.

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 form³¹ 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 cards³² 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 406³³ 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

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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

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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~~

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59 ~~cannabis~~, including whether the physician certification order
60 had been previously filled and whether the physician
61 certification order was written for the person attempting to
62 have it filled.

63 (c) A physician licensed under chapter 458 or chapter 459,
64 to ensure proper care for patients who has written an order for
65 low-THC cannabis for the purpose of monitoring the patient's use
66 of such cannabis or for the purpose of determining, before
67 issuing an order for low-THC cannabis, whether another physician
68 has ordered the patient's use of low-THC cannabis. The physician
69 may access the confidential and exempt information only for the
70 patient for whom he or she has ordered or is determining whether
71 to order the use of low-THC cannabis pursuant to s. 381.986.

72 (d) A practitioner licensed to prescribe prescription
73 drugs, to ensure proper care for patients before prescribing
74 medications that may interact with marijuana.

75 (e) An employee of the department for the purposes of
76 maintaining the registry and periodic reporting or disclosure of
77 information that has been redacted to exclude personal
78 identifying information.

79 (f) An employee of the department for the purpose of
80 monitoring physician registration in the compassionate use
81 registry and the issuance of physician certifications as
82 authorized in s. 381.986 for practices that could facilitate
83 unlawful diversion or misuse of marijuana or cannabis delivery
84 devices.

85 (g) ~~(e)~~ The department's relevant health care regulatory
86 boards responsible for the licensure, regulation, or discipline
87 of a physician if he or she is involved in a specific

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88 investigation of a violation of s. 381.986. If a health care
89 regulatory board's investigation reveals potential criminal
90 activity, the board may provide any relevant information to the
91 appropriate law enforcement agency.

92 ~~(h) (f)~~ A person engaged in bona fide research if the person
93 agrees:

- 94 1. To submit a research plan to the department which
- 95 specifies the exact nature of the information requested and the
- 96 intended use of the information;
- 97 2. To maintain the confidentiality of the records or
- 98 information if personal identifying information is made
- 99 available to the researcher;
- 100 3. To destroy any confidential and exempt records or
- 101 information obtained after the research is concluded; and
- 102 4. Not to contact, directly or indirectly, for any purpose,
- 103 a patient or physician whose information is in the registry.
- 104 (4) All information released from the registry under
- 105 subsection (3) remains confidential and exempt, and a person who
- 106 receives access to such information must maintain the
- 107 confidential and exempt status of the information received.
- 108 (5) A person who willfully and knowingly violates this
- 109 section commits a felony of the third degree, punishable as
- 110 provided in s. 775.082, s. 775.083, or s. 775.084.

111 (6) This section is subject to the Open Government Sunset
112 Review Act in accordance with s. 119.15 and shall stand repealed
113 on October 2, 2022 ~~2019~~, unless reviewed and saved from repeal
114 through reenactment by the Legislature.

115 Section 2. The Legislature finds that it is a public
116 necessity that the personal identifying information of

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117 qualifying patients who use marijuana for medical reasons and of
 118 these patients' caregivers held by the Department of Health in
 119 the compassionate use registry established under s. 381.986,
 120 Florida Statutes, be made confidential and exempt from s.
 121 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 122 State Constitution. Specifically, the Legislature finds that it
 123 is a public necessity to make confidential and exempt from
 124 public records requirements the names, addresses, dates of
 125 birth, photographs, telephone numbers, and government-issued
 126 identification numbers of a qualifying patient and the patient's
 127 caregiver, any other information collected for the purpose of
 128 issuing the qualifying patient's or caregiver's compassionate
 129 use registry identification card issued pursuant to s. 381.986,
 130 Florida Statutes, and all information pertaining to a physician
 131 certification for marijuana issued in accordance with s.
 132 381.986, Florida Statutes, which are held in the registry. The
 133 choice to use marijuana to treat a qualifying patient's medical
 134 condition or symptom and the choice to assist a qualifying
 135 patient with the medical use of marijuana are personal and
 136 private matters. The availability of such information to the
 137 public could make the public aware of both the qualifying
 138 patient's use of marijuana and the qualifying patient's disease
 139 or other medical conditions for which the qualifying patient is
 140 using marijuana. The knowledge of the qualifying patient's use
 141 of marijuana, the knowledge of the qualifying patient's medical
 142 condition, and the knowledge that a caregiver is assisting a
 143 qualifying patient with the use of marijuana could be exploited
 144 to embarrass, harass, or discriminate against the qualifying
 145 patient and the patient's caregiver and could also be used as a

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146 discriminatory tool by an employer who disapproves of the
 147 qualifying patient's use of marijuana or the caregiver's
 148 assistance in the use of marijuana. However, despite the
 149 potential hazards of collecting such information, maintaining
 150 the compassionate use registry established under s. 381.986,
 151 Florida Statutes, is necessary to prevent the diversion and
 152 nonmedical use of any marijuana as well as to aid and improve
 153 research done on the efficacy of marijuana. Thus, the
 154 Legislature finds that it is a public necessity to make
 155 confidential and exempt from public records requirements the
 156 personal identifying information of qualifying patients and
 157 caregivers held by the Department of Health in the compassionate
 158 use registry established under s. 381.986, Florida Statutes.

159 Section 3. This act shall take effect on the same date that
 160 SB 406 or similar legislation takes effect, if such legislation
 161 is adopted in the same legislative session or an extension
 162 thereof and becomes a law.

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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.

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 5

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

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.

5,001 (10/2011)

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)

Topic Public Records

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone _____

Street

Tall FL 32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing 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
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 SECRRA, an institution must be not-for-profit, regionally accredited, and chartered 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 council¹⁴ 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

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

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1 A bill to be entitled
 2 An act relating to postsecondary distance education;
 3 creating s. 1000.35, F.S.; authorizing this state to
 4 participate in the State Authorization Reciprocity
 5 Agreement (SARA) for delivery of postsecondary
 6 distance education; providing definitions;
 7 establishing the Postsecondary Reciprocal Distance
 8 Education Coordinating Council within the Department
 9 of Education; requiring the Commission for Independent
 10 Education to provide administrative support for the
 11 council; providing membership and duties of the
 12 council; requiring the council to propose an annual
 13 fee schedule and collect fees from Florida SARA
 14 institutions; requiring the proposed fee schedule to
 15 be submitted to the State Board of Education for
 16 approval; providing for deposit of such fees into a
 17 specified trust fund; authorizing the council to
 18 revoke a Florida SARA institution's participation for
 19 noncompliance; authorizing such institution to
 20 withdraw from participation in the SARA after
 21 providing notice; exempting council decisions from the
 22 Administrative Procedure Act; providing that
 23 provisions relating to the jurisdiction of the
 24 commission are not superseded; requiring the state
 25 board to adopt rules; amending s. 1005.06, F.S.;
 26 providing that the commission does not have
 27 jurisdiction over certain non-Florida institutions
 28 participating in the SARA; amending s. 1005.31, F.S.;
 29 authorizing the solicitation of prospective students

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30 for enrollment in certain postsecondary educational
 31 institutions; providing a directive to the Division of
 32 Law Revision and Information; providing an effective
 33 date.

34
 35 Be It Enacted by the Legislature of the State of Florida:

36
 37 Section 1. Section 1000.35, Florida Statutes, is created to
 38 read:

39 1000.35 State Authorization Reciprocity Agreement.—

40 (1) The purpose of this section is to authorize this
 41 state's participation in the State Authorization Reciprocity
 42 Agreement (SARA) as established by the Southern Regional
 43 Education Board (SREB) and the National Council for State
 44 Authorization Reciprocity Agreements (NC-SARA) relative to
 45 postsecondary distance education as defined in the SARA. All
 46 parties to the SARA must be willing to accept each other's
 47 authorization of accredited institutions to operate in their
 48 state to offer distance educational services beyond state
 49 boundaries.

50 (2) For purposes of this section, the term:

51 (a) "Commission" means the Commission for Independent
 52 Education.

53 (b) "Complaint" means a formal assertion in writing that a
 54 person, institution, state, agency, or other entity operating
 55 under the SARA has violated the terms of the SARA or the laws,
 56 standards, or regulations incorporated therein.

57 (c) "Council" means the Postsecondary Reciprocal Distance
 58 Education Coordinating Council, which serves as the single

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59 portal entity designated by the state to administer the SARA and
 60 serves as the interstate point of contact for SARA-related
 61 questions, complaints, and other matters related to the SARA.
 62 (d) "Department" means the Department of Education.
 63 (e) "Florida SARA institution" means a postsecondary
 64 institution in this state approved by the council to participate
 65 in the SARA.
 66 (f) "Institution" means a public or private postsecondary
 67 degree-granting college or university that is accredited by a
 68 federally recognized accrediting body and that awards, at a
 69 minimum, associate-level degrees requiring at least 2 years of
 70 full-time equivalent college work.
 71 (g) "Member state" means a state, territory, or district
 72 within the United States that has been approved to participate
 73 in the SARA.
 74 (h) "Non-Florida SARA institution" means an institution
 75 approved by a member state other than this state to participate
 76 in the SARA.
 77 (i) "SREB" means the Southern Regional Education Board.
 78 (j) "State Authorization Reciprocity Agreement" or "SARA"
 79 means the agreement that establishes reciprocity between member
 80 states that accept other member states' authorization of
 81 accredited institutions to operate in their states to offer
 82 distance educational services beyond state boundaries pursuant
 83 to the terms and conditions set forth in the agreement.
 84 (k) "State board" means the State Board of Education.
 85 (3) The council is created within the department for the
 86 purpose of administering the SARA. The council shall consist of
 87 the Chancellor of the State University System, the Chancellor of

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88 the Florida College System, the Chancellor of the Division of
 89 Career and Adult Education, the executive director of the
 90 commission, and the president of the Independent Colleges and
 91 Universities of Florida. The commission shall provide
 92 administrative support for the council. The council shall:
 93 (a) Within 60 days after the effective date of this act,
 94 apply for this state to participate as a member of the SARA
 95 pursuant to the procedures established by the SREB;
 96 (b) Serve as the single portal entity for administration of
 97 the SARA;
 98 (c) Review and approve applications from institutions in
 99 this state to participate in the SARA and establish an appeals
 100 process for institutions that are not approved to participate in
 101 the SARA;
 102 (d) Ensure compliance by Florida SARA institutions with the
 103 terms and provisions of the SARA, including, but not limited to,
 104 accreditation and institutional quality, consumer information
 105 and protection, disclosure and reporting requirements, complaint
 106 mechanisms, and financial responsibility;
 107 (e) Comply with the terms and provisions of the SARA
 108 relating to any member state, Florida SARA institution, or non-
 109 Florida SARA institution;
 110 (f) Comply with the reporting requirements in the SARA and
 111 post all such reports on the council's website;
 112 (g) Consistent with the complaint resolution processes in
 113 the SARA, develop and administer a complaint resolution process
 114 to resolve SARA-related complaints after all complaint processes
 115 in place at a Florida SARA institution have been exhausted by
 116 the complainant;

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117 (h) Delegate any responsibilities, obligations, or
 118 authorities necessary for the administration of this state's
 119 participation in the SARA to the commission's staff; and
 120 (i) Recommend rules necessary to administer this section
 121 for adoption by the state board.
 122 (4) The council shall propose an annual fee schedule and
 123 collect fees from each Florida SARA institution. The fees shall
 124 be commensurate with the costs incurred by the council and
 125 commission to administer the SARA and shall be based on a
 126 graduated scale of institutional enrollment. The council shall
 127 propose an annual fee schedule to generate the amount of revenue
 128 necessary for its operations. The proposed fee schedule shall be
 129 submitted to the state board for approval. The department shall
 130 include the approved fee schedule in its legislative budget
 131 request which takes effect unless revised by the Legislature in
 132 the General Appropriations Act. All fees collected pursuant to
 133 this subsection shall be submitted through the department to the
 134 Chief Financial Officer for deposit into a separate account
 135 within the Institutional Assessment Trust Fund. Any fee
 136 authorized by the council is nonrefundable unless paid in error.
 137 (5) The council may revoke a Florida SARA institution's
 138 approval to participate in the SARA if the council determines
 139 such institution is not in compliance with the terms and
 140 provisions of the SARA.
 141 (6) A Florida SARA institution may withdraw from
 142 participation as a Florida SARA institution by submitting notice
 143 of its intent to withdraw to the council, which shall become
 144 effective at the beginning of the next academic term after
 145 receipt of such notice.

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146 (7) Decisions of the council are not subject to chapter
 147 120.
 148 (8) This section does not supersede the requirements in
 149 chapter 1005 relating to postsecondary educational institutions
 150 under the jurisdiction of the commission.
 151 (9) The state board shall adopt rules to implement this
 152 section.
 153 Section 2. Paragraph (h) is added to subsection (1) of
 154 section 1005.06, Florida Statutes, to read:
 155 1005.06 Institutions not under the jurisdiction or purview
 156 of the commission.-
 157 (1) Except as otherwise provided in law, the following
 158 institutions are not under the jurisdiction or purview of the
 159 commission and are not required to obtain licensure:
 160 (h) Any non-Florida institution that has been approved by a
 161 member state to participate in the State Authorization
 162 Reciprocity Agreement (SARA), as those terms are defined in s.
 163 1000.35(2), if the degree programs that may be offered and the
 164 activities that may be conducted by such institution in this
 165 state are limited to the distance education degree programs and
 166 activities provided in and consistent with the terms and
 167 provisions of the SARA.
 168 Section 3. Subsection (11) of section 1005.31, Florida
 169 Statutes, is amended to read:
 170 1005.31 Licensure of institutions.-
 171 (11) The commission shall establish minimum standards for
 172 the approval of agents. The commission may adopt rules to ensure
 173 that licensed agents meet these standards and uphold the intent
 174 of this chapter. An agent may not solicit prospective students

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175 in this state for enrollment in any independent postsecondary
176 educational institution under the commission's purview or in any
177 out-of-state independent postsecondary educational institution
178 unless the agent has received a license as prescribed by the
179 commission or solicits for a postsecondary educational
180 institution that is not under the jurisdiction of the commission
181 pursuant to s. 1005.06(1)(h).

182 Section 4. The Division of Law Revision and Information is
183 directed to replace the phrase "the effective date of this act"
184 wherever it occurs in this act with the date this act becomes a
185 law.

186 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.

A handwritten signature in blue ink that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE
APPEARANCE RECORD

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

668
Bill Number (if applicable)

Meeting Date _____

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

Tallahassee FL 32312
City State Zip

Email ch.wright513@wingate.edu

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 12 5 / 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.

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

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.

Phone 850-567-0588

Street

Tallahassee

State

FL 32399

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.

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

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

Phone 850-412-0306

TALLAHASSEE FL 32301
City State Zip

Email bboyd@sselawfirm.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

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.

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

APPEARANCE RECORD

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

4/25/17

668

Meeting Date

Bill Number (if applicable)

Topic Postsecondary Distance Education

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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.	<u>Androff</u>	<u>Graf</u>	<u>ED</u>	Fav/CS
2.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

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 chooses. *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 1 authorizes 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 1 specifies 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 all 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.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

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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9 (a) "High-impact school operator" means an entity
10 identified by the department pursuant to subsection (2). The
11 term does not include a for-profit entity.

12 (b) "Persistently low-performing school" means a school
13 defined pursuant to s. 1008.33(3)(c).

14 (c) "High-impact school" means a full-time public school
15 operated by a high-impact school operator which primarily serves
16 students who were attending, or were assigned to attend, a
17 persistently low-performing school and who comprise at least 60
18 percent of its total enrollment; which is located in the
19 attendance zone of a persistently low-performing school; and
20 which is a Title I eligible school. The term does not include a
21 part-time school or a virtual charter school.

22 (2) HIGH-IMPACT SCHOOL OPERATOR.—A high-impact school
23 operator is a nonprofit organization with tax exempt status
24 under s. 501(c)(3) of the Internal Revenue Code which operates
25 three or more charter schools that serve students in grades K-12
26 in Florida or other states has a record of serving students from
27 low-income families, and is designated by the State Board of
28 Education as a high-impact school operator based on a
29 determination that it meets at least one of the following
30 requirements:

31 (a) The past performance of the high-impact school operator
32 meets or exceeds the following criteria:

33 1. The achievement of enrolled students exceeds the
34 district and state averages of the states in which the
35 operator's schools operate;

36 2. The average college attendance rate at all schools
37 currently operated by the operator exceeds 80 percent, if such



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38 data is available;

39 3. The percentage of students eligible for a free or
40 reduced price lunch under the National School Lunch Act enrolled
41 at all schools currently operated by the operator exceeds 70
42 percent;

43 4. The operator is in good standing with the authorizer in
44 each state in which it operates;

45 5. The audited financial statements of the operator are
46 free of material exceptions and going concern issues; and

47 6. Other outcome measures as determined by the State Board
48 of Education.

49 (b) The operator was awarded a United States Department of
50 Education Charter School Program grant for Replication and
51 Expansion of High-Quality Charter Schools within the preceding 3
52 years before applying to be a high-impact school operator.

53 (c) The operator receives funding through the National Fund
54 or a Regional Fund of the Charter School Growth Fund to
55 accelerate the growth of the nation's best charter schools.

56 (d) The operator is selected by a district school board in
57 accordance with s. 1008.33.

58
59 An entity that meets the requirements of paragraph (b),
60 paragraph (c), or paragraph (d) before the adoption by the state
61 board of measurable criteria pursuant to paragraph (a) shall be
62 designated as a high-impact school operator. After the adoption
63 of the measurable criteria, an entity shall be designated as a
64 high-impact school operator if it meets the criteria or is
65 selected by a district school board in accordance with s.
66 1008.33.



67 (3) DESIGNATION OF HIGH-IMPACT SCHOOL OPERATOR.-Initial
68 status as a high-impact school operator is valid for 5 years
69 after the opening of a high-impact school. If a high-impact
70 school operator seeks the renewal of its status, such renewal
71 shall solely be based upon the academic and financial
72 performance of all schools established by the operator in the
73 state since its initial designation and the operator's material
74 compliance with the terms of its performance-based agreement
75 established pursuant to subsection (5).

76 (4) ESTABLISHMENT OF HIGH-IMPACT SCHOOLS.-A high-impact
77 school operator may submit a notice of intent to open a high-
78 impact school to the school district in which a persistently
79 low-performing school has been identified by the State Board of
80 Education pursuant to subsection (9).

81 (a) The notice of intent must include:

82 1. An academic focus and plan;

83 2. A financial plan;

84 3. Goals and objectives for increasing student achievement
85 for the students from any persistently low-performing school and
86 students from low-income families;

87 4. A completed or planned community outreach plan;

88 5. The organizational history of success in working with
89 students with similar demographics;

90 6. The grade levels to be served and enrollment
91 projections;

92 7. The proposed location or geographic area proposed for
93 the school and its proximity to the persistently low-performing
94 school; and

95 8. A staffing plan.



96 (b) A school district with a school that is designated, or
97 is likely to be designated, as a persistently low-performing
98 school during the 2017-2018 school year may, with the approval
99 of the State Board of Education contingent on its determination
100 that the school will likely improve to a grade of "C" or higher
101 during the 2018-2019 school year, implement a new turnaround
102 option specified under s. 1008.33(4). Absent the approval of the
103 state board, a school district must enter into a performance-
104 based agreement with a high-impact operator, or may relinquish
105 authority to the state board to enter into a performance-based
106 agreement with a high-impact school operator, to open one or
107 more high-impact schools.

108 (5) PERFORMANCE-BASED AGREEMENT.—The performance-based
109 agreement must include all of the following components:

110 (a) The notice of intent, which is incorporated by
111 reference and attached to the agreement.

112 (b) The location or geographic area proposed for the high-
113 impact school and its proximity to the persistently low-
114 performing school.

115 (c) An enumeration of the grades to be served in each year
116 of the agreement and whether the school will serve children in
117 the school readiness or prekindergarten programs.

118 (d) A plan of action and specific milestones for student
119 recruitment and the enrollment of students from persistently
120 low-performing schools, including enrollment preferences and
121 procedures for conducting transparent admissions lotteries that
122 are open to the public; however, enrollment preference must be
123 given to students who are attending, or are assigned to attend,
124 a persistently low-performing school. If the high-impact



125 school's total enrollment consists of at least 60 percent of
126 students who were attending, or were assigned to attend, a
127 persistently low-performing school, students attending the high-
128 impact school are exempt, to the extent permitted by federal
129 grant requirements, from any enrollment lottery.

130 (e) A delineation of the current incoming baseline standard
131 of student academic achievement, the outcomes to be achieved,
132 and the method of measurement that will be used.

133 (f) A description of the methods of involving parents and
134 expected levels for such involvement.

135 (g) The grounds for termination, including failure to meet
136 the requirements for student performance established pursuant to
137 paragraph (e), generally accepted standards of fiscal
138 management, or material violation of terms of the agreement. The
139 nonrenewal or termination of a performance-based agreement must
140 comply with the requirements of s. 1002.33(8).

141 (h) A provision allowing the high-impact school operator to
142 open additional schools to serve students enrolled in or zoned
143 for a persistently low-performing school if the high-impact
144 school operator maintains its status under subsection (3).

145 (i) A provision establishing the initial term as 5 years.
146 The agreement shall be renewed, upon the request of the high-
147 impact school operator, unless the school fails to meet the
148 requirements for student performance established pursuant to
149 paragraph (e) or generally accepted standards of fiscal
150 management, or the high-impact school operator or its high-
151 impact school materially violates the law or the terms of the
152 agreement.

153 (j) A requirement to provide transportation consistent with



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154 the requirements of ss. 1006.21-1006.27 and s. 1012.45. The
155 governing body of the high-impact school may provide
156 transportation through an agreement or contract with the
157 district school board, a private provider, or parents of
158 enrolled students. Transportation may not be a barrier to equal
159 access for all students residing within a reasonable distance of
160 the school.

161 (k) A requirement that any arrangement entered into to
162 borrow or otherwise secure funds for the high-impact school from
163 a source other than the state or a school district shall
164 indemnify the state and the school district from any and all
165 liability, including, but not limited to, financial
166 responsibility for the payment of the principal or interest.

167 (l) A provision that any loans, bonds, or other financial
168 agreements are not obligations of the state or the school
169 district but are obligations of the high-impact school and are
170 payable solely from the sources of funds pledged by such
171 agreement.

172 (m) A prohibition on the pledge of credit or taxing power
173 of the state or the school district.

174 (6) AUTHORIZED FLEXIBILITIES.—

175 (a) A high-impact school may be designated by the State
176 Board of Education as a local education agency, if requested,
177 for the purposes of receiving federal funds and, in doing so,
178 accepts the full responsibility for all local education agency
179 requirements and the schools for which it will perform local
180 education agency responsibilities. Students enrolled in a school
181 established by a high-impact school operator designated as a
182 local educational agency are not eligible students for purposes



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183 of calculating the district grade pursuant to s. 1008.34(5).

184 (b) For the purposes of tort liability, the high-impact
185 school operator, the high-impact school, and its employees or
186 agents shall be governed by s. 768.28. The school district
187 sponsor is not liable for civil damages under state law for the
188 employment actions or personal injury, property damage, or death
189 resulting from an act or omission of a high-impact school
190 operator, the high-impact school, or its employees or agents.

191 (c) A high-impact school may be either a private or a
192 public employer. As a public employer, the high-impact school
193 may participate in the Florida Retirement System upon
194 application and approval as a covered group under s.
195 121.021(34). If a high-impact school participates in the Florida
196 Retirement System, the high-impact school's employees shall be
197 compulsory members of the Florida Retirement System.

198 (d) A high-impact school operator may employ school
199 administrators and instructional personnel who do not meet the
200 requirements of s. 1012.56 if the school administrators and
201 instructional personnel are not ineligible for such employment
202 under s. 1012.315.

203 (e) Compliance with s. 1003.03 shall be calculated as the
204 average at the school level.

205 (f) High-impact schools operated by a high-impact school
206 operator shall be exempt from chapters 1000-1013 and all school
207 board policies. However, a high-impact school operator shall be
208 in compliance with the laws in chapters 1000-1013 relating to:

209 1. The student assessment program and school grading
210 system;

211 2. Student progression and graduation;



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212 3. The provision of services to students with disabilities;
213 4. Civil rights, including s. 1000.05, relating to
214 discrimination;
215 5. Student health, safety, and welfare;
216 6. Public meetings and records, public inspection, and
217 criminal and civil penalties pursuant to s. 286.011. The
218 governing board of a high-impact school must hold at least two
219 public meetings per school year in the school district in which
220 the high-impact school is located. Any other meetings of the
221 governing board may be held in accordance with s.
222 120.54(2)(b)2.;
223 7. Public records pursuant to chapter 119; and
224 8. The code of ethics for public officers and employees
225 pursuant to ss. 112.313(2), (3), (7), and (12) and 112.3143(3).
226 (7) FACILITIES.—
227 (a) A high-impact school shall use facilities that comply
228 with the Florida Building Code, except for the State
229 Requirements for Educational Facilities. A high-impact school
230 that uses school district facilities must comply with the State
231 Requirements for Educational Facilities only if the school
232 district and the high-impact school operator have entered into a
233 mutual management plan for the reasonable maintenance of such
234 facilities. The mutual management plan shall contain a provision
235 by which the district school board agrees to maintain the school
236 facilities in the same manner as its other public schools within
237 the district. The local governing authority shall not adopt or
238 impose any local building requirements or site-development
239 restrictions, such as parking and site-size criteria, which are
240 addressed by and more stringent than those found in the State



241 Requirements for Educational Facilities of the Florida Building
242 Code. A local governing authority must treat high-impact schools
243 equitably in comparison to similar requirements, restrictions,
244 and site planning processes imposed upon public schools. The
245 agency having jurisdiction for inspection of a facility and
246 issuance of a certificate of occupancy or use shall be the local
247 municipality or, if in an unincorporated area, the county
248 governing authority. If an official or employee of the local
249 governing authority refuses to comply with this paragraph, the
250 aggrieved school or entity has an immediate right to bring an
251 action in circuit court to enforce its rights by injunction. An
252 aggrieved party that receives injunctive relief may be awarded
253 reasonable attorney fees and court costs.

254 (b) Any facility, or portion thereof, used to house a high-
255 impact school shall be exempt from ad valorem taxes pursuant to
256 s. 196.1983. Library, community service, museum, performing
257 arts, theatre, cinema, church, Florida College System
258 institution, college, and university facilities may provide
259 space to high-impact schools within their facilities under their
260 preexisting zoning and land use designations.

261 (c) High-impact school facilities are exempt from
262 assessments of fees for building permits, except as provided in
263 s. 553.80; fees for building and occupational licenses; impact
264 fees or exactions; service availability fees; and assessments
265 for special benefits.

266 (d) No later than October 1, each school district shall
267 annually provide to the department a list of all underused,
268 vacant, or surplus facilities owned or operated by the school
269 district. A high-impact school operator establishing a high-



270 impact school may use an educational facility identified in this
271 paragraph at no cost or at a mutually agreeable cost not to
272 exceed fair market value rates. A high-impact school operator
273 using a facility pursuant to this paragraph may not sell or
274 dispose of such facility without the written permission of the
275 school district. For purposes of this paragraph, "underused,
276 vacant, or surplus facility" means an entire facility or portion
277 thereof which is not fully used or is used irregularly or
278 intermittently by the school district for instructional or
279 program use.

280 (8) FUNDING.—

281 (a) High-impact schools shall be funded in accordance with
282 s. 1002.33(17).

283 (b) High-impact schools shall receive priority in the
284 department's Public Charter School Grant Program competitions.

285 (c) High-impact schools shall be considered charter schools
286 for purposes of s. 1013.62, except charter capital outlay may
287 not be used to purchase real property or for the construction of
288 school facilities.

289 (d) Funding for high-impact schools may be provided in the
290 General Appropriations Act to support the following eligible
291 expenditures:

292 1. Preparing teachers, school leaders, and specialized
293 instructional support personnel, including costs associated
294 with:

295 a. Providing professional development; and

296 b. Hiring and compensating teachers, school leaders, and
297 specialized instructional support personnel for services beyond
298 the school day and year.



299 2. Acquiring supplies, training, equipment, and educational
300 materials, including developing and acquiring instructional
301 materials.

302 3. Providing one-time startup costs associated with
303 providing transportation to students to and from the high-impact
304 school.

305 4. Carrying out community engagement activities, which may
306 include paying the cost of student and staff recruitment.

307 5. Providing funds to cover the nonvoted ad valorem millage
308 that would otherwise be required for schools and the required
309 local effort funds calculated pursuant to s. 1011.62 when the
310 State Board of Education enters into an agreement with a high-
311 impact school operator pursuant to subsection (5).

312 (e) If a high-impact school is not renewed or is
313 terminated, any unencumbered funds and all equipment and
314 property purchased with the funds shall revert to the ownership
315 of the state. The reversion of such equipment, property, and
316 furnishings shall focus on tangible or irrecoverable costs such
317 as rental or leasing fees, normal maintenance, and limited
318 renovations. The reversion of all property secured with grant
319 funds is subject to the complete satisfaction of all lawful
320 liens or encumbrances.

321 (9) STATE BOARD OF EDUCATION AUTHORITY AND OBLIGATIONS.—
322 Pursuant to Art. IX of the State Constitution, which prescribes
323 the duty of the State Board of Education to supervise the public
324 school system, the State Board of Education shall:

325 (a) Publish an annual list of persistently low-performing
326 schools after the release of preliminary school grades.

327 (b) Adopt a standard notice of intent and performance-based



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328 agreement that must be used by high-impact school operators and
329 district school boards to eliminate regulatory and bureaucratic
330 barriers that delay access to high-quality schools for students
331 in persistently low-performing schools.

332 (c) Resolve disputes between a high-impact school operator
333 and a school district arising from a performance-based agreement
334 or a contract between a charter operator and a school district
335 under the board's oversight and enforcement authority and the
336 requirements of s. 1008.33.

337 (d) Provide students in persistently low-performing schools
338 with a public school that meets accountability standards.

339 Subject to the authorities and approvals specified under
340 paragraph (4) (b), the State Board of Education may enter into a
341 performance-based agreement with a high-impact school operator
342 to establish a high-impact school. Upon the State Board of
343 Education entering into a performance-based agreement with a
344 high-impact school operator, the school district shall transfer
345 to the high-impact school the proportionate share of state funds
346 allocated from the Florida Education Finance Program.

347 (10) RULES.—The State Board of Education shall adopt rules
348 pursuant to ss. 120.536(1) and 120.54 to implement this section.

349 Section 2. Section 1001.292, Florida Statutes, is created
350 to read:

351 1001.292 High-impact Schools Revolving Loan Program.—

352 (1) The High-impact Schools Revolving Loan Program is
353 established within the Department of Education to provide
354 assistance to a high-impact school operator, as defined in s.
355 1002.333, to meet school building construction needs and pay for
356 expenses related to the startup of a new high-impact school. The



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357 program shall consist of funds appropriated by the Legislature,
358 money received from the repayment of loans made from the
359 program, and interest earned.

360 (2) Funds provided pursuant to this section may not exceed
361 25 percent of the total cost of the project, which shall be
362 calculated based on 80 percent of the cost per student station
363 established by s. 1013.64(6)(b) multiplied by the capacity of
364 the facility.

365 (3) The department may contract with a third-party
366 administrator to administer the program. If the department
367 contracts with a third-party administrator, funds shall be
368 granted to the third-party administrator to create a revolving
369 loan fund for the purpose of financing projects that meet the
370 requirements of subsection (4). The third-party administrator
371 shall report to the department annually. The department shall
372 continue to administer the program until a third-party
373 administrator is selected.

374 (4) High-impact school operators that have been designated
375 by the State Board of Education and have executed a performance-
376 based agreement pursuant to s. 1002.333 shall be provided a loan
377 up to the amount provided in subsection (2) to support the
378 performance-based contract components of high-impact schools, as
379 defined in s. 1002.333(1).

380 (5) The department shall post on its website the projects
381 that have received loans, the geographic distribution of the
382 projects, the status of the projects, the costs of the program,
383 and student outcomes for students enrolled in the high-impact
384 school receiving funds.

385 (6) All repayments of principal and interest shall be



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386 returned to the loan fund and made available for loans to other
387 applicants.

388 (7) Interest on loans provided under this program may be
389 used to defray the costs of administration and shall be the
390 lower of:

391 (a) The rate paid on moneys held in the fund; or

392 (b) A rate equal to 50 percent of the rate authorized under
393 s. 215.84.

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

395

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

397 And the title is amended as follows:

398 Delete everything before the enacting clause
399 and insert:

400 A bill to be entitled
401 An act relating to K-12 public schools; creating s.
402 1002.333, F.S., relating to high-impact schools and
403 high-impact school operators; defining terms;
404 providing eligibility criteria for high-impact school
405 operators; providing for the designation and
406 redesignation of a high-impact school operator;
407 authorizing high-impact school operators to establish
408 high-impact schools in specified areas; providing the
409 process for the establishment of a high-impact school;
410 providing the requirements for a performance-based
411 agreement; authorizing the State Board of Education to
412 designate a high-impact school as a local education
413 agency; providing that a school district sponsor is
414 not liable for specified damages; providing that a



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415 high-impact school may be a private or public
416 employer; authorizing a high-impact school to
417 participate in the Florida Retirement System;
418 authorizing a high-impact school operator to employ
419 certain staff; providing specific statutory exemptions
420 for high-impact schools; providing requirements for
421 facilities used by high-impact schools; requiring
422 districts to annually provide a list of specified
423 property to the Department of Education; requiring
424 that high-impact schools be funded through the Florida
425 Education Finance Program; establishing additional
426 funding sources and guidelines for eligible
427 expenditures; providing authority and obligations of
428 the State Board of Education; providing a mechanism
429 for the resolution of disputes; providing for
430 rulemaking; creating s. 1001.292, F.S.; establishing
431 the High-impact Schools Revolving Loan Program;
432 providing criteria for administration of the program;
433 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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11 compliance with the terms of its performance-based agreement
12 established pursuant to subsection (5).

13 (4) ESTABLISHMENT OF HIGH-IMPACT SCHOOLS.—A high-impact
14 school operator may submit a notice of intent to open a high-
15 impact school to the school district in which a persistently
16 low-performing school has been identified by the State Board of
17 Education pursuant to subsection (9).

18 (a) The notice of intent must include:

19 1. An academic focus and plan;

20 2. A financial plan;

21 3. Goals and objectives for increasing student achievement

22 for the students from any persistently low-performing school and
23 students from low-income families;

24 4. A completed or planned community outreach plan;

25 5. The organizational history of success in working with
26 students with similar demographics;

27 6. The grade levels to be served and enrollment
28 projections;

29 7. The proposed location or geographic area proposed for
30 the school and its proximity to the persistently low-performing
31 school; and

32 8. A staffing plan.

33 (b) A school district with a school that is designated, or
34 is likely to be designated, as a persistently low-performing
35 school during the 2017-2018 school year may, with the approval
36 of the State Board of Education contingent on its determination
37 that the school will likely improve to a grade of "C" or higher
38 during the 2018-2019 school year, implement a new turnaround
39 option specified under s. 1008.33(4). Absent the approval of the



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40 state board, a school district must enter into a performance-
41 based agreement with a high-impact operator, or may relinquish
42 authority to the state board to enter into a performance-based
43 agreement with a high-impact school operator, to open one or
44 more high-impact schools.

45 (5) PERFORMANCE-BASED AGREEMENT.—The performance-based
46 agreement must include all of the following components:

47 (a) The notice of intent, which is incorporated by
48 reference and attached to the agreement.

49 (b) The location or geographic area proposed for the high-
50 impact school and its proximity to the persistently low-
51 performing school.

52 (c) An enumeration of the grades to be served in each year
53 of the agreement and whether the school will serve children in
54 the school readiness or prekindergarten programs.

55 (d) A plan of action and specific milestones for student
56 recruitment and the enrollment of students from persistently
57 low-performing schools, including enrollment preferences and
58 procedures for conducting transparent admissions lotteries that
59 are open to the public; however, enrollment preference must be
60 given to students who are attending, or are assigned to attend,
61 a persistently low-performing school. If the high-impact
62 school's total enrollment consists of at least 60 percent of
63 students who were attending, or were assigned to attend, a
64 persistently low-performing school, students attending the high-
65 impact school are exempt, to the extent permitted by federal
66 grant requirements, from any enrollment lottery.

67 (e) A delineation of the current incoming baseline standard
68 of student academic achievement, the outcomes to be achieved,



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69 and the method of measurement that will be used.

70 (f) A description of the methods of involving parents and
71 expected levels for such involvement.

72 (g) The grounds for termination, including failure to meet
73 the requirements for student performance established pursuant to
74 paragraph (e), generally accepted standards of fiscal
75 management, or material violation of terms of the agreement. The
76 nonrenewal or termination of a performance-based agreement must
77 comply with the requirements of s. 1002.33(8).

78 (h) A provision allowing the high-impact school operator to
79 open additional schools to serve students enrolled in or zoned
80 for a persistently low-performing school if the high-impact
81 school operator maintains its status under subsection (3).

82 (i) A provision establishing the initial term as 3 years.



821780

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

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

1 A bill to be entitled
 2 An act relating to charter schools; amending s.
 3 1002.33, F.S.; revising charter school contract and
 4 funding requirements; creating s. 1002.336, F.S.;
 5 defining terms; authorizing certain entities to apply
 6 for designation as a High-Impact Charter Management
 7 Organization; requiring the State Board of Education
 8 to adopt rules; providing criteria for an initial and
 9 renewal designation; providing that the charter school
 10 may receive charter school capital outlay; authorizing
 11 certain administrative fees to be waived under certain
 12 conditions; requiring the Department of Education to
 13 give priority to certain charter schools applying for
 14 specified grants; amending s. 1013.62, F.S.; revising
 15 the standards that a charter school must meet to be
 16 eligible for a funding allocation; providing an
 17 effective date.
 18
 19 Be It Enacted by the Legislature of the State of Florida:
 20
 21 Section 1. Paragraph (n) of subsection (9) and paragraph
 22 (c) of subsection (17) of section 1002.33, Florida Statutes, are
 23 amended to read:
 24 1002.33 Charter schools.—
 25 (9) CHARTER SCHOOL REQUIREMENTS.—
 26 (n)1. The director and a representative of the governing
 27 board of a charter school that has earned a grade of "D" or "F"
 28 pursuant to s. 1008.34 shall appear before the sponsor to
 29 present information concerning each contract component having

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

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30 noted deficiencies. The director and a representative of the
 31 governing board shall submit to the sponsor for approval a
 32 school improvement plan to raise student performance. Upon
 33 approval by the sponsor, the charter school shall begin
 34 implementation of the school improvement plan. The department
 35 shall offer technical assistance and training to the charter
 36 school and its governing board and establish guidelines for
 37 developing, submitting, and approving such plans.
 38 2.a. If a charter school earns three consecutive grades of
 39 "D," two consecutive grades of "D" followed by a grade of "F,"
 40 or two nonconsecutive grades of "F" within a 3-year period, the
 41 charter school governing board shall choose one of the following
 42 corrective actions:
 43 (I) Contract for educational services to be provided
 44 directly to students, instructional personnel, and school
 45 administrators, as prescribed in state board rule;
 46 (II) Contract with an outside entity that has a
 47 demonstrated record of effectiveness to operate the school;
 48 (III) Reorganize the school under a new director or
 49 principal who is authorized to hire new staff; or
 50 (IV) Voluntarily close the charter school.
 51 b. The charter school must implement the corrective action
 52 in the school year following receipt of a third consecutive
 53 grade of "D," a grade of "F" following two consecutive grades of
 54 "D," or a second nonconsecutive grade of "F" within a 3-year
 55 period.
 56 c. The sponsor may annually waive a corrective action if it
 57 determines that the charter school is likely to improve a letter
 58 grade if additional time is provided to implement the

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59 intervention and support strategies prescribed by the school
60 improvement plan. Notwithstanding this sub-subparagraph, a
61 charter school that earns a second consecutive grade of "F" is
62 subject to subparagraph 4.

63 d. A charter school is no longer required to implement a
64 corrective action if it improves by at least one letter grade.
65 However, the charter school must continue to implement
66 strategies identified in the school improvement plan. The
67 sponsor must annually review implementation of the school
68 improvement plan to monitor the school's continued improvement
69 pursuant to subparagraph 5.

70 e. A charter school implementing a corrective action that
71 does not improve by at least one letter grade after 2 full
72 school years of implementing the corrective action must select a
73 different corrective action. Implementation of the new
74 corrective action must begin in the school year following the
75 implementation period of the existing corrective action, unless
76 the sponsor determines that the charter school is likely to
77 improve a letter grade if additional time is provided to
78 implement the existing corrective action. Notwithstanding this
79 sub-subparagraph, a charter school that earns a second
80 consecutive grade of "F" while implementing a corrective action
81 is subject to subparagraph 4.

82 3. A charter school with a grade of "D" or "F" ~~which that~~
83 improves by at least one letter grade must continue to implement
84 the strategies identified in the school improvement plan. The
85 sponsor must annually review implementation of the school
86 improvement plan to monitor the school's continued improvement
87 pursuant to subparagraph 5.

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88 4. A charter school's charter contract is automatically
89 terminated if the school earns two consecutive grades of "F"
90 after all school grade appeals are final unless:

91 a. The charter school is established to turn around the
92 performance of a district public school pursuant to s.
93 1008.33(4)(b)3. Such charter schools shall be governed by s.
94 1008.33;

95 b. The charter school is designated under s. 1002.336 as a
96 High-Impact Charter Management Organization to serve a critical
97 need area or serves a student population the majority of which
98 resides in a school zone served by a district public school that
99 earned a grade of "F" in the year before the charter school
100 opened and the charter school earns at least a grade of "D" in
101 its third year of operation. The exception provided under this
102 sub-subparagraph does not apply to a charter school in its
103 fourth year of operation and thereafter; or

104 c. The state board grants the charter school a waiver of
105 termination. The charter school must request the waiver within
106 15 days after the department's official release of school
107 grades. The state board may waive termination if the charter
108 school demonstrates that the Learning Gains of its students on
109 statewide assessments are comparable to or better than the
110 Learning Gains of similarly situated students enrolled in nearby
111 district public schools. The waiver is valid for 1 year and may
112 only be granted once. Charter schools that have been in
113 operation for more than 5 years are not eligible for a waiver
114 under this sub-subparagraph.

115
116 The sponsor shall notify the charter school's governing board,

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 117 the charter school principal, and the department in writing when
 118 a charter contract is terminated under this subparagraph. The
 119 letter of termination must meet the requirements of paragraph
 120 (8) (c). A charter terminated under this subparagraph must follow
 121 the procedures for dissolution and reversion of public funds
 122 pursuant to paragraphs (8) (e)-(g) and (9) (o).

123 5. The director and a representative of the governing board
 124 of a graded charter school that has implemented a school
 125 improvement plan under this paragraph shall appear before the
 126 sponsor at least once a year to present information regarding
 127 the progress of intervention and support strategies implemented
 128 by the school pursuant to the school improvement plan and
 129 corrective actions, if applicable. The sponsor shall communicate
 130 at the meeting, and in writing to the director, the services
 131 provided to the school to help the school address its
 132 deficiencies.

133 6. Notwithstanding any provision of this paragraph except
 134 sub-subparagraphs 4.a.-c., the sponsor may terminate the charter
 135 at any time pursuant to subsection (8).

136 (17) FUNDING.—Students enrolled in a charter school,
 137 regardless of the sponsorship, shall be funded as if they are in
 138 a basic program or a special program, the same as students
 139 enrolled in other public schools in the school district. Funding
 140 for a charter lab school shall be as provided in s. 1002.32.

141 (c) If the district school board is providing programs or
 142 services to students funded by federal funds, any eligible
 143 students enrolled in charter schools in the school district
 144 shall be provided federal funds for the same level of service
 145 provided students in the schools operated by the district school

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 146 board. Pursuant to provisions of 20 U.S.C. 8061 s. 10306, all
 147 charter schools shall receive all federal funding for which the
 148 school is otherwise eligible, including Title I funding, not
 149 later than 5 months after the charter school first opens and
 150 within 5 months after any subsequent expansion of enrollment.
 151 Unless otherwise mutually agreed to by the charter school and
 152 its sponsor, and consistent with state and federal rules and
 153 regulations governing the use and disbursement of federal funds,
 154 the sponsor shall reimburse the charter school on a monthly
 155 basis for all invoices submitted by the charter school for
 156 federal funds available to the sponsor for the benefit of the
 157 charter school, the charter school's students, and the charter
 158 school's students as public school students in the school
 159 district. Such federal funds include, but are not limited to,
 160 Title I, Title II, and Individuals with Disabilities Education
 161 Act (IDEA) funds. The department shall provide school districts
 162 with technical assistance to ensure the federal funds are
 163 allocated to charter schools using an appropriate methodology.
 164 To receive timely reimbursement for an invoice, the charter
 165 school must submit the invoice to the sponsor at least 30 days
 166 before the monthly date of reimbursement set by the sponsor. In
 167 order to be reimbursed, any expenditures made by the charter
 168 school must comply with all applicable state rules and federal
 169 regulations, including, but not limited to, the applicable
 170 federal Office of Management and Budget Circulars; the federal
 171 Education Department General Administrative Regulations; and
 172 program-specific statutes, rules, and regulations. Such funds
 173 may not be made available to the charter school until a plan is
 174 submitted to the sponsor for approval of the use of the funds in

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175 accordance with applicable federal requirements. The sponsor has
176 30 days to review and approve any plan submitted pursuant to
177 this paragraph.

178 Section 2. Section 1002.336, Florida Statutes, is created
179 to read:

180 1002.336 High-Impact Charter Management Organization.-

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

182 (a) "Critical need area" means an area designated as such
183 by the Legislature or an area that is served by one or more
184 public schools that are subject to the turnaround options
185 specified in s. 1008.33(4)(b).

186 (b) "Entity" means a nonprofit organization with tax exempt
187 status under s. 501(c)(3) of the Internal Revenue Code which is
188 authorized by law to operate a public charter school.

189 (2) An entity that successfully operates a system of
190 charter schools which primarily serves educationally
191 disadvantaged students who are eligible for free or reduced-
192 price lunch under the Richard B. Russell National School Lunch
193 Act, may apply to the State Board of Education for status as a
194 High-Impact Charter Management Organization.

195 (3) The State Board of Education shall adopt rules
196 prescribing the process and criteria for the initial designation
197 and renewal designation of a High-Impact Charter Management
198 Organization. The criteria for initial designation must include
199 a review of the data from all schools currently and previously
200 operated by the entity during the past 3 years and the
201 comparison of student-level data to the data of similar students
202 in other schools. The initial designation period may not exceed
203 5 years. The criteria for initial and renewal designation must

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204 include, but need not be limited to, all of the following:

205 (a) Student demographic and achievement data, including
206 performance on statewide assessments and nationally norm-
207 referenced assessments.

208 (b) Student attendance, promotion, retention, and
209 graduation rates.

210 (c) Other student outcome data, such as college attendance
211 rates and completion rates.

212 (d) Annual finance statements and audits.

213 (4) An entity that is designated as a High-Impact Charter
214 Management Organization may:

215 (a) Submit an application to a local school board pursuant
216 to s. 1002.33 to establish and operate charter schools in
217 critical need areas;

218 (b) Take the actions described in s. 1002.331(2); and

219 (c) Notwithstanding the criteria in s. 1002.33(25), be
220 designated as a local educational agency for the purpose of
221 receiving federal funds.

222 (5) Notwithstanding s. 1013.62(1)(a), a charter school
223 operated by a High-Impact Charter Management Organization is
224 eligible to receive charter school capital outlay.

225 (6) The administrative fee provided for in s.
226 1002.33(20)(a)2. shall be waived for a charter school
227 established by a High-Impact Charter Management Organization in
228 a critical need area if the entity maintains its status as a
229 High-Impact Charter Management Organization.

230 (7) The department shall give priority to charter schools
231 operated by a High-Impact Charter Management Organization in the
232 department's Public Charter School Grant Program competitions.

581-03950-17

2017796c1

233 Such priority treatment may be provided only for a new charter
 234 school that will operate in a critical need area.

235 (8) If an entity seeks status renewal, the State Board of
 236 Education shall review the academic and financial performance of
 237 the charter schools established in critical need areas
 238 consistent with subsection (3).

239 (9) The State Board of Education shall adopt rules under
 240 ss. 120.536(1) and 120.54 to administer this section.

241 Section 3. Paragraph (a) of subsection (1) of section
 242 1013.62, Florida Statutes, is amended to read:

243 1013.62 Charter schools capital outlay funding.-

244 (1) In each year in which funds are appropriated for
 245 charter school capital outlay purposes, the Commissioner of
 246 Education shall allocate the funds among eligible charter
 247 schools as specified in this section.

248 (a) To be eligible for a funding allocation, a charter
 249 school must:

250 1.a. Have been in operation for 2 or more years;

251 b. Be governed by a governing board established in the
 252 state for 3 or more years which operates both charter schools
 253 and conversion charter schools within the state;

254 c. Be an expanded feeder chain of a charter school within
 255 the same school district that is currently receiving charter
 256 school capital outlay funds;

257 d. Have been accredited by the Commission on Schools of the
 258 Southern Association of Colleges and Schools; or

259 e. Serve students in facilities that are provided by a
 260 business partner for a charter school-in-the-workplace pursuant
 261 to s. 1002.33(15) (b).

581-03950-17

2017796c1

262 2. Have an annual audit that does not reveal any of the
 263 financial emergency conditions provided in s. 218.503(1) for the
 264 most recent fiscal year for which such audit results are
 265 available.

266 ~~3. Have satisfactory student achievement based on state~~
 267 ~~accountability standards applicable to the charter school.~~

268 ~~3.4-~~ Have received final approval from its sponsor pursuant
 269 to s. 1002.33 for operation during that fiscal year.

270 ~~4.5-~~ Serve students in facilities that are not provided by
 271 the charter school's sponsor.

272 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.

A handwritten signature in blue ink that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

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

Phone 850-345-1114

Tallahassee FL 32308

City

State

Zip

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.

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

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

April 25 2017

Meeting Date

796

Bill Number (if applicable)

821 780

Amendment Barcode (if applicable)

Topic Charter Schools

Name Marie-Claire Liman

Job Title _____

Address 1911 Wahalaan

Street

Phone 850 728 7514

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.

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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

796
Bill Number (if applicable)

821 780
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 overholtbetha@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

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

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APPEARANCE RECORD

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4/25/17

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

Phone 850-345-1114

Tallahassee FL 32308

City

State

Zip

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

4 125/2017
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
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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

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

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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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

Phone 728-0587

Street

Tallahassee

32311

Email overholtbeth2@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17

Meeting Date

SB 790

Bill Number (if applicable)

Topic Charter Schools

Amendment Barcode (if applicable)

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.

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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

Meeting Date

7910

Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Kelly Quinten

Job Title Legislative Advocate

Address 540 Beverly Ct

Phone 772 204 1792

Street

Tallahassee FL 32301

City

State

Zip

Email lwvfaadvocacy@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.

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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

796

Bill Number (if applicable)

906464 (Bea)

Amendment Barcode (if applicable)

Topic High Impact Charter

Name Cathy Boehme (Say Name)

Job Title Legislative Specialist

Address 213 S. Adams St.
Street

Phone 850-229-2800

Tallahassee FL 32301
City State Zip

Email cathy.boehme@florida.edu
25

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.

The Florida Senate
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.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	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 addresses⁵ 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 websites⁷ 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

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 URL²¹ 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

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 Commissioner²⁴ 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 I 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)(l), 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).

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

By the Committee on Criminal Justice; and Senator Baxley

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1 A bill to be entitled
 2 An act relating to Internet identifiers; amending s.
 3 775.21, F.S.; revising the definition of the term
 4 "Internet identifier"; defining the term "social
 5 Internet communication"; requiring a sexual predator
 6 to register each Internet identifier's corresponding
 7 website home page or application software name with
 8 the Department of Law Enforcement through the
 9 sheriff's office; requiring a sexual predator to
 10 report any change to certain information after initial
 11 in-person registration in a specified manner;
 12 requiring a sexual predator to register all electronic
 13 mail addresses, Internet identifiers, and Internet
 14 identifiers' corresponding website home pages or
 15 application names with the department within 48 hours
 16 after using the addresses or identifiers, rather than
 17 before using them; providing that the department's
 18 sexual predator registration list is a public record,
 19 unless otherwise made exempt or confidential and
 20 exempt; revising the information that a sexual
 21 predator must report to the sheriff's office each
 22 year; conforming provisions to change made by the act;
 23 making technical changes; amending s. 943.0435, F.S.;
 24 requiring a sexual offender, upon initial
 25 registration, to report in person at the sheriff's
 26 office; requiring the sexual offender to report any
 27 change to each Internet identifier's corresponding
 28 website home page or application software name in
 29 person at the sheriff's office in a specified manner;

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30 requiring a sexual offender to report any change to
 31 certain information after initial in-person
 32 registration in a specified manner; requiring a sexual
 33 offender to register all electronic mail addresses and
 34 Internet identifiers, and each Internet identifier's
 35 corresponding website home page or application
 36 software name, with a specified period after using
 37 these addresses or identifiers, rather than before
 38 using them; making technical changes; reenacting ss.
 39 943.0437(2), 944.606(1)(c), 944.607(1)(e),
 40 985.481(1)(c), and 985.4815(1)(e), F.S., relating to
 41 the definition of the term "Internet identifier," to
 42 incorporate the amendment made to s. 775.21, F.S., in
 43 references thereto; reenacting ss. 944.606(3)(a),
 44 944.607(4)(a), (9), and (13)(c), 985.481(3)(a), and
 45 985.4815(4)(a), (9), and (13)(b), F.S., relating to
 46 sexual offenders, notification to the Department of
 47 Law Enforcement of information on sexual offenders,
 48 notification to the department upon release of sexual
 49 offenders adjudicated delinquent, and notification to
 50 the department of information on juvenile sexual
 51 offenders, respectively, to incorporate the amendment
 52 made to s. 943.0435, F.S., in references thereto;
 53 reenacting ss. 794.056(1), 921.0022(3)(g), and
 54 938.085, F.S., relating to the Rape Crisis Program
 55 Trust Fund, the Criminal Punishment Code offense
 56 severity ranking chart, and additional costs to fund
 57 rape crisis centers, respectively, to incorporate the
 58 amendments made to ss. 775.21 and 943.0435, F.S., in

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59 references thereto; providing an effective date.

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. Present paragraphs (m), (n), and (o) of
64 subsection (2) of section 775.21, Florida Statutes, are
65 redesignated as paragraphs (n), (o), and (p), respectively, a
66 new paragraph (m) is added to that subsection, paragraph (j) of
67 that subsection is amended, paragraphs (a) and (d) of subsection
68 (4) and paragraph (d) of subsection (5) of that section are
69 republished, paragraphs (a), (e), (g), and (k) of subsection (6)
70 of that section are amended, paragraph (i) of subsection (6) of
71 that section is republished, paragraph (a) of subsection (8) and
72 paragraph (a) of subsection (10) of that section are amended,
73 and paragraph (e) of subsection (10) of that section is
74 republished, to read:

75 775.21 The Florida Sexual Predators Act.—

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

77 (j) "Internet identifier" means any designation, moniker,
78 screen name, username, or other name used for self-
79 identification to send or receive social Internet communication
80 includes, but is not limited to, all website uniform resource
81 locators (URLs) and application software, whether mobile or
82 nonmobile, used for Internet communication, including anonymous
83 communication, through electronic mail, chat, instant messages,
84 social networking, social gaming, or other similar programs and
85 all corresponding usernames, logins, screen names, and screen
86 identifiers associated with each URL or application software.
87 Internet identifier does not include a date of birth, social

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88 security number, personal identification number (PIN), or
89 password. A sexual offender's or sexual predator's use of an
90 Internet identifier that discloses his or her date of birth,
91 social security number, personal identification number (PIN),
92 password, or other information that would reveal the identity of
93 the sexual offender or sexual predator URL, or application
94 software used for utility, banking, retail, or medical purposes.
95 ~~Voluntary disclosure by a sexual predator or sexual offender of~~
96 ~~his or her date of birth, Social Security number, or PIN as an~~
97 ~~Internet identifier waives the disclosure exemption in this~~
98 ~~paragraph and in s. 119.071(5)(1) for such personal information.~~
99 (m) "Social Internet communication" means any communication
100 through a commercial social networking website, as defined in s.
101 943.0437, or application software. The term does not include any
102 of the following:

103 1. Communication for which the primary purpose is the
104 facilitation of commercial transactions involving goods or
105 services;

106 2. Communication on an Internet website for which the
107 primary purpose of the website is the dissemination of news; or

108 3. Communication with a governmental entity.

109
110 For purposes of this paragraph, the term "application software"
111 means any computer program that is designed to run on a mobile
112 device such as a smartphone or tablet computer, that allows
113 users to create web pages or profiles that provide information
114 about themselves and are available publicly or to other users,
115 and that offers a mechanism for communication with other users
116 through a forum, a chatroom, electronic mail, or an instant

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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),

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(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

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175 person was a resident of that state or jurisdiction, without
 176 regard to whether the person otherwise meets the criteria for
 177 registration as a sexual offender, shall register in the manner
 178 provided in s. 943.0435 or s. 944.607 and shall be subject to
 179 community and public notification as provided in s. 943.0435 or
 180 s. 944.607. A person who meets the criteria of this section is
 181 subject to the requirements and penalty provisions of s.
 182 943.0435 or s. 944.607 until the person provides the department
 183 with an order issued by the court that designated the person as
 184 a sexual predator, as a sexually violent predator, or by another
 185 sexual offender designation in the state or jurisdiction in
 186 which the order was issued which states that such designation
 187 has been removed or demonstrates to the department that such
 188 designation, if not imposed by a court, has been removed by
 189 operation of law or court order in the state or jurisdiction in
 190 which the designation was made, and provided such person no
 191 longer meets the criteria for registration as a sexual offender
 192 under the laws of this state.

193 (6) REGISTRATION.—

194 (a) A sexual predator shall register with the department
 195 through the sheriff's office by providing the following
 196 information to the department:

197 1. Name; social security number; age; race; sex; date of
 198 birth; height; weight; tattoos or other identifying marks; hair
 199 and eye color; photograph; address of legal residence and
 200 address of any current temporary residence, within the state or
 201 out of state, including a rural route address and a post office
 202 box; if no permanent or temporary address, any transient
 203 residence within the state; address, location or description,

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204 and dates of any current or known future temporary residence
 205 within the state or out of state; ~~all~~ electronic mail addresses;
 206 ~~and all~~ Internet identifiers and each Internet identifier's
 207 corresponding website home page or application software name
 208 ~~required to be provided pursuant to subparagraph (g)5.~~; ~~all~~ home
 209 telephone numbers and cellular telephone numbers ~~required to be~~
 210 ~~provided pursuant to subparagraph (g)5.~~; employment information
 211 ~~required to be provided pursuant to subparagraph (g)5.~~; the
 212 make, model, color, vehicle identification number (VIN), and
 213 license tag number of all vehicles owned; date and place of each
 214 conviction; fingerprints; palm prints; and a brief description
 215 of the crime or crimes committed by the offender. A post office
 216 box may not be provided in lieu of a physical residential
 217 address. The sexual predator shall produce his or her passport,
 218 if he or she has a passport, and, if he or she is an alien,
 219 shall produce or provide information about documents
 220 establishing his or her immigration status. The sexual predator
 221 shall also provide information about any professional licenses
 222 he or she has.

223 a. Any change that occurs after the sexual predator
 224 registers in person at the sheriff's office as provided in this
 225 subparagraph in any of the following information related to the
 226 sexual predator must be reported as provided in paragraphs (g),
 227 (i), and (j): permanent, temporary, or transient residence;
 228 name; electronic mail addresses; Internet identifiers and each
 229 Internet identifier's corresponding website home page or
 230 application software name; home telephone numbers and cellular
 231 telephone numbers; employment information; and status at an
 232 institution of higher education.

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233 ~~b.a.~~ If the sexual predator's place of residence is a motor
 234 vehicle, trailer, mobile home, or manufactured home, as defined
 235 in chapter 320, the sexual predator shall also provide to the
 236 department written notice of the vehicle identification number;
 237 the license tag number; the registration number; and a
 238 description, including color scheme, of the motor vehicle,
 239 trailer, mobile home, or manufactured home. If a sexual
 240 predator's place of residence is a vessel, live-aboard vessel,
 241 or houseboat, as defined in chapter 327, the sexual predator
 242 shall also provide to the department written notice of the hull
 243 identification number; the manufacturer's serial number; the
 244 name of the vessel, live-aboard vessel, or houseboat; the
 245 registration number; and a description, including color scheme,
 246 of the vessel, live-aboard vessel, or houseboat.

247 ~~c.b.~~ If the sexual predator is enrolled or employed,
 248 whether for compensation or as a volunteer, at an institution of
 249 higher education in this state, the sexual predator shall also
 250 provide to the department ~~pursuant to subparagraph (g)5.~~ the
 251 name, address, and county of each institution, including each
 252 campus attended, and the sexual predator's enrollment,
 253 volunteer, or employment status. The sheriff, the Department of
 254 Corrections, or the Department of Juvenile Justice shall
 255 promptly notify each institution of higher education of the
 256 sexual predator's presence and any change in the sexual
 257 predator's enrollment, volunteer, or employment status.

258 ~~d.e.~~ A sexual predator shall report in person to the
 259 sheriff's office within 48 hours after any change in vehicles
 260 owned to report those vehicle information changes.

261 2. Any other information determined necessary by the

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262 department, including criminal and corrections records;
 263 nonprivileged personnel and treatment records; and evidentiary
 264 genetic markers when available.

265 (e)1. If the sexual predator is not in the custody or
 266 control of, or under the supervision of, the Department of
 267 Corrections or is not in the custody of a private correctional
 268 facility, the sexual predator shall register in person:

269 a. At the sheriff's office in the county where he or she
 270 establishes or maintains a residence within 48 hours after
 271 establishing or maintaining a residence in this state; and

272 b. At the sheriff's office in the county where he or she
 273 was designated a sexual predator by the court within 48 hours
 274 after such finding is made.

275 2. Any change that occurs after the sexual predator
 276 registers in person at the sheriff's office as provided in
 277 subparagraph 1. in any of the following information related to
 278 ~~in~~ the sexual predator must be reported as provided in
 279 paragraphs (g), (i), and (j): predator's permanent, temporary,
 280 or transient residence; name; vehicles owned; electronic mail
 281 addresses; Internet identifiers and each Internet identifier's
 282 corresponding website home page or application software name;
 283 home telephone numbers and cellular telephone numbers; ~~and~~
 284 employment information; ~~and any~~ change in status at an
 285 institution of higher education, ~~required to be provided~~
 286 pursuant to subparagraph (g)5., after the sexual predator
 287 registers in person at the sheriff's office as provided in
 288 subparagraph 1. must be accomplished in the manner provided in
 289 paragraphs (g), (i), and (j). When a sexual predator registers
 290 with the sheriff's office, the sheriff shall take a photograph,

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291 a set of fingerprints, and palm prints of the predator and
 292 forward the photographs, palm prints, and fingerprints to the
 293 department, along with the information that the predator is
 294 required to provide pursuant to this section.

295 (g)1. Each time a sexual predator's driver license or
 296 identification card is subject to renewal, and, without regard
 297 to the status of the predator's driver license or identification
 298 card, within 48 hours after any change of the predator's
 299 residence or change in the predator's name by reason of marriage
 300 or other legal process, the predator shall report in person to a
 301 driver license office and is subject to the requirements
 302 specified in paragraph (f). The Department of Highway Safety and
 303 Motor Vehicles shall forward to the department and to the
 304 Department of Corrections all photographs and information
 305 provided by sexual predators. Notwithstanding the restrictions
 306 set forth in s. 322.142, the Department of Highway Safety and
 307 Motor Vehicles may release a reproduction of a color-photograph
 308 or digital-image license to the Department of Law Enforcement
 309 for purposes of public notification of sexual predators as
 310 provided in this section. A sexual predator who is unable to
 311 secure or update a driver license or an identification card with
 312 the Department of Highway Safety and Motor Vehicles as provided
 313 in paragraph (f) and this paragraph shall also report any change
 314 of the predator's residence or change in the predator's name by
 315 reason of marriage or other legal process within 48 hours after
 316 the change to the sheriff's office in the county where the
 317 predator resides or is located and provide confirmation that he
 318 or she reported such information to the Department of Highway
 319 Safety and Motor Vehicles. The reporting requirements under this

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320 subparagraph do not negate the requirement for a sexual predator
 321 to obtain a Florida driver license or identification card as
 322 required by this section.

323 2.a. A sexual predator who vacates a permanent, temporary,
 324 or transient residence and fails to establish or maintain
 325 another permanent, temporary, or transient residence shall,
 326 within 48 hours after vacating the permanent, temporary, or
 327 transient residence, report in person to the sheriff's office of
 328 the county in which he or she is located. The sexual predator
 329 shall specify the date upon which he or she intends to or did
 330 vacate such residence. The sexual predator shall provide or
 331 update all of the registration information required under
 332 paragraph (a). The sexual predator shall provide an address for
 333 the residence or other place that he or she is or will be
 334 located during the time in which he or she fails to establish or
 335 maintain a permanent or temporary residence.

336 b. A sexual predator shall report in person at the
 337 sheriff's office in the county in which he or she is located
 338 within 48 hours after establishing a transient residence and
 339 thereafter must report in person every 30 days to the sheriff's
 340 office in the county in which he or she is located while
 341 maintaining a transient residence. The sexual predator must
 342 provide the addresses and locations where he or she maintains a
 343 transient residence. Each sheriff's office shall establish
 344 procedures for reporting transient residence information and
 345 provide notice to transient registrants to report transient
 346 residence information as required in this sub-subparagraph.
 347 Reporting to the sheriff's office as required by this sub-
 348 subparagraph does not exempt registrants from any reregistration

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349 requirement. The sheriff may coordinate and enter into
 350 agreements with police departments and other governmental
 351 entities to facilitate additional reporting sites for transient
 352 residence registration required in this sub-subparagraph. The
 353 sheriff's office shall, within 2 business days, electronically
 354 submit and update all information provided by the sexual
 355 predator to the department.

356 3. A sexual predator who remains at a permanent, temporary,
 357 or transient residence after reporting his or her intent to
 358 vacate such residence shall, within 48 hours after the date upon
 359 which the predator indicated he or she would or did vacate such
 360 residence, report in person to the sheriff's office to which he
 361 or she reported pursuant to subparagraph 2. for the purpose of
 362 reporting his or her address at such residence. When the sheriff
 363 receives the report, the sheriff shall promptly convey the
 364 information to the department. An offender who makes a report as
 365 required under subparagraph 2. but fails to make a report as
 366 required under this subparagraph commits a felony of the second
 367 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 368 775.084.

369 4. The failure of a sexual predator who maintains a
 370 transient residence to report in person to the sheriff's office
 371 every 30 days as required by sub-subparagraph 2.b. is punishable
 372 as provided in subsection (10).

373 5.a. A sexual predator shall register all electronic mail
 374 addresses and Internet identifiers, and each Internet
 375 identifier's corresponding website home page or application
 376 software name, with the department through the department's
 377 online system or in person at the sheriff's office within 48

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378 ~~hours after~~ ~~before~~ using such electronic mail addresses and
 379 Internet identifiers. If the sexual predator is in the custody
 380 or control, or under the supervision, of the Department of
 381 Corrections, he or she must report all electronic mail addresses
 382 and Internet identifiers, and each Internet identifier's
 383 corresponding website home page or application software name, to
 384 the Department of Corrections before using such electronic mail
 385 addresses or Internet identifiers. If the sexual predator is in
 386 the custody or control, or under the supervision, of the
 387 Department of Juvenile Justice, he or she must report all
 388 electronic mail addresses and Internet identifiers, and each
 389 Internet identifier's corresponding website home page or
 390 application software name, to the Department of Juvenile Justice
 391 before using such electronic mail addresses or Internet
 392 identifiers.

393 b. A sexual predator shall register all changes to home
 394 telephone numbers and cellular telephone numbers, including
 395 added and deleted numbers, all changes to employment
 396 information, and all changes in status related to enrollment,
 397 volunteering, or employment at institutions of higher education,
 398 through the department's online system; in person at the
 399 sheriff's office; in person at the Department of Corrections if
 400 the sexual predator is in the custody or control, or under the
 401 supervision, of the Department of Corrections; or in person at
 402 the Department of Juvenile Justice if the sexual predator is in
 403 the custody or control, or under the supervision, of the
 404 Department of Juvenile Justice. All changes required to be
 405 reported in this sub-subparagraph shall be reported within 48
 406 hours after the change.

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407 c. The department shall establish an online system through
 408 which sexual predators may securely access, submit, and update
 409 all electronic mail addresses; address and Internet identifiers
 410 and each Internet identifier's corresponding website home page
 411 or application software name; identifier information, home
 412 telephone numbers and cellular telephone numbers;~~;~~ employment
 413 information;~~;~~ and institution of higher education information.

414 (i) A sexual predator who intends to establish a permanent,
 415 temporary, or transient residence in another state or
 416 jurisdiction other than the State of Florida shall report in
 417 person to the sheriff of the county of current residence within
 418 48 hours before the date he or she intends to leave this state
 419 to establish residence in another state or jurisdiction or at
 420 least 21 days before the date he or she intends to travel if the
 421 intended residence of 5 days or more is outside of the United
 422 States. Any travel that is not known by the sexual predator 21
 423 days before the departure date must be reported to the sheriff's
 424 office as soon as possible before departure. The sexual predator
 425 shall provide to the sheriff the address, municipality, county,
 426 state, and country of intended residence. For international
 427 travel, the sexual predator shall also provide travel
 428 information, including, but not limited to, expected departure
 429 and return dates, flight number, airport of departure, cruise
 430 port of departure, or any other means of intended travel. The
 431 sheriff shall promptly provide to the department the information
 432 received from the sexual predator. The department shall notify
 433 the statewide law enforcement agency, or a comparable agency, in
 434 the intended state, jurisdiction, or country of residence of the
 435 sexual predator's intended residence. The failure of a sexual

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436 predator to provide his or her intended place of residence is
 437 punishable as provided in subsection (10).

438 (k)1. The department is responsible for the online
 439 maintenance of current information regarding each registered
 440 sexual predator. The department shall maintain hotline access
 441 for state, local, and federal law enforcement agencies to obtain
 442 instantaneous locator file and offender characteristics
 443 information on all released registered sexual predators for
 444 purposes of monitoring, tracking, and prosecution. The
 445 photograph, palm prints, and fingerprints do not have to be
 446 stored in a computerized format.

447 2. The department's sexual predator registration list,
 448 containing the information described in subparagraph (a)1., is a
 449 public record, unless otherwise made exempt or confidential and
 450 exempt from s. 119.07(1) and s. 24(a) of Art. I of the State
 451 Constitution. The department may disseminate this public
 452 information by any means deemed appropriate, including operating
 453 a toll-free telephone number for this purpose. When the
 454 department provides information regarding a registered sexual
 455 predator to the public, department personnel shall advise the
 456 person making the inquiry that positive identification of a
 457 person believed to be a sexual predator cannot be established
 458 unless a fingerprint comparison is made, and that it is illegal
 459 to use public information regarding a registered sexual predator
 460 to facilitate the commission of a crime.

461 3. The department shall adopt guidelines as necessary
 462 regarding the registration of sexual predators and the
 463 dissemination of information regarding sexual predators as
 464 required by this section.

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465 (8) VERIFICATION.—The department and the Department of
 466 Corrections shall implement a system for verifying the addresses
 467 of sexual predators. The system must be consistent with the
 468 federal Adam Walsh Child Protection and Safety Act of 2006 and
 469 any other federal standards applicable to such verification or
 470 required to be met as a condition for the receipt of federal
 471 funds by the state. The Department of Corrections shall verify
 472 the addresses of sexual predators who are not incarcerated but
 473 who reside in the community under the supervision of the
 474 Department of Corrections and shall report to the department any
 475 failure by a sexual predator to comply with registration
 476 requirements. County and local law enforcement agencies, in
 477 conjunction with the department, shall verify the addresses of
 478 sexual predators who are not under the care, custody, control,
 479 or supervision of the Department of Corrections, and may verify
 480 the addresses of sexual predators who are under the care,
 481 custody, control, or supervision of the Department of
 482 Corrections. Local law enforcement agencies shall report to the
 483 department any failure by a sexual predator to comply with
 484 registration requirements.

485 (a) A sexual predator shall report in person each year
 486 during the month of the sexual predator's birthday and during
 487 every third month thereafter to the sheriff's office in the
 488 county in which he or she resides or is otherwise located to
 489 reregister. The sheriff's office may determine the appropriate
 490 times and days for reporting by the sexual predator, which must
 491 be consistent with the reporting requirements of this paragraph.
 492 Reregistration must include any changes to the following
 493 information:

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494 1. Name; social security number; age; race; sex; date of
 495 birth; height; weight; tattoos or other identifying marks; hair
 496 and eye color; address of any permanent residence and address of
 497 any current temporary residence, within the state or out of
 498 state, including a rural route address and a post office box; if
 499 no permanent or temporary address, any transient residence
 500 within the state including the address, location or description
 501 of the transient residences, and dates of any current or known
 502 future temporary residence within the state or out of state; all
 503 electronic mail addresses; all ~~or~~ Internet identifiers and each
 504 Internet identifier's corresponding website home page or
 505 application software name required to be provided pursuant to
 506 subparagraph (6) (g) 5-; all home telephone numbers and cellular
 507 telephone numbers required to be provided pursuant to
 508 subparagraph (6) (g) 5-; date and place of any employment required
 509 to be provided pursuant to subparagraph (6) (g) 5-; the make,
 510 model, color, vehicle identification number (VIN), and license
 511 tag number of all vehicles owned; fingerprints; palm prints; and
 512 photograph. A post office box may not be provided in lieu of a
 513 physical residential address. The sexual predator shall also
 514 produce his or her passport, if he or she has a passport, and,
 515 if he or she is an alien, shall produce or provide information
 516 about documents establishing his or her immigration status. The
 517 sexual predator shall also provide information about any
 518 professional licenses he or she has.

519 2. If the sexual predator is enrolled or employed, whether
 520 for compensation or as a volunteer, at an institution of higher
 521 education in this state, the sexual predator shall also provide
 522 to the department the name, address, and county of each

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523 institution, including each campus attended, and the sexual
524 predator's enrollment, volunteer, or employment status.

525 3. If the sexual predator's place of residence is a motor
526 vehicle, trailer, mobile home, or manufactured home, as defined
527 in chapter 320, the sexual predator shall also provide the
528 vehicle identification number; the license tag number; the
529 registration number; and a description, including color scheme,
530 of the motor vehicle, trailer, mobile home, or manufactured
531 home. If the sexual predator's place of residence is a vessel,
532 live-aboard vessel, or houseboat, as defined in chapter 327, the
533 sexual predator shall also provide the hull identification
534 number; the manufacturer's serial number; the name of the
535 vessel, live-aboard vessel, or houseboat; the registration
536 number; and a description, including color scheme, of the
537 vessel, live-aboard vessel, or houseboat.

538 (10) PENALTIES.—

539 (a) Except as otherwise specifically provided, a sexual
540 predator who fails to register; who fails, after registration,
541 to maintain, acquire, or renew a driver license or an
542 identification card; who fails to provide required location
543 information; who fails to provide, electronic mail addresses
544 ~~address information before use~~, Internet identifiers, and each
545 Internet identifier's corresponding website home page or
546 application software name; who fails to provide ~~identifier~~
547 ~~information before use~~, all home telephone numbers and cellular
548 telephone numbers, employment information, change in status at
549 an institution of higher education, or change-of-name
550 information; who fails to make a required report in connection
551 with vacating a permanent residence; who fails to reregister as

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552 required; who fails to respond to any address verification
553 correspondence from the department within 3 weeks of the date of
554 the correspondence; who knowingly provides false registration
555 information by act or omission; or who otherwise fails, by act
556 or omission, to comply with the requirements of this section
557 commits a felony of the third degree, punishable as provided in
558 s. 775.082, s. 775.083, or s. 775.084.

559 (e) An arrest on charges of failure to register, the
560 service of an information or a complaint for a violation of this
561 section, or an arraignment on charges for a violation of this
562 section constitutes actual notice of the duty to register when
563 the predator has been provided and advised of his or her
564 statutory obligation to register under subsection (6). A sexual
565 predator's failure to immediately register as required by this
566 section following such arrest, service, or arraignment
567 constitutes grounds for a subsequent charge of failure to
568 register. A sexual predator charged with the crime of failure to
569 register who asserts, or intends to assert, a lack of notice of
570 the duty to register as a defense to a charge of failure to
571 register shall immediately register as required by this section.
572 A sexual predator who is charged with a subsequent failure to
573 register may not assert the defense of a lack of notice of the
574 duty to register.

575 Section 2. Paragraph (e) of subsection (1) of section
576 943.0435, Florida Statutes, is republished, and subsection (2),
577 paragraph (e) of subsection (4), and paragraph (c) of subsection
578 (14) of that section, are amended to read:

579 943.0435 Sexual offenders required to register with the
580 department; penalty.—

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

582 (e) "Internet identifier" has the same meaning as provided

583 in s. 775.21.

584 (2) Upon initial registration, a sexual offender shall:

585 (a) Report in person at the sheriff's office:

586 1. In the county in which the offender establishes or

587 maintains a permanent, temporary, or transient residence within

588 48 hours after:

589 a. Establishing permanent, temporary, or transient

590 residence in this state; or

591 b. Being released from the custody, control, or supervision

592 of the Department of Corrections or from the custody of a

593 private correctional facility; or

594 2. In the county where he or she was convicted within 48

595 hours after being convicted for a qualifying offense for

596 registration under this section if the offender is not in the

597 custody or control of, or under the supervision of, the

598 Department of Corrections, or is not in the custody of a private

599 correctional facility.

600

601 Any change in the information required to be provided pursuant

602 to paragraph (b), including, but not limited to, any change in

603 the sexual offender's permanent, temporary, or transient

604 residence; name; electronic mail addresses; Internet identifiers

605 and each Internet identifier's corresponding website home page

606 or application software name; home telephone numbers and

607 cellular telephone numbers; ~~and~~ employment information; and any

608 change in status at an institution of higher education, ~~required~~

609 ~~to be provided pursuant to paragraph (4)(c)~~, after the sexual

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610 offender reports in person at the sheriff's office must be

611 ~~reported accomplished~~ in the manner provided in subsections (4),

612 (7), and (8).

613 (b) Provide his or her name; date of birth; social security

614 number; race; sex; height; weight; hair and eye color; tattoos

615 or other identifying marks; fingerprints; palm prints;

616 photograph; employment information ~~required to be provided~~

617 ~~pursuant to paragraph (4)(c)~~; address of permanent or legal

618 residence or address of any current temporary residence, within

619 the state or out of state, including a rural route address and a

620 post office box; if no permanent or temporary address, any

621 transient residence within the state, address, location or

622 description, and dates of any current or known future temporary

623 residence within the state or out of state; the make, model,

624 color, vehicle identification number (VIN), and license tag

625 number of all vehicles owned; ~~all~~ home telephone numbers and

626 cellular telephone numbers ~~required to be provided pursuant to~~

627 ~~paragraph (4)(c)~~; ~~all~~ electronic mail addresses; ~~and all~~

628 Internet identifiers and each Internet identifier's

629 corresponding website home page or application software name

630 ~~required to be provided pursuant to paragraph (4)(c)~~; date and

631 place of each conviction; and a brief description of the crime

632 or crimes committed by the offender. A post office box may not

633 be provided in lieu of a physical residential address. The

634 sexual offender shall also produce his or her passport, if he or

635 she has a passport, and, if he or she is an alien, shall produce

636 or provide information about documents establishing his or her

637 immigration status. The sexual offender shall also provide

638 information about any professional licenses he or she has.

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639 1. If the sexual offender's place of residence is a motor
 640 vehicle, trailer, mobile home, or manufactured home, as defined
 641 in chapter 320, the sexual offender shall also provide to the
 642 department through the sheriff's office written notice of the
 643 vehicle identification number; the license tag number; the
 644 registration number; and a description, including color scheme,
 645 of the motor vehicle, trailer, mobile home, or manufactured
 646 home. If the sexual offender's place of residence is a vessel,
 647 live-aboard vessel, or houseboat, as defined in chapter 327, the
 648 sexual offender shall also provide to the department written
 649 notice of the hull identification number; the manufacturer's
 650 serial number; the name of the vessel, live-aboard vessel, or
 651 houseboat; the registration number; and a description, including
 652 color scheme, of the vessel, live-aboard vessel, or houseboat.

653 2. If the sexual offender is enrolled or employed, whether
 654 for compensation or as a volunteer, at an institution of higher
 655 education in this state, the sexual offender shall also provide
 656 to the department ~~pursuant to paragraph (4)(c)~~ the name,
 657 address, and county of each institution, including each campus
 658 attended, and the sexual offender's enrollment, volunteer, or
 659 employment status. The sheriff, the Department of Corrections,
 660 or the Department of Juvenile Justice shall promptly notify each
 661 institution of higher education of the sexual offender's
 662 presence and any change in the sexual offender's enrollment,
 663 volunteer, or employment status.

664 3. A sexual offender shall report in person to the
 665 sheriff's office within 48 hours after any change in vehicles
 666 owned to report those vehicle information changes.

667 (c) Provide any other information determined necessary by

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668 the department, including criminal and corrections records;
 669 nonprivileged personnel and treatment records; and evidentiary
 670 genetic markers, when available.

671
 672 When a sexual offender reports at the sheriff's office, the
 673 sheriff shall take a photograph, a set of fingerprints, and palm
 674 prints of the offender and forward the photographs, palm prints,
 675 and fingerprints to the department, along with the information
 676 provided by the sexual offender. The sheriff shall promptly
 677 provide to the department the information received from the
 678 sexual offender.

679 (4)

680 (e)1. A sexual offender shall register all electronic mail
 681 addresses and Internet identifiers, and each Internet
 682 identifier's corresponding website home page or application
 683 software name, with the department through the department's
 684 online system or in person at the sheriff's office within 48
 685 hours after ~~before~~ using such electronic mail addresses and
 686 Internet identifiers. If the sexual offender is in the custody
 687 or control, or under the supervision, of the Department of
 688 Corrections, he or she must report all electronic mail addresses
 689 and Internet identifiers, and each Internet identifier's
 690 corresponding website home page or application software name, to
 691 the Department of Corrections before using such electronic mail
 692 addresses or Internet identifiers. If the sexual offender is in
 693 the custody or control, or under the supervision, of the
 694 Department of Juvenile Justice, he or she must report all
 695 electronic mail addresses and Internet identifiers, and each
 696 Internet identifier's corresponding website home page or

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697 application software name, to the Department of Juvenile Justice
698 before using such electronic mail addresses or Internet
699 identifiers.

700 2. A sexual offender shall register all changes to home
701 telephone numbers and cellular telephone numbers, including
702 added and deleted numbers, all changes to employment
703 information, and all changes in status related to enrollment,
704 volunteering, or employment at institutions of higher education,
705 through the department's online system; in person at the
706 sheriff's office; in person at the Department of Corrections if
707 the sexual offender is in the custody or control, or under the
708 supervision, of the Department of Corrections; or in person at
709 the Department of Juvenile Justice if the sexual offender is in
710 the custody or control, or under the supervision, of the
711 Department of Juvenile Justice. All changes required to be
712 reported under this subparagraph must be reported within 48
713 hours after the change.

714 3. The department shall establish an online system through
715 which sexual offenders may securely access, submit, and update
716 all changes in status to electronic mail addresses; ~~address and~~
717 Internet identifiers and each Internet identifier's
718 corresponding website home page or application software name;
719 ~~identifier information~~, home telephone numbers and cellular
720 telephone numbers; ~~employment information~~; and institution of
721 higher education information.

722 (14)

723 (c) The sheriff's office may determine the appropriate
724 times and days for reporting by the sexual offender, which must
725 be consistent with the reporting requirements of this

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726 subsection. Reregistration must include any changes to the
727 following information:

728 1. Name; social security number; age; race; sex; date of
729 birth; height; weight; tattoos or other identifying marks; hair
730 and eye color; address of any permanent residence and address of
731 any current temporary residence, within the state or out of
732 state, including a rural route address and a post office box; if
733 no permanent or temporary address, any transient residence
734 within the state; address, location or description, and dates of
735 any current or known future temporary residence within the state
736 or out of state; all electronic mail addresses or Internet
737 identifiers and each Internet identifier's corresponding website
738 home page or application software name ~~required to be provided~~
739 ~~pursuant to paragraph (4)(e)~~; all home telephone numbers and
740 cellular telephone numbers ~~required to be provided pursuant to~~
741 ~~paragraph (4)(e)~~; employment information ~~required to be provided~~
742 ~~pursuant to paragraph (4)(e)~~; the make, model, color, vehicle
743 identification number (VIN), and license tag number of all
744 vehicles owned; fingerprints; palm prints; and photograph. A
745 post office box may not be provided in lieu of a physical
746 residential address. The sexual offender shall also produce his
747 or her passport, if he or she has a passport, and, if he or she
748 is an alien, shall produce or provide information about
749 documents establishing his or her immigration status. The sexual
750 offender shall also provide information about any professional
751 licenses he or she has.

752 2. If the sexual offender is enrolled or employed, whether
753 for compensation or as a volunteer, at an institution of higher
754 education in this state, the sexual offender shall also provide

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755 to the department the name, address, and county of each
756 institution, including each campus attended, and the sexual
757 offender's enrollment, volunteer, or employment status.

758 3. If the sexual offender's place of residence is a motor
759 vehicle, trailer, mobile home, or manufactured home, as defined
760 in chapter 320, the sexual offender shall also provide the
761 vehicle identification number; the license tag number; the
762 registration number; and a description, including color scheme,
763 of the motor vehicle, trailer, mobile home, or manufactured
764 home. If the sexual offender's place of residence is a vessel,
765 live-aboard vessel, or houseboat, as defined in chapter 327, the
766 sexual offender shall also provide the hull identification
767 number; the manufacturer's serial number; the name of the
768 vessel, live-aboard vessel, or houseboat; the registration
769 number; and a description, including color scheme, of the
770 vessel, live-aboard vessel, or houseboat.

771 4. Any sexual offender who fails to report in person as
772 required at the sheriff's office, who fails to respond to any
773 address verification correspondence from the department within 3
774 weeks of the date of the correspondence, who fails to report all
775 electronic mail addresses and all Internet identifiers, and each
776 Internet identifier's corresponding website home page or
777 application software name ~~before use~~, or who knowingly provides
778 false registration information by act or omission commits a
779 felony of the third degree, punishable as provided in s.
780 775.082, s. 775.083, or s. 775.084.

781 Section 3. For the purpose of incorporating the amendment
782 made by this act to section 775.21, Florida Statutes, in a
783 reference thereto, subsection (2) of section 943.0437, Florida

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784 Statutes, is reenacted to read:

785 943.0437 Commercial social networking websites.—

786 (2) The department may provide information relating to
787 electronic mail addresses and Internet identifiers, as defined
788 in s. 775.21, maintained as part of the sexual offender registry
789 to commercial social networking websites or third parties
790 designated by commercial social networking websites. The
791 commercial social networking website may use this information
792 for the purpose of comparing registered users and screening
793 potential users of the commercial social networking website
794 against the list of electronic mail addresses and Internet
795 identifiers provided by the department.

796 Section 4. For the purpose of incorporating the amendment
797 made by this act to section 775.21, Florida Statutes, in a
798 reference thereto, paragraph (c) of subsection (1) of section
799 944.606, Florida Statutes, is reenacted to read:

800 944.606 Sexual offenders; notification upon release.—

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

802 (c) "Internet identifier" has the same meaning as provided
803 in s. 775.21.

804 Section 5. For the purpose of incorporating the amendment
805 made by this act to section 775.21, Florida Statutes, in a
806 reference thereto, paragraph (e) of subsection (1) of section
807 944.607, Florida Statutes, is reenacted to read:

808 944.607 Notification to Department of Law Enforcement of
809 information on sexual offenders.—

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

811 (e) "Internet identifier" has the same meaning as provided
812 in s. 775.21.

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813 Section 6. For the purpose of incorporating the amendment
814 made by this act to section 775.21, Florida Statutes, in a
815 reference thereto, paragraph (c) of subsection (1) of section
816 985.481, Florida Statutes, is reenacted to read:

817 985.481 Sexual offenders adjudicated delinquent;
818 notification upon release.—

819 (1) As used in this section:

820 (c) "Internet identifier" has the same meaning as provided
821 in s. 775.21.

822 Section 7. For the purpose of incorporating the amendment
823 made by this act to section 775.21, Florida Statutes, in a
824 reference thereto, paragraph (e) of subsection (1) of section
825 985.4815, Florida Statutes, is reenacted to read:

826 985.4815 Notification to Department of Law Enforcement of
827 information on juvenile sexual offenders.—

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

829 (e) "Internet identifier" has the same meaning as provided
830 in s. 775.21.

831 Section 8. For the purpose of incorporating the amendment
832 made by this act to section 943.0435, Florida Statutes, in a
833 reference thereto, paragraph (a) of subsection (3) of section
834 944.606, Florida Statutes, is reenacted to read:

835 944.606 Sexual offenders; notification upon release.—

836 (3)(a) The department shall provide information regarding
837 any sexual offender who is being released after serving a period
838 of incarceration for any offense, as follows:

839 1. The department shall provide: the sexual offender's
840 name, any change in the offender's name by reason of marriage or
841 other legal process, and any alias, if known; the correctional

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842 facility from which the sexual offender is released; the sexual
843 offender's social security number, race, sex, date of birth,
844 height, weight, and hair and eye color; tattoos or other
845 identifying marks; address of any planned permanent residence or
846 temporary residence, within the state or out of state, including
847 a rural route address and a post office box; if no permanent or
848 temporary address, any transient residence within the state;
849 address, location or description, and dates of any known future
850 temporary residence within the state or out of state; date and
851 county of sentence and each crime for which the offender was
852 sentenced; a copy of the offender's fingerprints, palm prints,
853 and a digitized photograph taken within 60 days before release;
854 the date of release of the sexual offender; all electronic mail
855 addresses and all Internet identifiers required to be provided
856 pursuant to s. 943.0435(4)(e); employment information, if known,
857 provided pursuant to s. 943.0435(4)(e); all home telephone
858 numbers and cellular telephone numbers required to be provided
859 pursuant to s. 943.0435(4)(e); information about any
860 professional licenses the offender has, if known; and passport
861 information, if he or she has a passport, and, if he or she is
862 an alien, information about documents establishing his or her
863 immigration status. The department shall notify the Department
864 of Law Enforcement if the sexual offender escapes, absconds, or
865 dies. If the sexual offender is in the custody of a private
866 correctional facility, the facility shall take the digitized
867 photograph of the sexual offender within 60 days before the
868 sexual offender's release and provide this photograph to the
869 Department of Corrections and also place it in the sexual
870 offender's file. If the sexual offender is in the custody of a

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871 local jail, the custodian of the local jail shall register the
 872 offender within 3 business days after intake of the offender for
 873 any reason and upon release, and shall notify the Department of
 874 Law Enforcement of the sexual offender's release and provide to
 875 the Department of Law Enforcement the information specified in
 876 this paragraph and any information specified in subparagraph 2.
 877 that the Department of Law Enforcement requests.

878 2. The department may provide any other information deemed
 879 necessary, including criminal and corrections records,
 880 nonprivileged personnel and treatment records, when available.

881 Section 9. For the purpose of incorporating the amendment
 882 made by this act to section 943.0435, Florida Statutes, in
 883 references thereto, paragraph (a) of subsection (4), subsection
 884 (9), and paragraph (c) of subsection (13) of section 944.607,
 885 Florida Statutes, are reenacted to read:

886 944.607 Notification to Department of Law Enforcement of
 887 information on sexual offenders.—

888 (4) A sexual offender, as described in this section, who is
 889 under the supervision of the Department of Corrections but is
 890 not incarcerated shall register with the Department of
 891 Corrections within 3 business days after sentencing for a
 892 registrable offense and otherwise provide information as
 893 required by this subsection.

894 (a) The sexual offender shall provide his or her name; date
 895 of birth; social security number; race; sex; height; weight;
 896 hair and eye color; tattoos or other identifying marks; all
 897 electronic mail addresses and Internet identifiers required to
 898 be provided pursuant to s. 943.0435(4)(e); employment
 899 information required to be provided pursuant to s.

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900 943.0435(4)(e); all home telephone numbers and cellular
 901 telephone numbers required to be provided pursuant to s.
 902 943.0435(4)(e); the make, model, color, vehicle identification
 903 number (VIN), and license tag number of all vehicles owned;
 904 permanent or legal residence and address of temporary residence
 905 within the state or out of state while the sexual offender is
 906 under supervision in this state, including any rural route
 907 address or post office box; if no permanent or temporary
 908 address, any transient residence within the state; and address,
 909 location or description, and dates of any current or known
 910 future temporary residence within the state or out of state. The
 911 sexual offender shall also produce his or her passport, if he or
 912 she has a passport, and, if he or she is an alien, shall produce
 913 or provide information about documents establishing his or her
 914 immigration status. The sexual offender shall also provide
 915 information about any professional licenses he or she has. The
 916 Department of Corrections shall verify the address of each
 917 sexual offender in the manner described in ss. 775.21 and
 918 943.0435. The department shall report to the Department of Law
 919 Enforcement any failure by a sexual predator or sexual offender
 920 to comply with registration requirements.

921 (9) A sexual offender, as described in this section, who is
 922 under the supervision of the Department of Corrections but who
 923 is not incarcerated shall, in addition to the registration
 924 requirements provided in subsection (4), register and obtain a
 925 distinctive driver license or identification card in the manner
 926 provided in s. 943.0435(3), (4), and (5), unless the sexual
 927 offender is a sexual predator, in which case he or she shall
 928 register and obtain a distinctive driver license or

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929 identification card as required under s. 775.21. A sexual
 930 offender who fails to comply with the requirements of s.
 931 943.0435 is subject to the penalties provided in s. 943.0435(9).
 932 (13)

933 (c) The sheriff's office may determine the appropriate
 934 times and days for reporting by the sexual offender, which must
 935 be consistent with the reporting requirements of this
 936 subsection. Reregistration must include any changes to the
 937 following information:

938 1. Name; social security number; age; race; sex; date of
 939 birth; height; weight; tattoos or other identifying marks; hair
 940 and eye color; address of any permanent residence and address of
 941 any current temporary residence, within the state or out of
 942 state, including a rural route address and a post office box; if
 943 no permanent or temporary address, any transient residence;
 944 address, location or description, and dates of any current or
 945 known future temporary residence within the state or out of
 946 state; all electronic mail addresses and Internet identifiers
 947 required to be provided pursuant to s. 943.0435(4)(e); all home
 948 telephone numbers and cellular telephone numbers required to be
 949 provided pursuant to s. 943.0435(4)(e); employment information
 950 required to be provided pursuant to s. 943.0435(4)(e); the make,
 951 model, color, vehicle identification number (VIN), and license
 952 tag number of all vehicles owned; fingerprints; palm prints; and
 953 photograph. A post office box may not be provided in lieu of a
 954 physical residential address. The sexual offender shall also
 955 produce his or her passport, if he or she has a passport, and,
 956 if he or she is an alien, shall produce or provide information
 957 about documents establishing his or her immigration status. The

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958 sexual offender shall also provide information about any
 959 professional licenses he or she has.

960 2. If the sexual offender is enrolled or employed, whether
 961 for compensation or as a volunteer, at an institution of higher
 962 education in this state, the sexual offender shall also provide
 963 to the department the name, address, and county of each
 964 institution, including each campus attended, and the sexual
 965 offender's enrollment, volunteer, or employment status.

966 3. If the sexual offender's place of residence is a motor
 967 vehicle, trailer, mobile home, or manufactured home, as defined
 968 in chapter 320, the sexual offender shall also provide the
 969 vehicle identification number; the license tag number; the
 970 registration number; and a description, including color scheme,
 971 of the motor vehicle, trailer, mobile home, or manufactured
 972 home. If the sexual offender's place of residence is a vessel,
 973 live-aboard vessel, or houseboat, as defined in chapter 327, the
 974 sexual offender shall also provide the hull identification
 975 number; the manufacturer's serial number; the name of the
 976 vessel, live-aboard vessel, or houseboat; the registration
 977 number; and a description, including color scheme, of the
 978 vessel, live-aboard vessel or houseboat.

979 4. Any sexual offender who fails to report in person as
 980 required at the sheriff's office, who fails to respond to any
 981 address verification correspondence from the department within 3
 982 weeks of the date of the correspondence, who fails to report all
 983 electronic mail addresses or Internet identifiers before use, or
 984 who knowingly provides false registration information by act or
 985 omission commits a felony of the third degree, punishable as
 986 provided in s. 775.082, s. 775.083, or s. 775.084.

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987 Section 10. For the purpose of incorporating the amendment
 988 made by this act to section 943.0435, Florida Statutes, in a
 989 reference thereto, paragraph (a) of subsection (3) of section
 990 985.481, Florida Statutes, is reenacted to read:

991 985.481 Sexual offenders adjudicated delinquent;
 992 notification upon release.—

993 (3) (a) The department shall provide information regarding
 994 any sexual offender who is being released after serving a period
 995 of residential commitment under the department for any offense,
 996 as follows:

997 1. The department shall provide the sexual offender's name,
 998 any change in the offender's name by reason of marriage or other
 999 legal process, and any alias, if known; the correctional
 1000 facility from which the sexual offender is released; the sexual
 1001 offender's social security number, race, sex, date of birth,
 1002 height, weight, and hair and eye color; tattoos or other
 1003 identifying marks; the make, model, color, vehicle
 1004 identification number (VIN), and license tag number of all
 1005 vehicles owned; address of any planned permanent residence or
 1006 temporary residence, within the state or out of state, including
 1007 a rural route address and a post office box; if no permanent or
 1008 temporary address, any transient residence within the state;
 1009 address, location or description, and dates of any known future
 1010 temporary residence within the state or out of state; date and
 1011 county of disposition and each crime for which there was a
 1012 disposition; a copy of the offender's fingerprints, palm prints,
 1013 and a digitized photograph taken within 60 days before release;
 1014 the date of release of the sexual offender; all home telephone
 1015 numbers and cellular telephone numbers required to be provided

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1016 pursuant to s. 943.0435(4) (e); all electronic mail addresses and
 1017 Internet identifiers required to be provided pursuant to s.
 1018 943.0435(4) (e); information about any professional licenses the
 1019 offender has, if known; and passport information, if he or she
 1020 has a passport, and, if he or she is an alien, information about
 1021 documents establishing his or her immigration status. The
 1022 department shall notify the Department of Law Enforcement if the
 1023 sexual offender escapes, absconds, or dies. If the sexual
 1024 offender is in the custody of a private correctional facility,
 1025 the facility shall take the digitized photograph of the sexual
 1026 offender within 60 days before the sexual offender's release and
 1027 also place it in the sexual offender's file. If the sexual
 1028 offender is in the custody of a local jail, the custodian of the
 1029 local jail shall register the offender within 3 business days
 1030 after intake of the offender for any reason and upon release,
 1031 and shall notify the Department of Law Enforcement of the sexual
 1032 offender's release and provide to the Department of Law
 1033 Enforcement the information specified in this subparagraph and
 1034 any information specified in subparagraph 2. which the
 1035 Department of Law Enforcement requests.

1036 2. The department may provide any other information
 1037 considered necessary, including criminal and delinquency
 1038 records, when available.

1039 Section 11. For the purpose of incorporating the amendment
 1040 made by this act to section 943.0435, Florida Statutes, in
 1041 references thereto, paragraph (a) of subsection (4), subsection
 1042 (9), and paragraph (b) of subsection (13) of section 985.4815,
 1043 Florida Statutes, are reenacted to read:

1044 985.4815 Notification to Department of Law Enforcement of

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1045 information on juvenile sexual offenders.-

1046 (4) A sexual offender, as described in this section, who is
 1047 under the supervision of the department but who is not committed
 1048 shall register with the department within 3 business days after
 1049 adjudication and disposition for a registrable offense and
 1050 otherwise provide information as required by this subsection.

1051 (a) The sexual offender shall provide his or her name; date
 1052 of birth; social security number; race; sex; height; weight;
 1053 hair and eye color; tattoos or other identifying marks; the
 1054 make, model, color, vehicle identification number (VIN), and
 1055 license tag number of all vehicles owned; permanent or legal
 1056 residence and address of temporary residence within the state or
 1057 out of state while the sexual offender is in the care or custody
 1058 or under the jurisdiction or supervision of the department in
 1059 this state, including any rural route address or post office
 1060 box; if no permanent or temporary address, any transient
 1061 residence; address, location or description, and dates of any
 1062 current or known future temporary residence within the state or
 1063 out of state; all home telephone numbers and cellular telephone
 1064 numbers required to be provided pursuant to s. 943.0435(4)(e);
 1065 all electronic mail addresses and Internet identifiers required
 1066 to be provided pursuant to s. 943.0435(4)(e); and the name and
 1067 address of each school attended. The sexual offender shall also
 1068 produce his or her passport, if he or she has a passport, and,
 1069 if he or she is an alien, shall produce or provide information
 1070 about documents establishing his or her immigration status. The
 1071 offender shall also provide information about any professional
 1072 licenses he or she has. The department shall verify the address
 1073 of each sexual offender and shall report to the Department of

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1074 Law Enforcement any failure by a sexual offender to comply with
 1075 registration requirements.

1076 (9) A sexual offender, as described in this section, who is
 1077 under the care, jurisdiction, or supervision of the department
 1078 but who is not incarcerated shall, in addition to the
 1079 registration requirements provided in subsection (4), register
 1080 in the manner provided in s. 943.0435(3), (4), and (5), unless
 1081 the sexual offender is a sexual predator, in which case he or
 1082 she shall register as required under s. 775.21. A sexual
 1083 offender who fails to comply with the requirements of s.
 1084 943.0435 is subject to the penalties provided in s. 943.0435(9).

1085 (13)

1086 (b) The sheriff's office may determine the appropriate
 1087 times and days for reporting by the sexual offender, which must
 1088 be consistent with the reporting requirements of this
 1089 subsection. Reregistration must include any changes to the
 1090 following information:

1091 1. Name; social security number; age; race; sex; date of
 1092 birth; height; weight; hair and eye color; tattoos or other
 1093 identifying marks; fingerprints; palm prints; address of any
 1094 permanent residence and address of any current temporary
 1095 residence, within the state or out of state, including a rural
 1096 route address and a post office box; if no permanent or
 1097 temporary address, any transient residence; address, location or
 1098 description, and dates of any current or known future temporary
 1099 residence within the state or out of state; passport
 1100 information, if he or she has a passport, and, if he or she is
 1101 an alien, information about documents establishing his or her
 1102 immigration status; all home telephone numbers and cellular

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1103 telephone numbers required to be provided pursuant to s.
 1104 943.0435(4)(e); all electronic mail addresses and Internet
 1105 identifiers required to be provided pursuant to s.
 1106 943.0435(4)(e); name and address of each school attended;
 1107 employment information required to be provided pursuant to s.
 1108 943.0435(4)(e); the make, model, color, vehicle identification
 1109 number (VIN), and license tag number of all vehicles owned; and
 1110 photograph. A post office box may not be provided in lieu of a
 1111 physical residential address. The offender shall also provide
 1112 information about any professional licenses he or she has.

1113 2. If the sexual offender is enrolled or employed, whether
 1114 for compensation or as a volunteer, at an institution of higher
 1115 education in this state, the sexual offender shall also provide
 1116 to the department the name, address, and county of each
 1117 institution, including each campus attended, and the sexual
 1118 offender's enrollment, volunteer, or employment status.

1119 3. If the sexual offender's place of residence is a motor
 1120 vehicle, trailer, mobile home, or manufactured home, as defined
 1121 in chapter 320, the sexual offender shall also provide the
 1122 vehicle identification number; the license tag number; the
 1123 registration number; and a description, including color scheme,
 1124 of the motor vehicle, trailer, mobile home, or manufactured
 1125 home. If the sexual offender's place of residence is a vessel,
 1126 live-aboard vessel, or houseboat, as defined in chapter 327, the
 1127 sexual offender shall also provide the hull identification
 1128 number; the manufacturer's serial number; the name of the
 1129 vessel, live-aboard vessel, or houseboat; the registration
 1130 number; and a description, including color scheme, of the
 1131 vessel, live-aboard vessel, or houseboat.

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1132 4. Any sexual offender who fails to report in person as
 1133 required at the sheriff's office, who fails to respond to any
 1134 address verification correspondence from the department within 3
 1135 weeks after the date of the correspondence, or who knowingly
 1136 provides false registration information by act or omission
 1137 commits a felony of the third degree, punishable as provided in
 1138 ss. 775.082, 775.083, and 775.084.

1139 Section 12. For the purpose of incorporating the amendments
 1140 made by this act to sections 775.21 and 943.0435, Florida
 1141 Statutes, in references thereto, subsection (1) of section
 1142 794.056, Florida Statutes, is reenacted to read:

1143 794.056 Rape Crisis Program Trust Fund.—

1144 (1) The Rape Crisis Program Trust Fund is created within
 1145 the Department of Health for the purpose of providing funds for
 1146 rape crisis centers in this state. Trust fund moneys shall be
 1147 used exclusively for the purpose of providing services for
 1148 victims of sexual assault. Funds credited to the trust fund
 1149 consist of those funds collected as an additional court
 1150 assessment in each case in which a defendant pleads guilty or
 1151 nolo contendere to, or is found guilty of, regardless of
 1152 adjudication, an offense provided in s. 775.21(6) and (10)(a),
 1153 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 1154 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 1155 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 1156 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 1157 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 1158 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.
 1159 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 1160 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.

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1161 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),
 1162 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust
 1163 fund also shall include revenues provided by law, moneys
 1164 appropriated by the Legislature, and grants from public or
 1165 private entities.

1166 Section 13. For the purpose of incorporating the amendments
 1167 made by this act to sections 775.21 and 943.0435, Florida
 1168 Statutes, in references thereto, paragraph (g) of subsection (3)
 1169 of section 921.0022, Florida Statutes, is reenacted to read:

1170 921.0022 Criminal Punishment Code; offense severity ranking
 1171 chart.—

1172 (3) OFFENSE SEVERITY RANKING CHART
 1173 (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

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1179 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 3rd Medicaid provider fraud;
 (2)(b)1.a. \$10,000 or less.

409.920 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

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			license.	
1186	459.013(1)	3rd	Practicing osteopathic medicine without a license.	
1187	460.411(1)	3rd	Practicing chiropractic medicine without a license.	
1188	461.012(1)	3rd	Practicing podiatric medicine without a license.	
1189	462.17	3rd	Practicing naturopathy without a license.	
1190	463.015(1)	3rd	Practicing optometry without a license.	
1191	464.016(1)	3rd	Practicing nursing without a license.	
1192	465.015(2)	3rd	Practicing pharmacy without a license.	
1193	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.	
1194	467.201	3rd	Practicing midwifery without a license.	
1195				

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	468.366	3rd	Delivering respiratory care services without a license.	
1196	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.	
1197	483.901(7)	3rd	Practicing medical physics without a license.	
1198	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.	
1199	484.053	3rd	Dispensing hearing aids without a license.	
1200	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.	
1201	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.	
1202	560.125(5)(a)	3rd	Money services business by	

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			unauthorized person, currency	
			or payment instruments	
			exceeding \$300 but less than	
1203			\$20,000.	
	655.50(10)(b)1.	3rd	Failure to report financial	
			transactions exceeding \$300 but	
			less than \$20,000 by financial	
			institution.	
1204				
	775.21(10)(a)	3rd	Sexual predator; failure to	
			register; failure to renew	
			driver license or	
			identification card; other	
			registration violations.	
1205				
	775.21(10)(b)	3rd	Sexual predator working where	
			children regularly congregate.	
1206				
	775.21(10)(g)	3rd	Failure to report or providing	
			false information about a	
			sexual predator; harbor or	
			conceal a sexual predator.	
1207				
	782.051(3)	2nd	Attempted felony murder of a	
			person by a person other than	
			the perpetrator or the	
			perpetrator of an attempted	
			felony.	

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1208				
	782.07(1)	2nd	Killing of a human being by the	
			act, procurement, or culpable	
			negligence of another	
			(manslaughter).	
1209				
	782.071	2nd	Killing of a human being or	
			unborn child by the operation	
			of a motor vehicle in a	
			reckless manner (vehicular	
			homicide).	
1210				
	782.072	2nd	Killing of a human being by the	
			operation of a vessel in a	
			reckless manner (vessel	
			homicide).	
1211				
	784.045(1)(a)1.	2nd	Aggravated battery;	
			intentionally causing great	
			bodily harm or disfigurement.	
1212				
	784.045(1)(a)2.	2nd	Aggravated battery; using	
			deadly weapon.	
1213				
	784.045(1)(b)	2nd	Aggravated battery; perpetrator	
			aware victim pregnant.	
1214				
	784.048(4)	3rd	Aggravated stalking; violation	
			of injunction or court order.	

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1215	784.048(7)	3rd	Aggravated stalking; violation of court order.
1216	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
1217	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
1218	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
1219	784.081(1)	1st	Aggravated battery on specified official or employee.
1220	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
1221	784.083(1)	1st	Aggravated battery on code inspector.
1222	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
1223	787.06(3)(e)2.	1st	Human trafficking using

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			coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
1224	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
1225	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
1226	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1227	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1228	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
1229	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting

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				to commit a felony.
1230	790.23	1st,PBL		Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
1231	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.
1232	796.05(1)	1st		Live on earnings of a prostitute; 2nd offense.
1233	796.05(1)	1st		Live on earnings of a prostitute; 3rd and subsequent offense.
1234	800.04(5)(c)1.	2nd		Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
1235	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

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				or older.
1236	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.
1237	806.01(2)	2nd		Maliciously damage structure by fire or explosive.
1238	810.02(3)(a)	2nd		Burglary of occupied dwelling; unarmed; no assault or battery.
1239	810.02(3)(b)	2nd		Burglary of unoccupied dwelling; unarmed; no assault or battery.
1240	810.02(3)(d)	2nd		Burglary of occupied conveyance; unarmed; no assault or battery.
1241	810.02(3)(e)	2nd		Burglary of authorized emergency vehicle.
1242	812.014(2)(a)1.	1st		Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law

	591-03322-17		2017684c1	enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
1243	812.014(2)(b)2.	2nd		Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
1244	812.014(2)(b)3.	2nd		Property stolen, emergency medical equipment; 2nd degree grand theft.
1245	812.014(2)(b)4.	2nd		Property stolen, law enforcement equipment from authorized emergency vehicle.
1246	812.0145(2)(a)	1st		Theft from person 65 years of age or older; \$50,000 or more.
1247	812.019(2)	1st		Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
1248	812.131(2)(a)	2nd		Robbery by sudden snatching.
1249	812.133(2)(b)	1st		Carjacking; no firearm, deadly weapon, or other weapon.

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1250	817.034(4)(a)1.	1st		Communications fraud, value greater than \$50,000.
1251	817.234(8)(a)	2nd		Solicitation of motor vehicle accident victims with intent to defraud.
1252	817.234(9)	2nd		Organizing, planning, or participating in an intentional motor vehicle collision.
1253	817.234(11)(c)	1st		Insurance fraud; property value \$100,000 or more.
1254	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.
1255	817.535(2)(a)	3rd		Filing false lien or other unauthorized document.
1256	817.611(2)(b)	2nd		Traffic in or possess 15 to 49 counterfeit credit cards or related documents.

1257	591-03322-17		2017684c1
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1258	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.
1259	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
1260	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
1261	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
1262	838.015	2nd	Bribery.
1263	838.016	2nd	Unlawful compensation or reward for official behavior.
1264	838.021(3)(a)	2nd	Unlawful harm to a public

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

	591-03322-17		2017684c1
			servant.
1265	838.22	2nd	Bid tampering.
1266	843.0855(2)	3rd	Impersonation of a public officer or employee.
1267	843.0855(3)	3rd	Unlawful simulation of legal process.
1268	843.0855(4)	3rd	Intimidation of a public officer or employee.
1269	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
1270	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1271	872.06	2nd	Abuse of a dead human body.
1272	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
1273	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs,

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

	591-03322-17		2017684c1	
				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

	591-03322-17		2017684c1	
				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

	591-03322-17		2017684c1	
				200 grams.
1285	893.135(1)(e)1.	1st		Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
1286	893.135(1)(f)1.	1st		Trafficking in amphetamine, more than 14 grams, less than 28 grams.
1287	893.135 (1)(g)1.a.	1st		Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
1288	893.135 (1)(h)1.a.	1st		Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
1289	893.135 (1)(j)1.a.	1st		Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
1290	893.135 (1)(k)2.a.	1st		Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
1291	893.1351(2)	2nd		Possession of place for trafficking in or manufacturing

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

	591-03322-17		2017684c1	
				of controlled substance.
1292	896.101(5)(a)	3rd		Money laundering, financial transactions exceeding \$300 but less than \$20,000.
1293	896.104(4)(a)1.	3rd		Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
1294	943.0435(4)(c)	2nd		Sexual offender vacating permanent residence; failure to comply with reporting requirements.
1295	943.0435(8)	2nd		Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
1296	943.0435(9)(a)	3rd		Sexual offender; failure to comply with reporting requirements.
1297	943.0435(13)	3rd		Failure to report or providing false information about a sexual offender; harbor or

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

591-03322-17 2017684c1
 conceal a sexual offender.
 1298 943.0435 (14) 3rd Sexual offender; failure to
 report and reregister; failure
 to respond to address
 verification; providing false
 registration information.
 1299 944.607 (9) 3rd Sexual offender; failure to
 comply with reporting
 requirements.
 1300 944.607 (10) (a) 3rd Sexual offender; failure to
 submit to the taking of a
 digitized photograph.
 1301 944.607 (12) 3rd Failure to report or providing
 false information about a
 sexual offender; harbor or
 conceal a sexual offender.
 1302 944.607 (13) 3rd Sexual offender; failure to
 report and reregister; failure
 to respond to address
 verification; providing false
 registration information.
 1303 985.4815 (10) 3rd Sexual offender; failure to
 submit to the taking of a

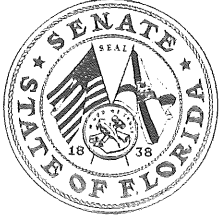
591-03322-17 2017684c1
 digitized photograph.
 1304 985.4815 (12) 3rd Failure to report or providing
 false information about a
 sexual offender; harbor or
 conceal a sexual offender.
 1305 985.4815 (13) 3rd Sexual offender; failure to
 report and reregister; failure
 to respond to address
 verification; providing false
 registration information.
 1306
 1307 Section 14. For the purpose of incorporating the amendments
 1308 made by this act to sections 775.21 and 943.0435, Florida
 1309 Statutes, in references thereto, section 938.085, Florida
 1310 Statutes, is reenacted to read:
 1311 938.085 Additional cost to fund rape crisis centers.—In
 1312 addition to any sanction imposed when a person pleads guilty or
 1313 nolo contendere to, or is found guilty of, regardless of
 1314 adjudication, a violation of s. 775.21(6) and (10) (a), (b), and
 1315 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
 1316 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.
 1317 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
 1318 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.
 1319 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.
 1320 796.07(2) (a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
 1321 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.
 1322 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.

591-03322-17

2017684c1

1323 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and
1324 (14)(c); or s. 985.701(1), the court shall impose a surcharge of
1325 \$151. Payment of the surcharge shall be a condition of
1326 probation, community control, or any other court-ordered
1327 supervision. The sum of \$150 of the surcharge shall be deposited
1328 into the Rape Crisis Program Trust Fund established within the
1329 Department of Health by chapter 2003-140, Laws of Florida. The
1330 clerk of the court shall retain \$1 of each surcharge that the
1331 clerk of the court collects as a service charge of the clerk's
1332 office.

1333 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

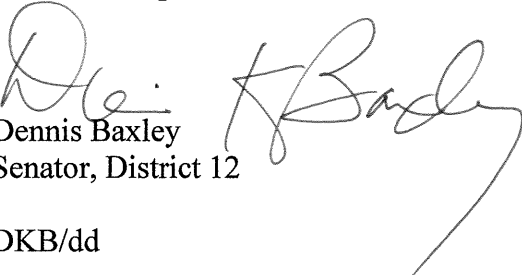
Dear Chairman Latvala,

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 Dr

Phone 850-219-3631

Street

Tallahassee FL 32308

Email bhoward@fpcr.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
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

Phone _____

Street

Tall

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing 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.

CS-004 (10/14/13)

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

Phone 850 410-7676

Street

TALCAHASSEE

FL

32302

Email JASON.JONES@FDLE.STATE.FL.US

City

State

Zip

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.

The Florida Senate
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.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	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 addresses⁵ 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 websites⁷ 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, URL²¹ 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

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 Commissioner²⁷ from taking any action based on the current definition of “Internet identifier.” However, the injunction does not preclude enforcement of the prior definition.

²³ The plaintiffs filed this action against current FDLE Commissioner Richard “Rick” L. Swearingen in his official capacity. Preliminary Injunction, *Doe I 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

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.

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.

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

By the Committee on Criminal Justice; and Senator Baxley

591-03323A-17

2017686c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; defining terms; requiring that
 4 electronic mail addresses and Internet identifiers of
 5 sexual predators or sexual offenders reported pursuant
 6 to specified laws be exempt from public records
 7 requirements; providing retroactive applicability;
 8 providing construction; providing for future review
 9 and repeal of the exemption; providing a statement of
 10 public necessity; providing a directive to the
 11 Division of Law Revision and Information; providing a
 12 contingent effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Paragraph (1) is added to subsection (5) of
 17 section 119.071, Florida Statutes, to read:
 18 119.071 General exemptions from inspection or copying of
 19 public records.—
 20 (5) OTHER PERSONAL INFORMATION.—
 21 (1)1. As used in this paragraph, the term:
 22 a. "Electronic mail address" has the same meaning as in s.
 23 668.602.
 24 b. "Internet identifier" has the same meaning as in s.
 25 775.21.
 26 2. Electronic mail addresses and Internet identifiers
 27 registered by sexual predators or sexual offenders and held by
 28 agencies pursuant to s. 775.21, s. 943.0435, s. 944.606, s.
 29 944.607, s. 985.481, or s. 985.4815 are exempt from s. 119.07(1)

Page 1 of 5

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

591-03323A-17

2017686c1

30 and s. 24(a), Art. I of the State Constitution. This exemption
 31 applies to records held before, on, or after the effective date
 32 of this act.
 33 3. This paragraph does not prohibit a law enforcement
 34 agency from confirming to a member of the public that an
 35 electronic mail address or Internet identifier reported pursuant
 36 to s. 775.21, s. 943.0435, s. 944.606, s. 944.607, s. 985.481,
 37 or s. 985.4815 is registered in the Department of Law
 38 Enforcement sexual offender and sexual predator registry.
 39 4. This paragraph is subject to the Open Government Sunset
 40 Review Act in accordance with s. 119.15 and shall stand repealed
 41 on October 2, 2022, unless reviewed and saved from repeal
 42 through reenactment by the Legislature.
 43 Section 2. (1) The Legislature finds that it is a public
 44 necessity that electronic mail addresses and Internet
 45 identifiers registered by sexual predators and sexual offenders
 46 and held by agencies pursuant to s. 775.21, s. 943.0435, s.
 47 944.606, s. 944.607, s. 985.481, or s. 985.4815, Florida
 48 Statutes, be made exempt from s. 119.071(1), Florida Statutes,
 49 and s. 24(a), Article I of the State Constitution. The
 50 Legislature finds that the exemption strikes an important
 51 balance between the government's legitimate interest in public
 52 safety and protecting individuals' rights afforded under the
 53 Constitution of the State of Florida and the First Amendment
 54 rights protected by the United States Constitution. The
 55 exemption maintains the ability of members of the public to
 56 confirm whether an electronic mail address or Internet
 57 identifier is associated with or is contained in the sexual
 58 offender and sexual predator registry without obtaining the

Page 2 of 5

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591-03323A-17

2017686c1

59 personal identifying information of the registrant associated
 60 with the electronic mail address or Internet identifier. This
 61 exemption allows members of the public access to safety
 62 information which assists them in making informed decisions
 63 regarding communicating or otherwise interacting with registered
 64 sexual predators and sexual offenders. Additionally, this
 65 exemption preserves the ability of criminal justice agencies to
 66 access valuable investigative information. Criminal justice
 67 agencies are tasked with the prevention of crimes to protect
 68 residents, particularly children, from sexual exploitation
 69 through investigating and bringing offenders to justice. As
 70 daily life necessitates increasing dependence upon access to the
 71 Internet, sexual exploitation through the use of the Internet
 72 grows as well. There is a nexus between commercial social
 73 networking sites and Internet sex crimes. Commercial social
 74 networking sites are widely used among youth and adults for
 75 introduction, communication, and publication of personal details
 76 that may be exploited. Additionally, locating missing children
 77 and sexual predators and sexual offenders who have evaded
 78 registration is greatly aided through the use of registered
 79 electronic mail addresses and Internet identifiers. Without this
 80 exemption, criminal justice agencies may lose access to
 81 information which has become a valuable investigative tool since
 82 the inception of this registration requirement. Absent a
 83 registration requirement for electronic mail addresses and
 84 Internet identifiers, investigative agencies will be severely
 85 hampered in the growing call to protect our residents from
 86 sexual exploitation online.

87 (2) The Legislature recognizes the importance of protecting

Page 3 of 5

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591-03323A-17

2017686c1

88 rights provided in the First Amendment to the United States
 89 Constitution for all citizens. Equally, the Legislature
 90 recognizes the importance of preserving the civil regulatory
 91 processes of sexual offender and sexual predator registration
 92 and ensuring criminal justice agencies have the critical
 93 resource of sexual offender and sexual predator electronic mail
 94 address and Internet identifier registration information
 95 necessary to protect our residents. Electronic mail addresses
 96 and Internet identifiers have an exceptional distinction from
 97 other registration requirements in that they are used as unique
 98 personal identifiers for speech and communication. Because of
 99 this distinction, a public records exemption is required to
 100 avoid any appearance of infringement on registrants'
 101 constitutional rights. If the ability to collect this
 102 information were prevented, it would greatly disrupt the ability
 103 of criminal justice agencies to use this essential information
 104 in combatting the prevalent problem of online sexual
 105 exploitation of children. For these reasons and for the
 106 preservation of and continued collection of this information,
 107 the Legislature finds that it is a public necessity that the
 108 electronic mail addresses and Internet identifiers continue to
 109 be registered by sexual predators and sexual offenders and held
 110 by agencies pursuant to ss. 775.21, 943.0435, 944.606, 944.607,
 111 985.481, and 985.4815, Florida Statutes, be exempt from public
 112 record requirements.

113 Section 3. The Division of Law Revision and Information is
 114 directed to replace the phrase "the effective date of this act"
 115 whenever it occurs in this act with the date the act becomes a
 116 law.

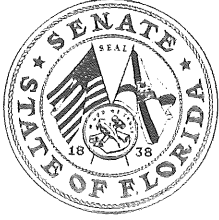
Page 4 of 5

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591-03323A-17

2017686c1

117 Section 4. This act shall take effect on the same date that
118 SB 684 or similar legislation takes effect, if such legislation
119 is adopted in the same legislative session or an extension
120 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

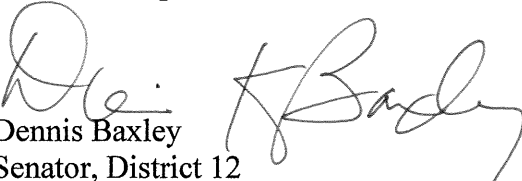
Dear Chairman Latvala,

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 Dr

Phone 850-219-3631

Street

Tallahassee FL 32308

City

State

Zip

Email bhoward@fpcra.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

Phone _____

Street

Tall
City

FL
State

32301
Zip

Email _____

Speaking: For Against Information

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

Representing 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.

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

Phone 850 910-7676

Street

TALLAHASSEE

City

FL

State

32302

Zip

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.

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.

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.

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



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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11 (d) "Total and permanent disability" means an impairment of
12 the mind or body which renders a first responder unable to
13 engage in a substantial gainful occupation and which is
14 reasonably certain to continue throughout his or her life.

15 (2) Any real estate that is owned and used as a homestead
16 by a person who has a total and permanent disability as a result
17 of an injury or injuries sustained in the line of duty while
18 serving as a first responder in this state or during an
19 operation in another state or country authorized by this state
20 or by a political subdivision of this state is exempt from
21 taxation, if the first responder is a permanent resident of this
22 state on January 1 of the year for which the exemption is being
23 claimed.

24 (3) An applicant may qualify for the exemption under this
25 section by applying by March 1, pursuant to subsection (4) or
26 subsection (5), to the property appraiser of the county where
27 the property is located.

28 (4) An applicant may qualify for the exemption under this
29 section by providing the employer certificate described in
30 paragraph (5)(b) and satisfying the requirements for the totally
31 and permanently disabled exemption in s. 196.101; however, for
32 purposes of this section, the applicant is not required to
33 satisfy the gross income requirement in s. 196.101(4)(a).

34 (5) An applicant may qualify for the exemption under this
35 section by providing all of the following documents to the
36 property appraiser, which serve as prima facie evidence that the
37 person is entitled to the exemption:

38 (a) Documentation from the Social Security Administration
39 stating that the applicant is totally and permanently disabled.



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40 The documentation must be provided to the property appraiser
41 within 3 months after issuance. An applicant who is not eligible
42 to receive a medical status determination from the Social
43 Security Administration due to his or her ineligibility for
44 Social Security benefits or Medicare benefits may provide
45 documentation from the Social Security Administration stating
46 that the applicant is not eligible to receive a medical status
47 determination from the Social Security Administration, and
48 provide physician certifications as required by paragraph (c)
49 from two professionally unrelated physicians, rather than the
50 one certification required by that paragraph.

51 (b)1. A certificate from the organization that employed the
52 applicant as a first responder or supervised the applicant as a
53 volunteer first responder at the time that the injury or
54 injuries occurred. The employer certificate must contain, at a
55 minimum:

- 56 a. The title of the person signing the certificate;
57 b. The name and address of the employing entity;
58 c. A description of the incident that caused the injury or
59 injuries;
60 d. The date and location of the incident; and
61 e. A statement that the first responder's injury or
62 injuries were:

63 (I) Directly and proximately caused by service in the line
64 of duty.

65 (II) Without willful negligence on the part of the first
66 responder.

67 (III) The sole cause of the first responder's total and
68 permanent disability.



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69 2. If the first responder's total and permanent disability
 70 was caused by a cardiac event, the employer must also certify
 71 that the requirements of subsection (6) are satisfied.

72 3. The employer certificate must be supplemented with
 73 extant documentation of the incident or event that caused the
 74 injury, such as an accident or incident report. The applicant
 75 may deliver the original employer certificate to the property
 76 appraiser's office or the employer may directly transmit the
 77 employer certificate to the applicable property appraiser.

78 (c) A certificate from a physician licensed in this state
 79 under chapter 458 or chapter 459 which certifies that the
 80 applicant has a total and permanent disability and that such
 81 disability renders the applicant unable to engage in any
 82 substantial gainful occupation due to an impairment of the mind
 83 or body, which condition is reasonably certain to continue
 84 throughout the life of the applicant. The physician certificate
 85 shall read as follows:

86
 87 FIRST RESPONDER'S
 88 PHYSICIAN CERTIFICATE OF
 89 TOTAL AND PERMANENT DISABILITY
 90

91 I, ... (name of physician) ..., a physician licensed pursuant to
 92 chapter 458 or chapter 459, Florida Statutes, hereby certify
 93 that Mr.....Mrs.....Miss.... Ms..... (applicant name and
 94 social security number) ..., is totally and permanently disabled
 95 due to an impairment of the mind or body, and such impairment
 96 renders him or her unable to engage in any substantial gainful
 97 occupation, which condition is reasonably certain to continue



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98 throughout his or her life. Mr.....Mrs.....Miss....
99 Ms.....(applicant name)... has the following mental or
100 physical condition(s):

101
102 It is my professional belief that within a degree of medical
103 certainty, the above-named condition(s) render
104 Mr.....Mrs.....Miss.... Ms.....(applicant name)... totally
105 and permanently disabled and that the foregoing statements are
106 true, correct, and complete to the best of my knowledge and
107 professional belief.

108
109 Signature....
110 Address...(print)...
111 Date....

112 Florida Board of Medicine or Osteopathic Medicine license number
113 Issued on.....

114
115 NOTICE TO TAXPAYER: Each Florida resident applying for an
116 exemption due to a total and permanent disability that occurred
117 in the line of duty while serving as a first responder must
118 present to the county property appraiser the required physician
119 certificate(s), the required documentation from the Social
120 Security Administration, and a certificate from the employer for
121 whom the applicant worked as a first responder at the time of
122 the injury or injuries, as required by section 196.102(5),
123 Florida Statutes. This form is to be completed by a licensed
124 Florida physician.

125
126 NOTICE TO TAXPAYER AND PHYSICIAN: Section 196.102(10), Florida



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127 Statutes, provides that any person who knowingly and willingly
 128 gives false information for the purpose of claiming the
 129 homestead exemption for totally and permanently disabled first
 130 responders commits a misdemeanor of the first degree, punishable
 131 by a term of imprisonment not exceeding 1 year or a fine not
 132 exceeding \$5,000, or both.

133 (6) A total and permanent disability that results from a
 134 cardiac event does not qualify for the exemption provided in
 135 this section unless the cardiac event occurs no later than 24
 136 hours after the first responder performed nonroutine stressful
 137 or strenuous physical activity in the line of duty and the first
 138 responder provides the employer with a certificate from the
 139 first responder's treating cardiologist for the cardiac event
 140 and pertinent supporting documentation showing that:

141 (a) The nonroutine stressful or strenuous activity directly
 142 and proximately caused the cardiac event that gave rise to the
 143 total and permanent disability; and

144 (b) The cardiac event was not caused by a preexisting
 145 vascular disease.

146 (7) An applicant who is granted the exemption under this
 147

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

149 And the title is amended as follows:

150 Delete line 2

151 and insert:

152 An act relating to an ad valorem tax exemption for
 153 first responders; amending s.



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.



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.



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57 196.081.

58 (2) Any real estate that is owned and used as a homestead
59 by a person who is totally and permanently disabled as a result
60 of an injury or injuries sustained in the line of duty while
61 serving as a first responder is exempt from taxation, if the
62 first responder is a permanent resident of this state on January
63 1 of the year for which the exemption is being claimed.

64 (3) An applicant may qualify for the exemption under this
65 section by applying by March 1, pursuant to subsection (4) or
66 subsection (5), to the property appraiser of the county where
67 the property is located.

68 (4) An applicant may qualify for the exemption under this
69 section by satisfying the requirements for the totally and
70 permanently disabled exemption in s. 196.101; however, for
71 purposes of this section, the applicant is not required to
72 satisfy the gross income requirement in s. 196.101(4)(a).

73 (5) An applicant may qualify for the exemption under this
74 section by providing all of the following documents, which serve
75 as prima facie evidence that the person is entitled to the
76 exemption:

77 (a) An award letter from the Social Security
78 Administration, based upon the applicant's total and permanent
79 disability, provided to the property appraiser within 3 months
80 after issuance.

81 (b)1. A certificate from the organization that employed the
82 applicant as a first responder at the time that the injury or
83 injuries occurred. The employer certificate must contain, at a
84 minimum:

85 a. The title of the person signing the certificate;



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86 b. The name and address of the employing entity;

87 c. A description of the incident that caused the injury or
88 injuries;

89 d. The date and location of the incident; and

90 e. A statement that the first responder's injury or
91 injuries were:

92 (I) Directly and proximately caused by service in the line
93 of duty.

94 (II) Without willful negligence on the part of the first
95 responder.

96 (III) The sole cause of the first responder's total and
97 permanent disability.

98 2. If the first responder's total and permanent disability
99 was caused by a cardiac event, the employer must also certify
100 that the requirements of subsection (6) are satisfied.

101 3. The employer certificate must be supplemented with
102 extant documentation of the incident or event that caused the
103 injury, such as an accident or incident report. The applicant
104 may deliver the original employer certificate to the property
105 appraiser's office or the employer may directly transmit the
106 employer certificate to the applicable property appraiser.

107 (c) A certificate from a physician licensed in this state
108 under chapter 458 or chapter 459 which certifies that the
109 applicant is totally and permanently disabled and that such
110 disability renders the applicant unable to engage in any
111 substantial gainful occupation due to an impairment of the mind
112 or body, which condition is reasonably certain to continue
113 throughout the life of the applicant. The physician certificate
114 shall read as follows:



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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



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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



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173 of any changes in his or her status with the Social Security
174 Administration or in employment or other relevant changes in
175 circumstances which affect his or her qualification for the
176 exemption.

177 (8) The tax exemption carries over to the benefit of the
178 surviving spouse as long as the surviving spouse holds the legal
179 or beneficial title to the homestead, permanently resides
180 thereon as specified in s. 196.031, and does not remarry. If the
181 surviving spouse sells the property, an exemption not to exceed
182 the amount granted under the most recent ad valorem tax roll may
183 be transferred to the new residence if it is used as the
184 surviving spouse's primary residence and he or she does not
185 remarry.

186 (9) An applicant may apply for the exemption before
187 producing the necessary documentation described in subsection
188 (4) or subsection (5). Upon receipt of the documentation, the
189 exemption must be granted as of the date of the original
190 application and the excess taxes paid must be refunded. Any
191 refund of excess taxes paid must be limited to those paid during
192 the 4-year period of limitation set forth in s. 197.182(1)(e).

193 (10) A person who knowingly or willfully gives false
194 information for the purpose of claiming the exemption provided
195 in this section commits a misdemeanor of the first degree,
196 punishable as provided in s. 775.082 or by a fine of not more
197 than \$5,000, or both.

198 (11) Notwithstanding s. 196.011 and this section, the
199 deadline for a first responder to file an application with the
200 property appraiser for an exemption under this section for the
201 2017 tax year is August 1, 2017.



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202 (12) If an application is not timely filed under subsection
203 (11), a property appraiser may grant the exemption if:

204 (a) The applicant files an application for the exemption on
205 or before the 25th day after the mailing of the notice required
206 under s. 194.011(1) by the property appraiser during the 2017
207 calendar year;

208 (b) The applicant is qualified for the exemption; and

209 (c) The applicant produces sufficient evidence, as
210 determined by the property appraiser, which demonstrates that
211 the applicant was unable to apply for the exemption in a timely
212 manner or otherwise demonstrates extenuating circumstances that
213 warrant granting the exemption.

214 (13) If the property appraiser denies an exemption under
215 subsection (11) or subsection (12), the applicant may file,
216 pursuant to s. 194.011(3), a petition with the value adjustment
217 board requesting that the exemption be granted. Notwithstanding
218 s. 194.013, the eligible first responder is not required to pay
219 a filing fee for such petition filed on or before December 31,
220 2017. Upon review of the petition, the value adjustment board
221 shall grant the exemption if it determines the applicant is
222 qualified and has demonstrated the existence of extenuating
223 circumstances warranting the exemption.

224 (14) The Department of Revenue may, and all conditions are
225 deemed to be met to, adopt emergency rules pursuant to ss.
226 120.536(1) and 120.54 to administer the application process for
227 the 2017 calendar year. This subsection expires August 30, 2018.

228 Section 3. This act operates retroactively to January 1,
229 2017.

230 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.

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

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1 A bill to be entitled
 2 An act relating to ad valorem taxation; amending s.
 3 196.011, F.S.; specifying the information to be
 4 included in an application for certain tax exemptions;
 5 creating s. 196.102, F.S.; providing definitions;
 6 providing an exemption from ad valorem taxation for
 7 certain first responders under specified conditions;
 8 providing an exemption from ad valorem taxation for
 9 certain surviving spouses of first responders who have
 10 died; specifying the documentation required to receive
 11 the exemption; providing a criminal penalty for
 12 knowingly or willingly giving false information for a
 13 certain purpose; granting rulemaking authority;
 14 specifying a deadline for applying for the exemption;
 15 authorizing property appraisers, under certain
 16 circumstances, to grant exemptions for untimely filed
 17 applications; providing procedures and requirements
 18 for petitioning value adjustment boards regarding
 19 denied exemptions; providing retroactive
 20 applicability; providing construction; providing an
 21 effective date.

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

24
 25 Section 1. Paragraph (b) of subsection (1) of section
 26 196.011, Florida Statutes, is amended to read:

27 196.011 Annual application required for exemption.—

28 (1)

29 (b) The form to apply for an exemption under s. 196.031, s.

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30 196.081, s. 196.091, s. 196.101, s. 196.102, s. 196.173, or s.
 31 196.202 must include a space for the applicant to list the
 32 social security number of the applicant and of the applicant's
 33 spouse, if any. If an applicant files a timely and otherwise
 34 complete application, and omits the required social security
 35 numbers, the application is incomplete. In that event, the
 36 property appraiser shall contact the applicant, who may refile a
 37 complete application by April 1. Failure to file a complete
 38 application by that date constitutes a waiver of the exemption
 39 privilege for that year, except as provided in subsection (7) or
 40 subsection (8).

41 Section 2. Section 196.102, Florida Statutes, is created to
 42 read:

43 196.102 Exemption for certain totally and permanently
 44 disabled first responders and their surviving spouses.—

45 (1) As used in this section, and not applicable to the
 46 payment of benefits under s. 112.19 or s. 112.191, the term:

47 (a) "Disabled" means a physical or cognitive impairment
 48 that constitutes or results in a substantial impediment to
 49 employment as a first responder. The term does not include a
 50 chronic condition or chronic disease, unless the injury
 51 sustained in the line of duty was the sole cause of the chronic
 52 condition or chronic disease.

53 (b) "First responder" means a law enforcement officer or
 54 correctional officer as defined in s. 943.10, a firefighter as
 55 defined in s. 633.102, or an emergency medical technician or
 56 paramedic as defined in s. 401.23 who is a full-time paid
 57 employee, part-time paid employee, or unpaid volunteer.

58 (c) "Cardiac event" means a heart attack, stroke or

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59 vascular rupture.

60 (d) "In the line of duty" means:

61 1. While engaging in activities within the course and scope
62 of employment as a first responder;

63 2. While performing an activity relating to fire
64 suppression and prevention;

65 3. While responding to a hazardous material emergency;

66 4. While performing rescue activity;

67 5. While providing emergency medical services;

68 6. While performing disaster relief activity;

69 7. While otherwise engaging in emergency response activity;

70 or

71 8. While engaging in a training exercise related to any of
72 the events or activities enumerated in this paragraph if the
73 training has been authorized by the employing entity.

74 (2) Any real estate that is owned and used as a homestead
75 by a person who is totally and permanently disabled as a result
76 of an injury or injuries sustained in the line of duty while
77 serving as a first responder is exempt from taxation if the
78 first responder is a permanent resident of this state on January
79 1 of the tax year for which the exemption is being claimed.

80 (3) The following documents, if provided to the property
81 appraiser of the county where the property is located, serve as
82 prima facie evidence that the first responder is entitled to the
83 exemption:

84 (a) A certificate of total and permanent disability, in the
85 form set forth in subsection (7), from two licensed physicians
86 of this state who are professionally unrelated, attesting to the
87 applicant's total and permanent disability.

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88 (b) A certificate from the organization that employed the
89 first responder at the time that the injury or injuries
90 occurred. The employer certificate must contain, at a minimum,
91 the information identified in subsection (8). The employer
92 certificate shall be supplemented with extant documentation of
93 the incident or event that caused the injury, such as an
94 accident or incident report. The first responder may deliver the
95 original employer certificate to the property appraiser's office
96 or the first responder's employer may directly transmit the
97 employer certificate to the applicable property appraiser.

98
99 Total and permanent disability that results from a cardiac event
100 does not qualify for the exemption provided in this section
101 unless the cardiac event occurs no later than 24 hours after the
102 first responder performed nonroutine stressful or strenuous
103 physical activity in the line of duty and the first responder
104 provides the employer with competent medical evidence showing
105 that:

106 1. The nonroutine stressful or strenuous activity directly
107 and proximately caused the cardiac event that gave rise to the
108 first responder's total and permanent disability; and

109 2. The cardiac event was not caused by preexisting vascular
110 disease.

111 (4)(a) Any real estate owned and used as a homestead by the
112 surviving spouse of a first responder who died but who had been
113 receiving a tax exemption under subsection (2), is exempt from
114 taxation.

115 (b) The tax exemption provided in paragraph (a) applies as
116 long as the surviving spouse holds the legal or beneficial title

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117 to the homestead, permanently resides thereon as specified in s.
 118 196.031, and does not remarry. If the surviving spouse sells the
 119 property, an exemption not to exceed the amount granted under
 120 the most recent ad valorem tax roll may be transferred to the
 121 new residence if it is used as the surviving spouse's primary
 122 residence and he or she does not remarry.

123 (5) A first responder may apply for the exemption before
 124 producing the necessary documentation described in paragraphs
 125 (3) (a) or (b). Upon receipt of the documentation, the exemption
 126 shall be granted as of the date of the original application and
 127 the excess taxes paid shall be refunded. Any refund of excess
 128 taxes paid shall be limited to those paid during the 4-year
 129 period of limitation set forth in s. 197.182(1) (e).

130 (6) The provisions of s. 196.011(9) waiving the requirement
 131 that an annual application be submitted to the property
 132 appraiser and providing lien authority are applicable to
 133 applications submitted pursuant to this section.

134 (7) The physician's certification shall read as follows:

135 PHYSICIAN'S CERTIFICATION OF
 136 TOTAL AND PERMANENT DISABILITY

137 I,...(name of physician)..., a physician licensed pursuant to
 138 chapter 458 or chapter 459, Florida Statutes, hereby certify
 139 that Mr.....Mrs.....Miss.... Ms.....(applicant name and
 140 social security number)...., is totally and permanently disabled,
 141 due to the following mental or physical condition(s):

142 ...(Physical or cognitive impairment that constitutes or results
 143 ...

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146 in a substantial impediment to employment as a first
 147 responder)...
 148 ...(Chronic condition or chronic disease solely caused by an
 149 injury sustained in the line of duty as a first responder)...

150 It is my professional belief that the above-named condition(s)
 151 render Mr.....Mrs.....Miss.... Ms.....(applicant name)...
 152 totally and permanently disabled, and that the foregoing
 153 statements are true, correct, and complete to the best of my
 154 knowledge and professional belief.

155 Signature....

156 Address...(print)...

157 Date....

158 Florida Board of Medicine or Osteopathic Medicine license number
 159 Issued on....

160 NOTICE TO TAXPAYER: Each Florida resident applying for an
 161 exemption due to a disability that occurred in the line of duty
 162 while serving as a first responder must present to the county
 163 property appraiser a copy of this form and a letter from the
 164 employer for whom the first responder worked at the time of the
 165 injury, as required by section 196.102(8), Florida Statutes.
 166 Each form is to be completed by a licensed Florida physician.

167 NOTICE TO TAXPAYER AND PHYSICIAN: Section 196.131(2), Florida
 168 Statutes, provides that any person who knowingly and willingly
 169 gives false information for the purpose of claiming homestead
 170 exemption commits a misdemeanor of the first degree, punishable

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175 by a term of imprisonment not exceeding 1 year or a fine not
 176 exceeding \$5,000, or both.
 177 (8) An employer for whom the first responder worked at the
 178 time of the injury must provide a certificate that, at a
 179 minimum, attests and includes:
 180 (a) The title of the person signing the certificate.
 181 (b) The name and address of the employing entity.
 182 (c) A description of the incident that caused the injury or
 183 injuries.
 184 (d) A statement that the first responder's injury or
 185 injuries were:
 186 1. Directly and proximately caused by service in the line
 187 of duty.
 188 2. Without willful negligence on the part of the first
 189 responder.
 190 3. The sole cause of the first responder's total and
 191 permanent disability.
 192 (9) Any person who knowingly or willfully gives false
 193 information for the purpose of claiming homestead exemption as
 194 set forth in this section commits a misdemeanor of the first
 195 degree, punishable as provided in s. 775.082 or by fine of not
 196 more than \$5,000, or both.
 197 (10) The Department of Revenue may, and all conditions are
 198 deemed to be met to, adopt emergency rules pursuant to ss.
 199 120.536(1) and 120.54 to administer the application process for
 200 the 2017 calendar year. This subsection is repealed on August
 201 30, 2018.
 202 (11) The Department of Revenue may adopt rules to
 203 administer this section.

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204 (12) Notwithstanding s. 196.011 and this section, the
 205 deadline for a first responder to file an application with the
 206 property appraiser for an exemption under this section for the
 207 2017 tax year is August 1, 2017.
 208 (13) If an application is not timely filed under subsection
 209 (12), a property appraiser may grant the exemption if:
 210 (a) The applicant files an application for the exemption on
 211 or before the 25th day after the mailing of the notice required
 212 under s. 194.011(1) by the property appraiser during the 2017
 213 calendar year;
 214 (b) The applicant is qualified for the exemption; and
 215 (c) The applicant produces sufficient evidence, as
 216 determined by the property appraiser, which demonstrates that
 217 the applicant was unable to apply for the exemption in a timely
 218 manner or otherwise demonstrates extenuating circumstances that
 219 warrant granting the exemption.
 220 (14) If the property appraiser denies an exemption under
 221 subsection (12) or subsection (13), the applicant may file,
 222 pursuant to s. 194.011(3), a petition with the value adjustment
 223 board requesting the exemption be granted. Notwithstanding s.
 224 194.013, the eligible first responder is not required to pay a
 225 filing fee for such petition filed on or before December 31,
 226 2017. Upon review of the petition, the value adjustment board
 227 shall grant the exemption if it determines the applicant is
 228 qualified and has demonstrated the existence of extenuating
 229 circumstances warranting the exemption.
 230 Section 3. This act operates retroactively to the 2017 tax
 231 roll and does not provide a basis for relief from an assessment
 232 of taxes not paid or create a right to a refund of taxes paid

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233 before January 1, 2017.

234 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.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Favorable</u>
4.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 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

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 device 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

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 believes²³” 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

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1 A bill to be entitled
 2 An act relating to the unlawful acquisition of utility
 3 services; amending s. 812.14, F.S.; revising the
 4 elements that constitute theft of utilities;
 5 clarifying that the presence of certain devices and
 6 alterations on the property of, and the actual
 7 possession by, a person constitutes prima facie
 8 evidence of a violation; clarifying that certain
 9 evidence of the manufacturing of a controlled
 10 substance in a leased dwelling constitutes prima facie
 11 evidence of a violation by an owner, lessor,
 12 sublessor; clarifying that specified circumstances
 13 create prima facie evidence of theft of utility
 14 services for the purpose of facilitating the
 15 manufacture of a controlled substance; revising such
 16 circumstances; specifying the types of damages that
 17 may be recovered as civil damages or restitution in a
 18 criminal case for damaging property of a utility or
 19 for the theft of electricity services; specifying the
 20 methods and bases used to determine and assess damages
 21 in a civil action or restitution in a criminal case
 22 for damaging property of a utility or for the theft of
 23 electricity services; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 812.14, Florida Statutes, is amended to
 28 read:
 29 812.14 Trespass and larceny with relation to utility

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

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30 fixtures; theft of utility services.-

31 (1) As used in this section, "utility" includes any person,
 32 firm, corporation, association, or political subdivision,
 33 whether private, municipal, county, or cooperative, which is
 34 engaged in the sale, generation, provision, or delivery of gas,
 35 electricity, heat, water, oil, sewer service, telephone service,
 36 telegraph service, radio service, or telecommunication service.

37 (2) A person may not ~~It is unlawful to:~~

38 (a) Willfully alter, tamper with, damage ~~injure~~, or
 39 knowingly allow damage to a ~~suffer to be injured~~ any meter,
 40 meter seal, pipe, conduit, wire, line, cable, transformer,
 41 amplifier, or other apparatus or device belonging to a utility
 42 line service in such a manner as to cause loss or damage or to
 43 prevent any meter installed for registering electricity, gas, or
 44 water from registering the quantity which otherwise would pass
 45 through the same; ~~to~~

46 (b) Alter the index or break the seal of any such meter; ~~in~~
 47 ~~any way to~~

48 (c) Hinder or interfere in any way with the proper action
 49 or accurate ~~just~~ registration of any such meter or device; ~~or~~

50 (d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste of,
 51 by any means, ~~of~~ electricity, ~~or~~ gas, or water passing through
 52 any such meter, wire, pipe, or fitting, or other appliance or
 53 appurtenance connected with or belonging to any such utility,
 54 after the ~~such~~ meter, wire, pipe, or fitting, or other appliance
 55 or appurtenance has been tampered with, injured, or altered;
 56 (e) ~~(b)~~ Connect ~~Make~~ or cause a ~~to be made~~ any connection
 57 with a ~~any~~ wire, main, service pipe or other pipes, appliance,
 58 or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without

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59 the consent of the utility, any service or any electricity, gas,
60 or water; ~~or to~~

61 (f) Cause a utility, without its consent, to supply any ~~to~~
62 ~~be supplied any~~ service or electricity, gas, or water ~~from a~~
63 ~~utility~~ to any person, firm, or corporation or any lamp, burner,
64 orifice, faucet, or other outlet ~~whatsoever~~, without reporting
65 the such service being reported for payment; ~~or~~

66 (g) Cause, without the consent of a utility, such
67 electricity, gas, or water to bypass ~~passing through~~ a meter
68 provided by the utility; or ~~and used for measuring and~~
69 ~~registering the quantity of electricity, gas, or water passing~~
70 ~~through the same.~~

71 (h)(e) Use or receive the direct benefit from the use of a
72 utility knowing, or under ~~such~~ circumstances that as would
73 induce a reasonable person to believe, that the such direct
74 benefits have resulted from any tampering with, altering of, or
75 injury to any connection, wire, conductor, meter, pipe, conduit,
76 line, cable, transformer, amplifier, or other apparatus or
77 device owned, operated, or controlled by such utility, for the
78 purpose of avoiding payment.

79 (3) The presence on the property of and in the actual
80 possession by of a person of any device or alteration that
81 prevents ~~affects the diversion or use of the services of a~~
82 ~~utility so as to avoid~~ the registration of the such use of
83 services by ~~or on~~ a meter installed by the utility or that
84 avoids ~~so as to otherwise avoid~~ the reporting of the use of
85 services ~~such service~~ for payment is prima facie evidence of the
86 violation of subsection (2) ~~this section~~ by such person.
87 However, this presumption does not apply unless:

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88 (a) The presence of the such a device or alteration can be
89 attributed only to a deliberate act in furtherance of an intent
90 to avoid payment for utility services;

91 (b) The person charged has received the direct benefit of
92 the reduction of the cost of the such utility services; and

93 (c) The customer or recipient of the utility services has
94 received the direct benefit of the such utility service for at
95 least one full billing cycle.

96 (4) A person who willfully violates subsection (2)
97 ~~paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c)~~ commits
98 theft, punishable as provided in s. 812.014.

99 (5) ~~It is unlawful for~~ A person or entity that owns,
100 leases, or subleases a property may not ~~to~~ permit a tenant or
101 occupant to use utility services knowing, or under such
102 circumstances as would induce a reasonable person to believe,
103 that such utility services have been connected in violation of
104 subsection (2) ~~paragraph (2)(a), paragraph (2)(b), or paragraph~~
105 ~~(2)(c).~~

106 (6) It is prima facie evidence that an owner, lessor, or
107 sublessor intended ~~It is prima facie evidence of a person's~~
108 ~~intent~~ to violate subsection (5) if:

109 (a) A controlled substance and materials for manufacturing
110 the controlled substance intended for sale or distribution to
111 another were found in a dwelling or structure;

112 (b) The dwelling or structure was ~~has been~~ visibly modified
113 to accommodate the use of equipment to grow cannabis marijuana
114 indoors, including, but not limited to, the installation of
115 equipment to provide additional air conditioning, equipment to
116 provide high-wattage lighting, or equipment for hydroponic

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117 cultivation; and

118 (c) The person or entity that owned, leased, or subleased
119 the dwelling or structure knew of, or did so under such
120 circumstances as would induce a reasonable person to believe in,
121 the presence of a controlled substance and materials for
122 manufacturing a controlled substance in the dwelling or
123 structure, regardless of whether the person or entity was
124 involved in the manufacture or sale of a controlled substance or
125 was in actual possession of the dwelling or structure.

126 (7) An owner, lessor, or sublessor ~~A person~~ who willfully
127 violates subsection (5) commits a misdemeanor of the first
128 degree, punishable as provided in s. 775.082 or s. 775.083.
129 Prosecution for a violation of subsection (5) does not preclude
130 prosecution for theft pursuant to subsection (8) or s. 812.014.

131 (8) Theft of utility services for the purpose of
132 facilitating the manufacture of a controlled substance is theft,
133 punishable as provided in s. 812.014.

134 (9) It is prima facie evidence of a person's intent to
135 violate subsection (8) if:

136 (a) The person committed theft of utility services
137 resulting in a dwelling, as defined in s. 810.011, or a
138 structure, as defined in s. 810.011, receiving unauthorized
139 access to utility services;

140 (b) A controlled substance and materials for manufacturing
141 the controlled substance were found in the dwelling or
142 structure; and

143 (c) The person knew or should have known of the presence of
144 the controlled substance and materials for manufacturing the
145 controlled substance in the dwelling or structure, regardless of

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146 whether the person was involved in the manufacture of the
147 controlled substance.

148 (10) Whoever is found in a civil action to have violated
149 this section is liable to the utility involved in an amount
150 equal to 3 times the amount of services unlawfully obtained or
151 \$3,000, whichever is greater.

152 (11) (a) For purposes of determining a defendant's liability
153 for civil damages under subsection (10) or criminal restitution
154 for the theft of electricity, the amount of civil damages or a
155 restitution order must include all of the following amounts:

156 1. The costs to repair or replace damaged property owned by
157 a utility, including reasonable labor costs.

158 2. Reasonable costs for the use of specialized equipment to
159 investigate or calculate the amount of unlawfully obtained
160 electricity services, including reasonable labor costs.

161 3. The amount of unlawfully obtained electricity services.

162 (b) A prima facie showing of the amount of unlawfully
163 obtained electricity services may be based on any methodology
164 reasonably relied upon by a utility to estimate such loss. The
165 methodology may consider the estimated start date of the theft
166 and the estimated daily or hourly use of electricity. Once a
167 prima facie showing has been made, the burden shifts to the
168 defendant to demonstrate that the loss is other than that
169 claimed by the utility.

170 1. The estimated start date of a theft may be based upon
171 one or more of the following:

172 a. The date of an overload notification from a transformer,
173 or the tripping of a transformer, which the utility reasonably
174 believes was overloaded as a result of the theft of electricity.

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- 175 b. The date the utility verified a substantive difference
 176 between the amount of electricity used at a property and the
 177 amount billed to the account holder.
- 178 c. The date the utility or a law enforcement officer
 179 located a tap or other device bypassing a meter.
- 180 d. The date the utility or a law enforcement officer
 181 observed or verified meter tampering.
- 182 e. The maturity of a cannabis crop found in a dwelling or
 183 structure using unlawfully obtained electricity services the
 184 utility or a law enforcement officer reasonably believes to have
 185 been grown in the dwelling or structure.
- 186 f. The date the utility or a law enforcement agency
 187 received a report of suspicious activity potentially indicating
 188 the presence of the unlawful cultivation of cannabis in a
 189 dwelling or structure or the date a law enforcement officer or
 190 an employee or contractor of a utility observed such suspicious
 191 activity.
- 192 g. The date when a utility observed a significant change in
 193 metered energy usage.
- 194 h. The date when an account with the utility was opened for
 195 a property that receives both metered and unlawfully obtained
 196 electricity services.
- 197 i. Any other fact or data reasonably relied upon by the
 198 utility to estimate the start date of a theft of electricity.
- 199 2. The estimated average daily or hourly use of the
 200 electricity may be based upon any, or a combination, of the
 201 following:
- 202 a. The load imposed by the fixtures, appliances, or
 203 equipment powered by unlawfully obtained electricity services.

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- 204 b. Recordings by the utility of the amount of electricity
 205 used by a property or the difference between the amount used and
 206 the amount billed.
- 207 c. A comparison of the amount of electricity historically
 208 used by the property and the amount billed while the property
 209 was using unlawfully obtained electricity.
- 210 d. A reasonable analysis of a meter that was altered or
 211 tampered with to prevent the creation of an accurate record of
 212 the amount of electricity obtained.
- 213 e. Any other fact or data reasonably relied upon by
 214 utilities to estimate the amount of unlawfully obtained
 215 electricity services.
- 216 (12) A court order requiring a defendant to pay restitution
 217 for damages to the property of a utility or for the theft of
 218 electricity need only be based on a conviction for a criminal
 219 offense that is causally connected to the damages or losses and
 220 bears a significant relationship to those damages or losses. A
 221 conviction for a violation of this section is not a prerequisite
 222 for a restitution order. Criminal offenses that bear a
 223 significant relationship and are causally connected to a
 224 violation of this section include, but are not limited to,
 225 offenses relating to the unlawful cultivation of cannabis in a
 226 dwelling or structure if the theft of electricity was used to
 227 facilitate the growth of the cannabis.
- 228 (13) The amount of restitution that a defendant may be
 229 ordered to pay is not limited by the monetary threshold of any
 230 criminal charge on which the restitution order is based.
- 231 (14)(11) This section does not apply to licensed and
 232 certified electrical contractors while such persons are

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233 performing usual and ordinary service in accordance with
234 recognized standards.

235 Section 2. This act shall take effect October 1, 2017.

236

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

Phone 877-6166

Street

TLH

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing 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.

The Florida Senate
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) owns³ 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

¹ Chapter 2003-159, L.O.F.

² Section 343.54, F.S.

³ Florida East Coast Industries (FEI) is the holding company for FECR. Fortress Investment Group acquired FEI 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 FEI. 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

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 assistance 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/141-4002%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 Agreement³¹ 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:

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 MiamiCentral³⁵ 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 AAF³⁶ 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 infrastructure³⁷ 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 to 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.

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 FECCR 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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11 include patrons at any station; commercial or residential
12 tenants of the developments in and around the stations or their
13 invitees; or any third parties performing work at a station or
14 in the rail corridor, such as employees and invitees of PI or
15 related entities, utilities, and fiber optic companies or
16 others, or invitees or employees of the department or any county
17 or municipality.

18 (h) "Freight rail service" means any and all uses and
19 purposes that are ancillary or related to current and future
20 freight rail operations on, along, over, under, and across the
21 rail corridor, including operating trains, rail cars, business
22 cars, locomotives, hi-rail vehicles, and other rail equipment
23 for the movement of freight in overhead and local service;
24 interchanging rail cars with other freight railroads; providing
25 pickups, setoffs, transloading services, or storage in transit;
26 and any and all other activities that are ancillary or related
27 to the transportation of freight on or along the rail corridor.

28 (i) "Intercity passenger rail service" means all passenger
29 service on the rail corridor other than commuter rail service
30 and is characterized by trains making less frequent stops along
31 the rail corridor than the commuter rail service makes.

32 (j) "Joint infrastructure" means any portion or segment of
33 the rail corridor which does not contain tracks or
34 infrastructure designated for the exclusive use of the
35 authority, AAF, or FECR and portions of the MiamiCentral station
36 used by both AAF and SFRTA, including, but not limited to,
37 stairs, elevators, and escalators.

38 (k) "Limited covered accident" means:
39 1. A collision directly between the trains, locomotives,



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40 rail cars, or rail equipment of SFRTA and FECR only, where the
41 collision is caused by or arising from the willful misconduct of
42 FECR or its subsidiaries, agents, licensees, employees,
43 officers, or directors, as adjudicated pursuant to a final and
44 unappealable court order, or if punitive damages or exemplary
45 damages are awarded due to the conduct of FECR or its
46 subsidiaries, agents, licensees, employees, officers, or
47 directors, as adjudicated pursuant to a final and unappealable
48 court order; or

49 2. A collision directly between the trains, locomotives,
50 rail cars, or rail equipment of SFRTA and AAF only, if the
51 collision is caused by or arising from the willful misconduct of
52 AAF or its subsidiaries, agents, licensees, employees, officers,
53 or directors, as adjudicated pursuant to a final and
54 unappealable court order, or if punitive damages or exemplary
55 damages are awarded due to the conduct of AAF or its
56 subsidiaries, agents, licensees, employees, officers, or
57 directors, as adjudicated pursuant to a final and unappealable
58 court order.

59 (1) "MiamiCentral" means the primary All Aboard Florida
60 station located in downtown Miami, which includes exclusive
61 areas used by the authority for commuter rail service.

62 (m) "Non-SFRTA commuter rail service" means AAF's
63 operation, or an AAF third-party designee's operation, of trains
64 in any commuter rail service on the rail corridor which is not
65 SFRTA's commuter rail service. The term does not include:

66 1. Any service operated by the authority between the
67 MiamiCentral station and any stations in Miami-Dade County,
68 Broward County, Palm Beach County, or points north on the FECR



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69 rail corridor; and

70 2. SFRTA's commuter rail service on the South Florida Rail
71 Corridor owned by the department.

72 (n) "Non-SFRTA commuter rail service operator" means the
73 operator of any non-SFRTA commuter rail service.

74 (o) "Other train" means a train that is not SFRTA's train,
75 FECR's train, AAF's train, a train of a non-SFRTA commuter rail
76 service operator, or a train of any other operator of intercity
77 rail passenger service and must be treated as a train of the
78 entity that made the initial request for the train to operate on
79 the rail corridor.

80 (p) "PI" means FDG Flagler Station II, LLC, which has an
81 easement on the rail corridor for nonrail uses.

82 (q) "Rail corridor" means the portion of a linear
83 contiguous strip of real property which is used for rail service
84 and owned by FECR or owned or controlled by AAF. The term
85 applies only when the authority has, by contract, assumed the
86 obligation to forever protect, defend, indemnify, and hold
87 harmless FECR, AAF, or their successors, in accordance with
88 subsection (2), and acquired an easement interest, a lease, a
89 right to operate, or a right of access. The term includes
90 structures essential to railroad operations, including the land,
91 structures, improvements, rights-of-way, easements, rail lines,
92 rail beds, guideway structures, switches, yards, parking
93 facilities, power relays, switching houses, rail stations, any
94 ancillary development, and any other facilities or equipment
95 used for the purposes of construction, operation, or maintenance
96 of a railroad that provides rail service.

97 (r) "Rail corridor invitee" means any person who is on or



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98 about the rail corridor in which the AAF, SFRTA, or non-SFRTA
99 commuter rail service operator has an easement interest, a
100 lease, a right to operate, or a right of access and who is:

101 1. Present at the behest of an AAF, an SFRTA, an FECR, or
102 the non-SFRTA commuter rail service operator for any purpose;

103 2. Otherwise entitled to be on or about the rail corridor;
104 or

105 3. Meeting, assisting, or in the company of a person
106 described in subparagraph 1. or subparagraph 2.

107 (s) "SFRTA" means the South Florida Regional Transportation
108 Authority.

109 (t) "SFRTA rail corridor invitee" means any rail corridor
110 invitee who is SFRTA's commuter rail passenger or is otherwise
111 present on the rail corridor at the request of, pursuant to a
112 contract with, for the purpose of doing business with, or at the
113 behest of SFRTA. The term does not include patrons at any
114 station, except those patrons who are also SFRTA's commuter rail
115 passengers; any person present on the rail corridor who is a
116 patron of the non-SFRTA commuter rail service or is meeting or
117 assisting a person who is a patron of the non-SFRTA commuter
118 rail service; commercial or residential tenants of the
119 developments in and around the stations or their invitees; or
120 any third parties performing work at a station or in the rail
121 corridor, such as employees and invitees of PI or related
122 entities, utilities, and fiber optic companies or others or
123 invitees or employees of the department or any county or
124 municipality.



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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 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



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56 invitee who is an AAF intercity rail passenger or is otherwise
57 present on the rail corridor at the request of, pursuant to a
58 contract with, or otherwise for the purpose of doing business
59 with or at the behest of AAF, including persons who are vendors
60 or employees of vendors at the MiamiCentral station or any other
61 station that AAF may construct on the rail corridor. The term
62 does not include patrons at any station, except those patrons
63 who are also AAF's intercity rail passengers; commercial or
64 residential tenants of the developments in and around the
65 stations or their invitees; or any third parties performing work
66 at a station or in the rail corridor, such as employees and
67 invitees of PI or related entities, utilities, and fiber optic
68 companies, or invitees or employees of the department or any
69 county or municipality.

70 (d) "Commuter rail passenger" means any person, ticketed or
71 unticketed, using the commuter rail service on the rail
72 corridor:

73 1. On board trains, locomotives, rail cars, or rail
74 equipment employed in commuter rail service or entraining
75 thereon and detraining therefrom;

76 2. On or about the rail corridor for any purpose related to
77 the commuter rail service, including parking or purchasing
78 tickets therefor and coming to, waiting for, and leaving from
79 locomotives, rail cars, or rail equipment; or

80 3. Meeting, assisting, or in the company of any person
81 described in subparagraph 1. or subparagraph 2.

82 (e) "Commuter rail service" means the operation of the
83 authority's trains transporting passengers and making frequent
84 stops within urban areas and their immediate suburbs along the



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85 rail corridor for the purpose of passengers entraining and
86 detraining, and including the nonrevenue movement of trains for
87 storage or maintenance. The term does not include the operation
88 of trains by AAF transporting passengers in intercity passenger
89 rail service between passenger rail stations established by AAF
90 at Miami-Dade, Fort Lauderdale, West Palm Beach, or future
91 stations, but shall include the provision of non-SFRTA commuter
92 rail service by AAF or a third party designated by AAF,
93 including SFRTA.

94 (f) "Existing IRIS crossing" means the existing, at-grade
95 railroad crossing between the SFRC and the rail corridor located
96 in Miami-Dade County.

97 (g) "Florida East Coast Railway" or "FECR" means Florida
98 East Coast Railway, LLC, or its successors and assigns.

99 (h) "FECR rail corridor invitee" means any rail corridor
100 invitee who is present on the rail corridor at the request of,
101 pursuant to a contract with, or otherwise for the purpose of
102 doing business with or at the behest of FECR. The term does not
103 include patrons at any station; commercial or residential
104 tenants of the developments in and around the stations or their
105 invitees; or any third parties performing work at a station or
106 in the rail corridor, such as employees and invitees of PI or
107 related entities, utilities, and fiber optic companies or
108 others, or invitees or employees of the department or any county
109 or municipality.

110 (i) "Freight rail service" means any and all uses and
111 purposes that are ancillary or related to current and future
112 freight rail operations on, along, over, under, and across the
113 rail corridor, including operating trains, rail cars, business



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114 cars, locomotives, hi-rail vehicles, and other rail equipment
115 for the movement of freight in overhead and local service;
116 interchanging rail cars with other freight railroads; providing
117 pickups, setoffs, transloading services, or storage in transit;
118 and any and all other activities that are ancillary or related
119 to the transportation of freight on or along the rail corridor.

120 (j) "Intercity passenger rail service" means all passenger
121 service on the rail corridor other than commuter rail service
122 and is characterized by trains making less frequent stops along
123 the rail corridor than the commuter rail service does.

124 (k) "Joint infrastructure" means any portion or segment of
125 the rail corridor which does not contain tracks or
126 infrastructure designated for the exclusive use of the
127 authority, AAF, or FECR and portions of the MiamiCentral station
128 used by both AAF and SFRTA, including, but not limited to,
129 stairs, elevators, and escalators.

130 (l) "Limited covered accident" means:

131 1. A collision directly between the trains, locomotives,
132 rail cars, or rail equipment of SFRTA and FECR only, where the
133 collision is caused by or arising from the willful misconduct of
134 FECR or its subsidiaries, agents, licensees, employees,
135 officers, or directors, as adjudicated pursuant to a final and
136 unappealable court order, or if punitive damages or exemplary
137 damages are awarded due to the conduct of FECR or its
138 subsidiaries, agents, licensees, employees, officers, or
139 directors, as adjudicated pursuant to a final and unappealable
140 court order; or

141 2. A collision directly between the trains, locomotives,
142 rail cars, or rail equipment of SFRTA and AAF only, if the



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153 collision is caused by or arising from the willful misconduct of
154 AAF or its subsidiaries, agents, licensees, employees, officers,
155 or directors, as adjudicated pursuant to a final and
156 unappealable court order, or if punitive damages or exemplary
157 damages are awarded due to the conduct of AAF or its
158 subsidiaries, agents, licensees, employees, officers, or
159 directors, as adjudicated pursuant to a final and unappealable
160 court order.

161 (m) "MiamiCentral" means the primary All Aboard Florida
162 station located in downtown Miami, which includes exclusive
163 areas used by the authority for commuter rail service.

164 (n) "Non-SFRTA commuter rail service" means AAF's
165 operation, or an AAF third-party designee's operation, of trains
166 in any commuter rail service on the rail corridor which is not
167 SFRTA's commuter rail service. The term does not include:

168 1. Any service operated by the authority between the
169 MiamiCentral station and any stations in Miami-Dade County,
170 Broward County, Palm Beach County, or points north on the FECR
171 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.



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172 (q) "Passenger easement" means a permanent, perpetual, and
173 exclusive easement on, along, over, under, or across the rail
174 corridor for commuter rail service.
175 (r) "PI" means FDG Flagler Station II, LLC, which has an
176 easement on the rail corridor for nonrail uses.
177 (s) "Rail corridor" means the portion of a linear
178 contiguous strip of real property which is used for rail service
179 and owned by FECR or owned or controlled by AAF. The term
180 applies only when the authority has, by contract, assumed the
181 obligation to forever protect, defend, indemnify, and hold
182 harmless FECR, AAF, or their successors, in accordance with
183 subsection (2), and acquired an easement interest, a lease, a
184 right to operate, or a right of access. The term includes
185 structures essential to railroad operations, including the land,
186 structures, improvements, rights-of-way, easements, rail lines,
187 rail beds, guideway structures, switches, yards, parking
188 facilities, power relays, switching houses, rail stations, any
189 ancillary development, and any other facilities or equipment
190 used for the purposes of construction, operation, or maintenance
191 of a railroad that provides rail service.
192 (t) "Rail corridor invitee" means any person who is on or
193 about the rail corridor in which the AAF, SFRTA, or the non-
194 SFRTA commuter rail service operator has an easement interest, a
195 lease, a right to operate, or a right of access, and who is:
196 1. Present at the behest of an AAF, an SFRTA, a FECR, or
197 the non-SFRTA commuter rail service operator for any purpose;
198 2. Otherwise entitled to be on or about the rail corridor;
199 or
200 3. Meeting, assisting, or in the company of a person



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201 described in subparagraph 1. or subparagraph 2.
202 (u) "SFRC" means South Florida Rail Corridor.
203 (v) "South Florida Regional Transportation Authority" or
204 "SFRTA" means the authority.
205 (w) "SFRTA rail corridor invitee" means any rail corridor
206 invitee who is SFRTA's commuter rail passenger or is otherwise
207 present on the rail corridor at the request of, pursuant to a
208 contract with, for the purpose of doing business with, or at the
209 behest of SFRTA. The term does not include patrons at any
210 station, except those patrons who are also SFRTA's commuter rail
211 passengers; any person present on the rail corridor who is a
212 patron of the non-SFRTA commuter rail service or is meeting or
213 assisting a person who is a patron of the non-SFRTA commuter
214 rail service; commercial or residential tenants of the
215 developments in and around the stations or their invitees; or
216 any third parties performing work at a station or in the rail
217 corridor, such as employees and invitees of PI or related
218 entities, utilities, and fiber optic companies or others, or
219 invitees or employees of the department or any county or
220 municipality.
221 (2) The authority, in conjunction with the operation of a
222 commuter rail service on a rail corridor, has the power to
223 assume the following obligations:
224 (a) To indemnify AAF and FECR in accordance with the terms
225 specified in this paragraph for so long as AAF and FECR or their
226 successors in interest agree to indemnify the authority in
227 accordance with the terms specified in this paragraph.
228 1. Except as specifically provided in this paragraph, the
229 authority shall protect, defend, indemnify, and hold harmless



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230 FECR, its officers, agents, employees, successors, and assigns
231 from and against any liability, cost, and expense, including,
232 but not limited to, SFRTA's commuter rail passengers and rail
233 corridor invitees in, on, or about the rail corridor, regardless
234 of whether the loss, damage, destruction, injury, or death
235 giving rise to any such liability, cost, or expense is caused in
236 whole or in part, and to whatever nature or degree, by the
237 fault, failure, negligence, misconduct, nonfeasance, or
238 misfeasance of FECR or its officers, agents, employees,
239 successors, and assigns;

240 2. Except as specifically provided in this paragraph, the
241 authority shall protect, defend, indemnify, and hold harmless
242 AAF and its officers, agents, employees, successors, and assigns
243 from and against any liability, cost, and expense, including,
244 but not limited to, SFRTA commuter rail passengers and SFRTA
245 rail corridor invitees in, on, or about the rail corridor,
246 regardless of whether the loss, damage, destruction, injury, or
247 death giving rise to any such liability, cost, or expense is
248 caused in whole or in part, and to whatever nature or degree, by
249 the fault, failure, negligence, misconduct, nonfeasance, or
250 misfeasance of AAF or its officers, agents, employees,
251 successors, and assigns; or

252 3. The assumption of liability by the authority may not in
253 any instance exceed the following parameters of allocation of
254 risk:

255 a. The authority shall be solely responsible for any loss,
256 injury, or damage to SFRTA commuter rail passengers, or to SFRTA
257 rail corridor invitees or trespassers, other than passengers or
258 invitees of the non-SFRTA commuter rail service, regardless of



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259 circumstances or cause, subject to the terms and provisions of
260 this paragraph.

261 b. FECR shall, with respect to a limited covered accident,
262 protect, defend, and indemnify SFRTA for the amount of the self-
263 insurance retention account.

264 c. AAF shall, with respect to a limited covered accident,
265 protect, defend, and indemnify SFRTA for the amount of the self-
266 insurance retention account.

267 d. When only one train is involved in an incident,
268 including incidents with trespassers or at at-grade crossings,
269 the authority shall be solely responsible for any loss, injury,
270 or damage if the train is an SFRTA train.

271 e. When an incident occurs with only FECR's train involved,
272 including incidents with trespassers or at at-grade crossings,
273 FECR shall be solely responsible for any loss, injury, or
274 damage, except for SFRTA's commuter rail passengers, SFRTA
275 employees, and SFRTA rail corridor invitees.

276 f. When an incident occurs with only AAF's train involved,
277 including incidents with trespassers or at at-grade crossings,
278 AAF shall be solely responsible for any loss, injury, or damage,
279 except for SFRTA's commuter rail passengers, SFRTA employees,
280 and SFRTA rail corridor invitees.

281 g. For the purposes of this paragraph:

282 (I) An "other train" shall be treated as the train of the
283 entity that made the initial request for the train to operate on
284 the rail corridor.

285 (II) In an incident involving any other train that is not
286 an SFRTA train, the other train shall be treated as an SFRTA
287 train solely for purposes of any allocation of liability



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288 between:

289 (A) SFRTA and FECR. SFRTA and FECR shall share
290 responsibility equally as to third parties outside the rail
291 corridor who incur loss, injury, or damage as a result of any
292 incident involving both SFRTA's train and FECR's train and the
293 allocation as between SFRTA and FECR, regardless of whether the
294 other train is treated as an SFRTA train, shall remain one-half
295 each as to third parties outside the rail corridor who incur
296 loss, injury, or damage as a result of the incident. The
297 involvement of any other train shall not alter the sharing of
298 equal responsibility as to third parties outside the rail
299 corridor who incur loss, injury, or damage as a result of the
300 incident.

301 (B) SFRTA and AAF. SFRTA and AAF shall share responsibility
302 equally as to third parties outside the rail corridor who incur
303 loss, injury, or damage as a result of any incident involving
304 both an SFRTA train and AAF's train and the allocation as
305 between SFRTA and AAF, regardless of whether the other train is
306 treated as an SFRTA train, shall remain one-half each as to
307 third parties outside the rail corridor who incur loss, injury,
308 or damage as a result of the incident. The involvement of any
309 other train shall not alter the sharing of equal responsibility
310 as to third parties outside the rail corridor who incur loss,
311 injury, or damage as a result of the incident.

312 h. When more than one train is involved in an incident:

313 (I) If only an SFRTA train and a FECR train, or only an
314 other train that is an SFRTA train by definition and a FECR
315 train, are involved in an incident, SFRTA shall be responsible
316 for its property, all SFRTA's commuter rail passengers, SFRTA



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317 employees, and SFRTA rail corridor invitees. FECR shall be
318 responsible for its property and all of its employees and FECR
319 rail corridor invitees. SFRTA and FECR shall each share one-half
320 responsibility as to the joint infrastructure and rail corridor
321 invitees who are not SFRTA rail corridor invitees or FECR rail
322 corridor invitees, including, but not limited to, trespassers or
323 third parties outside the rail corridor who incur loss, injury,
324 or damage as a result of the incident.

325 (II) If only an SFRTA train and an AAF train, or only an
326 other train that is by definition an SFRTA train and an AAF
327 train, are involved in an incident, SFRTA shall be responsible
328 for its property, all SFRTA's commuter rail passengers, SFRTA
329 employees, and SFRTA rail corridor invitees. AAF shall be
330 responsible for its property and all of its employees, AAF's
331 intercity rail passengers, and AAF rail corridor invitees. SFRTA
332 and AAF shall each share one-half responsibility as to the joint
333 infrastructure and rail corridor invitees who are not SFRTA rail
334 corridor invitees or AAF rail corridor invitees, including, but
335 not limited to, trespassers or third parties outside the rail
336 corridor who incur loss, injury, or damage as a result of the
337 incident.

338 (III) If a FECR train, an SFRTA train, and an AAF train are
339 involved in an incident, SFRTA shall be responsible for its
340 property, all SFRTA's commuter rail passengers, SFRTA employees,
341 and SFRTA rail corridor invitees. AAF shall be responsible for
342 its property and all of its employees, AAF's intercity rail
343 passengers, and AAF rail corridor invitees. FECR shall be
344 responsible for its property and all of its employees and FECR
345 rail corridor invitees. SFRTA, FECR, and AAF shall each share



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346 one-third responsibility as to the joint infrastructure and rail
347 corridor invitees who are not SFRTA rail corridor invitees, AAF
348 rail corridor invitees, or FECR rail corridor invitees,
349 including, but not limited to, trespassers or third parties
350 outside the rail corridor who incur loss, injury, or damage as a
351 result of the incident.

352 (IV) If an SFRTA train, a FECR train, and an AAF train are
353 involved in an incident, the allocation of liability among
354 SFRTA, FECR, and AAF shall be one-third each as to third parties
355 outside the rail corridor who incur loss, injury, or damage as a
356 result of the incident.

357 (V) If an SFRTA train, a FECR train, and any other train
358 are involved in an incident, the allocation of liability among
359 SFRTA, FECR, and the other train shall be one-third each as to
360 third parties outside the rail corridor who incur loss, injury,
361 or damage as a result of the incident.

362 (VI) If an SFRTA train, an AAF train, and any other train
363 are involved in an incident, the allocation of liability among
364 SFRTA, AAF, and the other train shall be one-third each as to
365 third parties outside the rail corridor who incur loss, injury,
366 or damage as a result of the incident.

367 i. Notwithstanding anything to the contrary set forth in
368 this paragraph, SFRTA is not obligated to indemnify FECR and AAF
369 for any amount in excess of the insurance coverage limit.
370 Whether or not SFRTA maintains the insurance coverage required
371 pursuant to paragraph (b) to cover the indemnification
372 obligations of this paragraph, SFRTA shall remain responsible
373 for the indemnification obligations set forth in this paragraph
374 up to the insurance coverage limit.



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375 j. If the non-SFRTA commuter rail service is provided by an
376 entity under contract with AAF, SFRTA may elect, at its sole
377 discretion, to provide the same insurance coverage and to
378 indemnify and hold harmless any non-SFRTA commuter rail service
379 operator to the same extent that it provides such insurance or
380 indemnification to AAF pursuant to this section.

381 (b) To purchase railroad liability insurance of \$295
382 million per occurrence, which amount shall be adjusted in
383 accordance with applicable law up to the insurance coverage
384 limit, with a \$5 million self-insurance retention account that
385 shall be composed of and defined as the "SFRTA insurance
386 program." The SFRTA insurance program may, at SFRTA's sole
387 discretion, cover the obligations described in this section or
388 any other service operated by SFRTA on a rail corridor. Because
389 the self-insurance retention account is a part of the SFRTA
390 insurance program, all definitions, terms, conditions,
391 restrictions, exclusions, obligations, and duties included in
392 any and all of the policies of insurance procured by SFRTA for
393 the SFRTA insurance program shall apply to the self-insurance
394 retention account and its application to claims against the
395 applicable insureds. SFRTA shall name FECR and AAF as insureds
396 on any policies it procures pursuant to this section at no cost
397 to AAF and FECR and ensure that all policies shall have a waiver
398 of exclusion for punitive damages and coverage for claims made
399 pursuant to the Federal Employers Liability Act, 45 U.S.C. s. 51
400 et seq. Such policies must also include terrorism coverage,
401 pollution coverage, including, but not limited to, coverage
402 applicable in the event of a railroad accident, a derailment, or
403 an overturn, and evacuation expense coverage.



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404 Section 2. Section 343.52, Florida Statutes, is reordered
405 and amended to read:

406 343.52 Definitions.—As used in this part, the term:

407 ~~(2)(1)~~ "Authority" means the South Florida Regional
408 Transportation Authority.

409 ~~(3)(2)~~ "Board" means the governing body of the authority.

410 ~~(1)(3)~~ "Area served" means Miami-Dade, Broward, and Palm
411 Beach Counties. However, this area may be expanded by mutual
412 consent of the authority and the board of county commissioners
413 of Monroe County. The authority may not expand into any
414 additional counties without the department's prior written
415 approval.

416 ~~(4)~~ "Department" means the Department of Transportation.

417 ~~(8)(4)~~ "Transit system" means a system used for the
418 transportation of people and goods by means of, without
419 limitation, a street railway, an elevated railway having a fixed
420 guideway, a commuter railroad, a subway, motor vehicles, or
421 motor buses, and includes a complete system of tracks, stations,
422 and rolling stock necessary to effectuate passenger service to
423 or from the surrounding regional municipalities.

424 ~~(7)(5)~~ "Transit facilities" means property, avenues of
425 access, equipment, or buildings built and installed in Miami-
426 Dade, Broward, and Palm Beach Counties which are required to
427 support a transit system.

428 (6) "Member" means the individuals constituting the board.

429 ~~(5)(7)~~ "Feeder transit services" means a transit system
430 that transports passengers to or from stations within or across
431 counties.

432 Section 3. Paragraph (d) of subsection (2) of section



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433 343.53, Florida Statutes, is amended to read:

434 343.53 South Florida Regional Transportation Authority.—

435 (2) The governing board of the authority shall consist of
436 10 voting members, as follows:

437 (d) If the authority's service area is expanded pursuant to
438 s. 343.54(6) ~~s. 343.54(5)~~, the county containing the new service
439 area shall have two members appointed to the board as follows:

440 1. The county commission of the county shall elect a
441 commissioner as that commission's representative on the board.
442 The commissioner must be a member of the county commission when
443 elected and for the full extent of his or her term.

444 2. The Governor shall appoint a citizen member to the board
445 who is not a member of the county commission but who is a
446 resident and a qualified elector of that county.

447 Section 4. Present subsections (4) and (5) of section
448 343.54, Florida Statutes, are renumbered as subsections (5) and
449 (6), respectively, and a new subsection (4) is added to that
450 section, to read:

451 343.54 Powers and duties.—

452 (4) Notwithstanding any other provision of this part, the
453 authority may not enter into, extend, or renew any contract or
454 other agreement that may be funded, in whole or in part, with
455 funds provided by the department without the prior review and
456 written approval by the department of the authority's proposed
457 expenditures.

458 Section 5. Paragraph (c) of subsection (4) of section
459 343.58, Florida Statutes, is amended to read:

460 343.58 County funding for the South Florida Regional
461 Transportation Authority.—



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462 (4) Notwithstanding any other provision of law to the
463 contrary and effective July 1, 2010, until as provided in
464 paragraph (d), the department shall transfer annually from the
465 State Transportation Trust Fund to the South Florida Regional
466 Transportation Authority the amounts specified in subparagraph
467 (a)1. or subparagraph (a)2.

468 (c)1. Funds provided to the authority by the department
469 under this subsection constitute state financial assistance
470 provided to a nonstate entity to carry out a state project
471 subject to the provisions of s. 215.97 and s. 215.971. The
472 department shall provide the funds in accordance with the terms
473 of a written agreement to be entered into between the authority
474 and the department which shall provide for department review,
475 approval and audit of authority expenditure of such funds, and
476 shall include such other provisions as are required by
477 applicable law. The department is specifically authorized to
478 agree to advance the authority one-fourth of the total funding
479 provided under this subsection for a state fiscal year at the
480 beginning of each state fiscal year, with monthly payments over
481 the fiscal year on a reimbursement basis as supported by
482 invoices and such additional documentation and information as
483 the department may reasonably require, and a reconciliation of
484 the advance against remaining invoices in the last quarter of
485 the fiscal year may not be committed by the authority without
486 the approval of the department, which may not be unreasonably
487 withheld. At least 90 days before advertising any procurement or
488 renewing any existing contract that will rely on state funds for
489 payment, the authority shall notify the department of the
490 proposed procurement or renewal and the proposed terms thereof.



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491 ~~If the department, within 60 days after receipt of notice,~~
492 ~~objects in writing to the proposed procurement or renewal,~~
493 ~~specifying its reasons for objection, the authority may not~~
494 ~~proceed with the proposed procurement or renewal. Failure of the~~
495 ~~department to object in writing within 60 days after notice~~
496 ~~shall be deemed consent. This requirement does not impair or~~
497 ~~cause the authority to cancel contracts that exist as of June~~
498 ~~30, 2012.~~

499 2. To enable the department to evaluate the authority's
500 proposed uses of state funds, the authority shall annually
501 provide the department with its proposed budget for the
502 following authority fiscal year and shall promptly provide the
503 department with any additional documentation or information
504 required by the department for its evaluation of the proposed
505 uses of the state funds.

506 Section 6. Paragraph (d) is added to subsection (17) of
507 section 341.302, Florida Statutes, to read:

508 341.302 Rail program; duties and responsibilities of the
509 department.—The department, in conjunction with other
510 governmental entities, including the rail enterprise and the
511 private sector, shall develop and implement a rail program of
512 statewide application designed to ensure the proper maintenance,
513 safety, revitalization, and expansion of the rail system to
514 assure its continued and increased availability to respond to
515 statewide mobility needs. Within the resources provided pursuant
516 to chapter 216, and as authorized under federal law, the
517 department shall:

518 (17) In conjunction with the acquisition, ownership,
519 construction, operation, maintenance, and management of a rail



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520 corridor, have the authority to:

521 (d) Without altering any of the rights granted to the
522 department under this section, agree to assume the obligations
523 to indemnify and insure, pursuant to s. 343.545, freight rail
524 service, intercity passenger rail service, and commuter rail
525 service on a department-owned rail corridor, whether ownership
526 is in fee or by easement, or on a rail corridor where the
527 department has the right to operate.

528

529 Neither the assumption by contract to protect, defend,
530 indemnify, and hold harmless; the purchase of insurance; nor the
531 establishment of a self-insurance retention fund shall be deemed
532 to be a waiver of any defense of sovereign immunity for torts
533 nor deemed to increase the limits of the department's or the
534 governmental entity's liability for torts as provided in s.
535 768.28. The requirements of s. 287.022(1) shall not apply to the
536 purchase of any insurance under this subsection. The provisions
537 of this subsection shall apply and inure fully as to any other
538 governmental entity providing commuter rail service and
539 constructing, operating, maintaining, or managing a rail
540 corridor on publicly owned right-of-way under contract by the
541 governmental entity with the department or a governmental entity
542 designated by the department. Notwithstanding any law to the
543 contrary, procurement for the construction, operation,
544 maintenance, and management of any rail corridor described in
545 this subsection, whether by the department, a governmental
546 entity under contract with the department, or a governmental
547 entity designated by the department, shall be pursuant to s.
548 287.057 and shall include, but not be limited to, criteria for



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549 the consideration of qualifications, technical aspects of the
550 proposal, and price. Further, any such contract for design-build
551 shall be procured pursuant to the criteria in s. 337.11(7).

552

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.	<u>Price</u>	<u>Miller</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Pitts</u>	<u>Pitts</u>	<u>ATD</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pitts</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 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) owns³ 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

¹ Chapter 2003-159, L.O.F.

² Section 343.54, F.S.

³ Florida East Coast Industries (FEI) is the holding company for FECR. Fortress Investment Group acquired FEI 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 FEI. 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

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 assistance 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/141-4002%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 Agreement³¹ 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:

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 MiamiCentral³⁵ 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 AAF³⁶ 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 infrastructure³⁷ 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

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59 equipment employed in commuter rail service or entraining
60 thereon and detaining therefrom;

61 2. On or about the rail corridor for any purpose related to
62 the commuter rail service, including parking or purchasing
63 tickets therefor and coming to, waiting for, and leaving from
64 locomotives, rail cars, or rail equipment; or

65 3. Meeting, assisting, or in the company of any person
66 described in subparagraph 1. or subparagraph 2.

67 (e) "Commuter rail service" means the operation of the
68 authority's trains transporting passengers and making frequent
69 stops within urban areas and their immediate suburbs along the
70 rail corridor for the purpose of passengers entraining and
71 detaining, and including the nonrevenue movement of trains for
72 storage or maintenance. The term does not include the operation
73 of trains by AAF transporting passengers in intercity passenger
74 rail service between passenger rail stations established by AAF
75 at Miami-Dade, Fort Lauderdale, West Palm Beach, or future
76 stations, but shall include the provision of non-SFRTA commuter
77 rail service by AAF or a third party designated by AAF,
78 including SFRTA.

79 (f) "Existing IRIS crossing" means the existing, at-grade
80 railroad crossing between the SFRC and the rail corridor located
81 in Miami-Dade County.

82 (g) "Florida East Coast Railway" or "FECR" means Florida
83 East Coast Railway, LLC, or its successors and assigns.

84 (h) "FECR rail corridor invitee" means any rail corridor
85 invitee who is present on the rail corridor at the request of,
86 pursuant to a contract with, or otherwise for the purpose of
87 doing business with or at the behest of FECR. The term does not

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88 include patrons at any station; commercial or residential
89 tenants of the developments in and around the stations or their
90 invitees; or any third parties performing work at a station or
91 in the rail corridor, such as employees and invitees of PI or
92 related entities, utilities, and fiber optic companies or
93 others, or invitees or employees of the department or any county
94 or municipality.

95 (i) "Freight rail service" means any and all uses and
96 purposes that are ancillary or related to current and future
97 freight rail operations on, along, over, under, and across the
98 rail corridor, including operating trains, rail cars, business
99 cars, locomotives, hi-rail vehicles, and other rail equipment
100 for the movement of freight in overhead and local service;
101 interchanging rail cars with other freight railroads; providing
102 pickups, setoffs, transloading services, or storage in transit;
103 and any and all other activities that are ancillary or related
104 to the transportation of freight on or along the rail corridor.

105 (j) "Intercity passenger rail service" means all passenger
106 service on the rail corridor other than commuter rail service
107 and is characterized by trains making less frequent stops along
108 the rail corridor than the commuter rail service does.

109 (k) "Joint infrastructure" means any portion or segment of
110 the rail corridor which does not contain tracks or
111 infrastructure designated for the exclusive use of the
112 authority, AAF, or FECR and portions of the MiamiCentral station
113 used by both AAF and SFRTA, including, but not limited to,
114 stairs, elevators, and escalators.

115 (l) "Limited covered accident" means:

116 1. A collision directly between the trains, locomotives,

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117 rail cars, or rail equipment of SFRTA and FECR only, where the
 118 collision is caused by or arising from the willful misconduct of
 119 FECR or its subsidiaries, agents, licensees, employees,
 120 officers, or directors, as adjudicated pursuant to a final and
 121 unappealable court order, or if punitive damages or exemplary
 122 damages are awarded due to the conduct of FECR or its
 123 subsidiaries, agents, licensees, employees, officers, or
 124 directors, as adjudicated pursuant to a final and unappealable
 125 court order; or

126 2. A collision directly between the trains, locomotives,
 127 rail cars, or rail equipment of SFRTA and AAF only, if the
 128 collision is caused by or arising from the willful misconduct of
 129 AAF or its subsidiaries, agents, licensees, employees, officers,
 130 or directors, as adjudicated pursuant to a final and
 131 unappealable court order, or if punitive damages or exemplary
 132 damages are awarded due to the conduct of AAF or its
 133 subsidiaries, agents, licensees, employees, officers, or
 134 directors, as adjudicated pursuant to a final and unappealable
 135 court order.

136 (m) "MiamiCentral" means the primary All Aboard Florida
 137 station located in downtown Miami, which includes exclusive
 138 areas used by the authority for commuter rail service.

139 (n) "Non-SFRTA commuter rail service" means AAF's
 140 operation, or an AAF third-party designee's operation, of trains
 141 in any commuter rail service on the rail corridor which is not
 142 SFRTA's commuter rail service. The term does not include:

143 1. Any service operated by the authority between the
 144 MiamiCentral station and any stations in Miami-Dade County,
 145 Broward County, Palm Beach County, or points north on the FECR

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146 rail corridor; and

147 2. SFRTA's commuter rail service on the South Florida Rail
 148 Corridor owned by the department.

149 (o) "Non-SFRTA commuter rail service operator" means the
 150 operator of any non-SFRTA commuter rail service.

151 (p) "Other train" means a train that is not SFRTA's train,
 152 FECR's train, AAF's train, a train of a non-SFRTA commuter rail
 153 service operator, or a train of any other operator of intercity
 154 rail passenger service and must be treated as a train of the
 155 entity that made the initial request for the train to operate on
 156 the rail corridor.

157 (q) "Passenger easement" means a permanent, perpetual, and
 158 exclusive easement on, along, over, under, or across the rail
 159 corridor for commuter rail service.

160 (r) "PI" means FDG Flagler Station II, LLC, which has an
 161 easement on the rail corridor for nonrail uses.

162 (s) "Rail corridor" means the portion of a linear
 163 contiguous strip of real property which is used for rail service
 164 and owned by FECR or owned or controlled by AAF. The term
 165 applies only when the authority has, by contract, assumed the
 166 obligation to forever protect, defend, indemnify, and hold
 167 harmless FECR, AAF, or their successors, in accordance with
 168 subsection (2), and acquired an easement interest, a lease, a
 169 right to operate, or a right of access. The term includes
 170 structures essential to railroad operations, including the land,
 171 structures, improvements, rights-of-way, easements, rail lines,
 172 rail beds, guideway structures, switches, yards, parking
 173 facilities, power relays, switching houses, rail stations, any
 174 ancillary development, and any other facilities or equipment

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175 used for the purposes of construction, operation, or maintenance
 176 of a railroad that provides rail service.

177 (t) "Rail corridor invitee" means any person who is on or
 178 about the rail corridor in which the AAF, SFRTA, or the non-
 179 SFRTA commuter rail service operator has an easement interest, a
 180 lease, a right to operate, or a right of access, and who is:

181 1. Present at the behest of an AAF, an SFRTA, a FECR, or
 182 the non-SFRTA commuter rail service operator for any purpose;

183 2. Otherwise entitled to be on or about the rail corridor;

184 or

185 3. Meeting, assisting, or in the company of a person
 186 described in subparagraph 1. or subparagraph 2.

187 (u) "SFRC" means South Florida Rail Corridor.

188 (v) "South Florida Regional Transportation Authority" or
 189 "SFRTA" means the authority.

190 (w) "SFRTA rail corridor invitee" means any rail corridor
 191 invitee who is SFRTA's commuter rail passenger or is otherwise
 192 present on the rail corridor at the request of, pursuant to a
 193 contract with, for the purpose of doing business with, or at the
 194 behest of SFRTA. The term does not include patrons at any
 195 station, except those patrons who are also SFRTA's commuter rail
 196 passengers; any person present on the rail corridor who is a
 197 patron of the non-SFRTA commuter rail service or is meeting or
 198 assisting a person who is a patron of the non-SFRTA commuter
 199 rail service; commercial or residential tenants of the
 200 developments in and around the stations or their invitees; or
 201 any third parties performing work at a station or in the rail
 202 corridor, such as employees and invitees of PI or related
 203 entities, utilities, and fiber optic companies or others, or

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204 invitees or employees of the department or any county or
 205 municipality.

206 (2) The authority, in conjunction with the operation of a
 207 commuter rail service on a rail corridor, has the power to
 208 assume the following obligations:

209 (a) To indemnify AAF and FECR in accordance with the terms
 210 specified in this paragraph for so long as AAF and FECR or their
 211 successors in interest agree to indemnify the authority in
 212 accordance with the terms specified in this paragraph.

213 1. Except as specifically provided in this paragraph, the
 214 authority shall protect, defend, indemnify, and hold harmless
 215 FECR, its officers, agents, employees, successors, and assigns
 216 from and against any liability, cost, and expense, including,
 217 but not limited to, SFRTA's commuter rail passengers and rail
 218 corridor invitees in, on, or about the rail corridor, regardless
 219 of whether the loss, damage, destruction, injury, or death
 220 giving rise to any such liability, cost, or expense is caused in
 221 whole or in part, and to whatever nature or degree, by the
 222 fault, failure, negligence, misconduct, nonfeasance, or
 223 misfeasance of FECR or its officers, agents, employees,
 224 successors, and assigns;

225 2. Except as specifically provided in this paragraph, the
 226 authority shall protect, defend, indemnify, and hold harmless
 227 AAF and its officers, agents, employees, successors, and assigns
 228 from and against any liability, cost, and expense, including,
 229 but not limited to, SFRTA commuter rail passengers and SFRTA
 230 rail corridor invitees in, on, or about the rail corridor,
 231 regardless of whether the loss, damage, destruction, injury, or
 232 death giving rise to any such liability, cost, or expense is

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233 caused in whole or in part, and to whatever nature or degree, by
 234 the fault, failure, negligence, misconduct, nonfeasance, or
 235 misfeasance of AAF or its officers, agents, employees,
 236 successors, and assigns; or

237 3. The assumption of liability by the authority may not in
 238 any instance exceed the following parameters of allocation of
 239 risk:

240 a. The authority shall be solely responsible for any loss,
 241 injury, or damage to SFRTA commuter rail passengers, or to SFRTA
 242 rail corridor invitees or trespassers, other than passengers or
 243 invitees of the non-SFRTA commuter rail service, regardless of
 244 circumstances or cause, subject to the terms and provisions of
 245 this paragraph.

246 b. FECR shall, with respect to a limited covered accident,
 247 protect, defend, and indemnify SFRTA for the amount of the self-
 248 insurance retention account.

249 c. AAF shall, with respect to a limited covered accident,
 250 protect, defend, and indemnify SFRTA for the amount of the self-
 251 insurance retention account.

252 d. When only one train is involved in an incident,
 253 including incidents with trespassers or at at-grade crossings,
 254 the authority shall be solely responsible for any loss, injury,
 255 or damage if the train is an SFRTA train.

256 e. When an incident occurs with only FECR's train involved,
 257 including incidents with trespassers or at at-grade crossings,
 258 FECR shall be solely responsible for any loss, injury, or
 259 damage, except for SFRTA's commuter rail passengers, SFRTA
 260 employees, and SFRTA rail corridor invitees.

261 f. When an incident occurs with only AAF's train involved,

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262 including incidents with trespassers or at at-grade crossings,
 263 AAF shall be solely responsible for any loss, injury, or damage,
 264 except for SFRTA's commuter rail passengers, SFRTA employees,
 265 and SFRTA rail corridor invitees.

266 g. For the purposes of this paragraph:

267 (I) An "other train" shall be treated as the train of the
 268 entity that made the initial request for the train to operate on
 269 the rail corridor.

270 (II) In an incident involving any other train that is not
 271 an SFRTA train, the other train shall be treated as an SFRTA
 272 train solely for purposes of any allocation of liability
 273 between:

274 (A) SFRTA and FECR. SFRTA and FECR shall share
 275 responsibility equally as to third parties outside the rail
 276 corridor who incur loss, injury, or damage as a result of any
 277 incident involving both SFRTA's train and FECR's train and the
 278 allocation as between SFRTA and FECR, regardless of whether the
 279 other train is treated as an SFRTA train, shall remain one-half
 280 each as to third parties outside the rail corridor who incur
 281 loss, injury, or damage as a result of the incident. The
 282 involvement of any other train shall not alter the sharing of
 283 equal responsibility as to third parties outside the rail
 284 corridor who incur loss, injury, or damage as a result of the
 285 incident.

286 (B) SFRTA and AAF. SFRTA and AAF shall share responsibility
 287 equally as to third parties outside the rail corridor who incur
 288 loss, injury, or damage as a result of any incident involving
 289 both an SFRTA train and AAF's train and the allocation as
 290 between SFRTA and AAF, regardless of whether the other train is

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291 treated as an SFRTA train, shall remain one-half each as to
 292 third parties outside the rail corridor who incur loss, injury,
 293 or damage as a result of the incident. The involvement of any
 294 other train shall not alter the sharing of equal responsibility
 295 as to third parties outside the rail corridor who incur loss,
 296 injury, or damage as a result of the incident.

297 h. When more than one train is involved in an incident:

298 (I) If only an SFRTA train and a FECR train, or only an
 299 other train that is an SFRTA train by definition and a FECR
 300 train, are involved in an incident, SFRTA shall be responsible
 301 for its property, all SFRTA's commuter rail passengers, SFRTA
 302 employees, and SFRTA rail corridor invitees. FECR shall be
 303 responsible for its property and all of its employees and FECR
 304 rail corridor invitees. SFRTA and FECR shall each share one-half
 305 responsibility as to the joint infrastructure and rail corridor
 306 invitees who are not SFRTA rail corridor invitees or FECR rail
 307 corridor invitees, including, but not limited to, trespassers or
 308 third parties outside the rail corridor who incur loss, injury,
 309 or damage as a result of the incident.

310 (II) If only an SFRTA train and an AAF train, or only an
 311 other train that is by definition an SFRTA train and an AAF
 312 train, are involved in an incident, SFRTA shall be responsible
 313 for its property, all SFRTA's commuter rail passengers, SFRTA
 314 employees, and SFRTA rail corridor invitees. AAF shall be
 315 responsible for its property and all of its employees, AAF's
 316 intercity rail passengers, and AAF rail corridor invitees. SFRTA
 317 and AAF shall each share one-half responsibility as to the joint
 318 infrastructure and rail corridor invitees who are not SFRTA rail
 319 corridor invitees or AAF rail corridor invitees, including, but

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320 not limited to, trespassers or third parties outside the rail
 321 corridor who incur loss, injury, or damage as a result of the
 322 incident.

323 (III) If a FECR train, an SFRTA train, and an AAF train are
 324 involved in an incident, SFRTA shall be responsible for its
 325 property, all SFRTA's commuter rail passengers, SFRTA employees,
 326 and SFRTA rail corridor invitees. AAF shall be responsible for
 327 its property and all of its employees, AAF's intercity rail
 328 passengers, and AAF rail corridor invitees. FECR shall be
 329 responsible for its property and all of its employees and FECR
 330 rail corridor invitees. SFRTA, FECR, and AAF shall each share
 331 one-third responsibility as to the joint infrastructure and rail
 332 corridor invitees who are not SFRTA rail corridor invitees, AAF
 333 rail corridor invitees, or FECR rail corridor invitees,
 334 including, but not limited to, trespassers or third parties
 335 outside the rail corridor who incur loss, injury, or damage as a
 336 result of the incident.

337 (IV) If an SFRTA train, a FECR train, and an AAF train are
 338 involved in an incident, the allocation of liability among
 339 SFRTA, FECR, and AAF shall be one-third each as to third parties
 340 outside the rail corridor who incur loss, injury, or damage as a
 341 result of the incident.

342 (V) If an SFRTA train, a FECR train, and any other train
 343 are involved in an incident, the allocation of liability among
 344 SFRTA, FECR, and the other train shall be one-third each as to
 345 third parties outside the rail corridor who incur loss, injury,
 346 or damage as a result of the incident.

347 (VI) If an SFRTA train, an AAF train, and any other train
 348 are involved in an incident, the allocation of liability among

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349 SFRTA, AAF, and the other train shall be one-third each as to
 350 third parties outside the rail corridor who incur loss, injury,
 351 or damage as a result of the incident.

352 i. Notwithstanding anything to the contrary set forth in
 353 this paragraph, SFRTA is not obligated to indemnify FECR and AAF
 354 for any amount in excess of the insurance coverage limit.
 355 Whether or not SFRTA maintains the insurance coverage required
 356 pursuant to paragraph (b) to cover the indemnification
 357 obligations of this paragraph, SFRTA shall remain responsible
 358 for the indemnification obligations set forth in this paragraph
 359 up to the insurance coverage limit.

360 j. If the non-SFRTA commuter rail service is provided by an
 361 entity under contract with AAF, SFRTA may elect, at its sole
 362 discretion, to provide the same insurance coverage and to
 363 indemnify and hold harmless any non-SFRTA commuter rail service
 364 operator to the same extent that it provides such insurance or
 365 indemnification to AAF pursuant to this section.

366 (b) To purchase railroad liability insurance of \$295
 367 million per occurrence, which amount shall be adjusted in
 368 accordance with applicable law up to the insurance coverage
 369 limit, with a \$5 million self-insurance retention account that
 370 shall be composed of and defined as the "SFRTA insurance
 371 program." The SFRTA insurance program may, at SFRTA's sole
 372 discretion, cover the obligations described in this section or
 373 any other service operated by SFRTA on a rail corridor. Because
 374 the self-insurance retention account is a part of the SFRTA
 375 insurance program, all definitions, terms, conditions,
 376 restrictions, exclusions, obligations, and duties included in
 377 any and all of the policies of insurance procured by SFRTA for

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378 the SFRTA insurance program shall apply to the self-insurance
 379 retention account and its application to claims against the
 380 applicable insureds. SFRTA shall name FECR and AAF as insureds
 381 on any policies it procures pursuant to this section at no cost
 382 to AAF and FECR and ensure that all policies shall have a waiver
 383 of exclusion for punitive damages and coverage for claims made
 384 pursuant to the Federal Employers Liability Act, 45 U.S.C. s. 51
 385 et seq. Such policies must also include terrorism coverage,
 386 pollution coverage, including, but not limited to, coverage
 387 applicable in the event of a railroad accident, a derailment, or
 388 an overturn, and evacuation expense coverage.

389 Section 2. Subsection (4) of section 343.58, Florida
 390 Statutes, is amended to read:

391 343.58 County funding for the South Florida Regional
 392 Transportation Authority.-

393 (4) Notwithstanding any other provision of law to the
 394 contrary and effective July 1, 2010, until as provided in
 395 paragraph (d), the department shall transfer annually from the
 396 State Transportation Trust Fund to the South Florida Regional
 397 Transportation Authority, in quarterly payments commencing at
 398 the start of each fiscal year, the amounts specified in
 399 subparagraph (a)1. or subparagraph (a)2.

400 (a)1. If the authority becomes responsible for maintaining
 401 and dispatching the South Florida Rail Corridor:

402 a. \$15 million from the State Transportation Trust Fund to
 403 the South Florida Regional Transportation Authority for
 404 operations, maintenance, and dispatch; and

405 b. An amount no less than the work program commitments
 406 equal to \$27.1 million for fiscal year 2010-2011, as of July 1,

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407 2009, for operating assistance to the authority and corridor
 408 track maintenance and contract maintenance for the South Florida
 409 Rail Corridor.

410 2. If the authority does not become responsible for
 411 maintaining and dispatching the South Florida Rail Corridor:

412 a. \$13.3 million from the State Transportation Trust Fund
 413 to the South Florida Regional Transportation Authority for
 414 operations; and

415 b. An amount no less than the work program commitments
 416 equal to \$17.3 million for fiscal year 2010-2011, as of July 1,
 417 2009, for operating assistance to the authority.

418 (b) Funding required by this subsection may not be provided
 419 from the funds dedicated to the Florida Rail Enterprise pursuant
 420 to s. 201.15(4)(a)4.

421 (c)1. Funds provided to the authority by the department
 422 under this subsection may not be committed by the authority
 423 without the approval of the department, which may not be
 424 unreasonably withheld. At least 90 days before advertising any
 425 procurement or renewing any existing contract that will rely on
 426 state funds for payment, the authority shall notify the
 427 department of the proposed procurement or renewal and the
 428 proposed terms thereof. If the department, within 60 days after
 429 receipt of notice, objects in writing to the proposed
 430 procurement or renewal, specifying its reasons for objection,
 431 the authority may not proceed with the proposed procurement or
 432 renewal. Failure of the department to object in writing within
 433 60 days after notice shall be deemed consent. This requirement
 434 does not impair or cause the authority to cancel contracts that
 435 exist as of June 30, 2012.

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

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436 2. To enable the department to evaluate the authority's
 437 proposed uses of state funds, the authority shall annually
 438 provide the department with its proposed budget for the
 439 following authority fiscal year and shall provide the department
 440 with any additional documentation or information required by the
 441 department for its evaluation of the proposed uses of the state
 442 funds.

443 (d) Funding required by this subsection shall cease upon
 444 commencement of an alternate dedicated local funding source
 445 sufficient for the authority to meet its responsibilities for
 446 operating, maintaining, and dispatching the South Florida Rail
 447 Corridor. The authority and the department shall cooperate in
 448 the effort to identify and implement such an alternate dedicated
 449 local funding source before July 1, 2019. Upon commencement of
 450 the alternate dedicated local funding source, the department
 451 shall convey to the authority a perpetual commuter rail easement
 452 in the South Florida Rail Corridor and all of the department's
 453 right, title, and interest in rolling stock, equipment, tracks,
 454 and other personal property owned and used by the department for
 455 the operation and maintenance of the commuter rail operations in
 456 the South Florida Rail Corridor.

457 Section 3. Paragraph (d) is added to subsection (17) of
 458 section 341.302, Florida Statutes, to read:

459 341.302 Rail program; duties and responsibilities of the
 460 department.—The department, in conjunction with other
 461 governmental entities, including the rail enterprise and the
 462 private sector, shall develop and implement a rail program of
 463 statewide application designed to ensure the proper maintenance,
 464 safety, revitalization, and expansion of the rail system to

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465 assure its continued and increased availability to respond to
 466 statewide mobility needs. Within the resources provided pursuant
 467 to chapter 216, and as authorized under federal law, the
 468 department shall:

469 (17) In conjunction with the acquisition, ownership,
 470 construction, operation, maintenance, and management of a rail
 471 corridor, have the authority to:

472 (d) Without altering any of the rights granted to the
 473 department under this section, agree to assume the obligations
 474 to indemnify and insure, pursuant to s. 343.545, freight rail
 475 service, intercity passenger rail service, and commuter rail
 476 service on a department-owned rail corridor, whether ownership
 477 is in fee or by easement, or on a rail corridor where the
 478 department has the right to operate.

479

480 Neither the assumption by contract to protect, defend,
 481 indemnify, and hold harmless; the purchase of insurance; nor the
 482 establishment of a self-insurance retention fund shall be deemed
 483 to be a waiver of any defense of sovereign immunity for torts
 484 nor deemed to increase the limits of the department's or the
 485 governmental entity's liability for torts as provided in s.
 486 768.28. The requirements of s. 287.022(1) shall not apply to the
 487 purchase of any insurance under this subsection. The provisions
 488 of this subsection shall apply and inure fully as to any other
 489 governmental entity providing commuter rail service and
 490 constructing, operating, maintaining, or managing a rail
 491 corridor on publicly owned right-of-way under contract by the
 492 governmental entity with the department or a governmental entity
 493 designated by the department. Notwithstanding any law to the

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494 contrary, procurement for the construction, operation,
 495 maintenance, and management of any rail corridor described in
 496 this subsection, whether by the department, a governmental
 497 entity under contract with the department, or a governmental
 498 entity designated by the department, shall be pursuant to s.
 499 287.057 and shall include, but not be limited to, criteria for
 500 the consideration of qualifications, technical aspects of the
 501 proposal, and price. Further, any such contract for design-build
 502 shall be procured pursuant to the criteria in s. 337.11(7).

503

Section 4. This act shall take effect July 1, 2017.

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The Florida Senate

Committee Agenda Request


To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 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

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. AFFAIRS MGR.

Address 801 NW 33RD ST.

Street

Phone 954-213-8690

POMPANO BEACH FL 33064

City

State

Zip

Email wooldndg@stfltafl.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

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

842

Meeting Date

Bill Number (if applicable)

Topic SFRTA

Amendment Barcode (if applicable)

Name ANDRES TRUJILLO

Job Title LEGISLATIVE DIRECTOR

Address 11774 SW 137th PATH

Phone 786-348-5771

Street

MIAMI

FL

33186

Email FLTRUJILLOUTN@COLL

City

State

Zip

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 ASSIT COUNTY ATTORNEY

Address 111 NW 15th 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.

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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)

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.

Phone 954-213-8690

Street

POMPANO BEACH FL 33064

Email wooldridge.v@state.fl.gov

City

State

Zip

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)

CB 842
Bill Number (if applicable)

Meeting Date _____

Topic TRANSPORTATION

Amendment Barcode (if applicable) _____

Name RUSSELL ROBERTS

Job Title VP GOVT AFFAIRS

Address 2255 LeJeune Rd

Phone 202-604-5959

Street
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)

Topic Transportation

Amendment Barcode (if applicable)

Name Jack Cory

Job Title Lobbyist

Address 730 E. Park Ave.

Phone

Street

Tallahassee, FL 32301

City

State

Zip

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

Phone 858-224-0880

Street

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 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.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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 activities 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 Commission¹³ 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

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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

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 Phone _____
Street

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 Negrón
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.

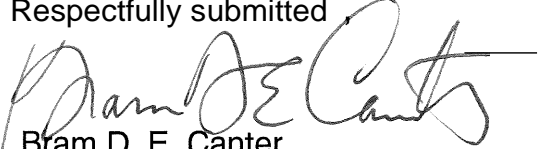
December 1, 2011

Page 4

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

1 A bill to be entitled
 2 An act for the relief of L.T.; providing an
 3 appropriation to compensate L.T. for injuries and
 4 damages sustained as a result of the negligence of
 5 employees of the Department of Children and Families,
 6 formerly known as the Department of Children and
 7 Family Services; providing legislative intent
 8 regarding certain Medicaid liens; providing a
 9 limitation on the payment of attorney fees; providing
 10 an effective date.

11

12 WHEREAS, on August 15, 1995, the Department of Children and
 13 Families removed 14-month-old L.T. and her infant brother from
 14 their mother's custody because they were not receiving adequate
 15 care, and

16 WHEREAS, the Department of Children and Families
 17 temporarily placed the children into the home of the children's
 18 great aunt and uncle, Vicki and Eddie Thomas, and

19 WHEREAS, a background check that was conducted shortly
 20 after L.T. and her brother were placed in the Thomases' home
 21 indicated that Mr. Thomas had once been convicted of a
 22 misdemeanor and possession of narcotics equipment, and

23 WHEREAS, the background check also revealed that Ms. Thomas
 24 had been charged with, but apparently not convicted of, larceny,
 25 and

26 WHEREAS, the background check did not reveal any prior
 27 history of violence, sex offenses, or child abuse, and

28 WHEREAS, after conducting a home study, interviews, and an
 29 investigation, the Department of Children and Families concluded

Page 1 of 6

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

590-01953-17

201738c1

30 that the Thomases were capable of providing a safe home for L.T.
 31 and her brother and approved the placement, and

32 WHEREAS, on August 21, 1996, approximately 1 year after
 33 L.T. and her brother had been placed in the Thomases' home, Mr.
 34 Thomas was charged with committing a lewd and lascivious act on
 35 a child under the age of 16, and

36 WHEREAS, the alleged victim was the 13-year-old daughter of
 37 a woman with whom Mr. Thomas was having an extramarital affair,
 38 and the state later amended the charge to add a count for sexual
 39 battery on a child by a familial or custodial authority, and

40 WHEREAS, after two hung jury trials in January and March of
 41 1997, Mr. Thomas pled no contest in April 1997 to committing a
 42 lewd, lascivious, and indecent act on a child under the age of
 43 16, and

44 WHEREAS, Mr. Thomas was sentenced to 5 years' probation and
 45 required to attend sex offender classes and register as a sex
 46 offender, and

47 WHEREAS, on May 9, 1997, 1 month after Mr. Thomas entered
 48 his plea and was convicted of a child sex crime, the Department
 49 of Children and Families recommended, and the judge approved, an
 50 order allowing Mr. Thomas to return home and have unsupervised
 51 contact with the children, and

52 WHEREAS, although the policies of the Department of
 53 Children and Families barred Mr. Thomas from being able to adopt
 54 a child because of his conviction for a sex act with a child and
 55 his sex offender status, the policies did not prohibit the
 56 continued placement of L.T. and her brother in the Thomases'
 57 home, and so the children remained with the Thomases, and

58 WHEREAS, the Department of Children and Families

Page 2 of 6

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

590-01953-17

201738c1

59 subsequently recommended to the court the permanent, long-term
60 placement of L.T. and her brother in the Thomases' home and
61 further recommended that the children be removed from protective
62 services, with no further supervision by the department, and

63 WHEREAS, on March 3, 2000, following the recommendation of
64 the Department of Children and Families, the court approved L.T.
65 and her brother's long-term placement with the Thomases and
66 removed the children from continued protective services, and

67 WHEREAS, on March 24, 2003, an abuse hotline call to the
68 Department of Children and Families reported that L.T. was being
69 abused by Mr. Thomas and that both Mr. and Ms. Thomas were using
70 drugs in the children's presence, and

71 WHEREAS, the next day, a child protective investigator for
72 the Department of Children and Families interviewed L.T. and her
73 brother while in the presence of Ms. Thomas, and neither child
74 was asked to be interviewed outside Ms. Thomas's presence, and

75 WHEREAS, L.T. and her brother denied the abuse allegations
76 while Ms. Thomas watched and listened to them, and

77 WHEREAS, results from new background checks and drug
78 screens were negative, and the Department of Children and
79 Families concluded that L.T. and her brother were not at risk of
80 abuse and closed the case, and

81 WHEREAS, on February 24, 2005, L.T. ran away from the
82 Thomases' home and was found by law enforcement officers, and

83 WHEREAS, L.T. ran away from home because she had been
84 repeatedly sexually and physically abused by Mr. Thomas and
85 physically, verbally, and emotionally abused for years by Ms.
86 Thomas, and

87 WHEREAS, L.T. and her brother were finally removed from the

590-01953-17

201738c1

88 Thomases' home in 2005, and

89 WHEREAS, during her adolescent and teenaged years, L.T. was
90 the subject of repeated Baker Act proceedings and suicide
91 attempts and was in and out of inpatient and outpatient
92 psychiatric facilities, and

93 WHEREAS, L.T. has been seen and treated by physicians and
94 mental health care professionals who have diagnosed her with
95 depression, posttraumatic stress disorder, anxiety disorder, and
96 other disorders attributed to her trauma, and

97 WHEREAS, although L.T. struggles with the symptoms of
98 depression, posttraumatic stress disorder, and anxiety disorder,
99 she is now 22 years of age, is married to a Naval Petty Officer
100 who is stationed at Naval Air Station Jacksonville, is the
101 mother of 2 very young daughters, and attends Florida State
102 College at Jacksonville as she works toward her goal of becoming
103 a mental health care professional specializing in treating
104 children who have been abused, neglected, or traumatized, and

105 WHEREAS, a lawsuit was brought on L.T.'s behalf in state
106 and federal courts alleging negligence pursuant to s. 768.28,
107 Florida Statutes, and civil rights violations pursuant to 42
108 U.S.C. s. 1983, and

109 WHEREAS, the civil rights claims were disposed of by the
110 trial court, but the negligence claims continued to be
111 litigated, and a jury trial of the case was set in Leon County,
112 and

113 WHEREAS, the parties attended a court-ordered mediation and
114 on June 21, 2010, agreed to a mediated settlement under which
115 L.T. will receive \$1 million, of which \$200,000 has been paid,
116 and the claim for the remaining \$800,000 is being submitted

590-01953-17 201738c1

117 through this bill, which the Department of Children and Families
118 agrees to support, NOW, THEREFORE,

119
120 Be It Enacted by the Legislature of the State of Florida:

121
122 Section 1. The facts stated in the preamble to this act are
123 found and declared to be true.

124 Section 2. There is appropriated from the General Revenue
125 Fund to the Department of Children and Families the sum of
126 \$800,000 for the relief of L.T. for the injuries and damages she
127 sustained. After payment of attorney fees and costs, lobbying
128 fees, and other similar expenses relating to this claim;
129 outstanding medical liens other than Medicaid liens; and other
130 immediate needs, the remaining funds shall be placed into a
131 trust created for the exclusive use and benefit of L.T. The
132 trust shall be administered by an institutional trustee of
133 L.T.'s choosing and shall terminate upon L.T.'s 25th birthday,
134 at which time the remaining principal and interest shall revert
135 to L.T. or, if she predeceases the termination of the trust, to
136 her heirs, beneficiaries, or estate.

137 Section 3. The Chief Financial Officer is directed to draw
138 a warrant in favor of L.T. in the sum of \$800,000 upon funds in
139 the State Treasury to the credit of the Department of Children
140 and Families, and the Chief Financial Officer is directed to pay
141 the same out of such funds in the State Treasury not otherwise
142 appropriated.

143 Section 4. It is the intent of the Legislature that any and
144 all Medicaid liens arising from the treatment and care of the
145 injuries and damages to L.T. described in this act shall be

590-01953-17 201738c1

146 waived or paid by the state.

147 Section 5. The amount awarded pursuant to the waiver of
148 sovereign immunity under s. 768.28, Florida Statutes, and the
149 amount awarded under this act are intended to provide the sole
150 compensation for all present and future claims arising out of
151 the factual situation described in the preamble to this act
152 which resulted in the injuries and damages to L.T. The total
153 amount paid for attorney fees relating to this claim may not
154 exceed 25 percent of the amount awarded under this act.

155 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,

A handwritten signature in cursive script that reads "Lizbeth Benacquisto".

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 Negrón
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

1 A bill to be entitled
 2 An act for the relief of Eddie Weekley and Charlotte
 3 Williams, individually and as co-personal
 4 representatives of the Estate of Franklin Weekley,
 5 their deceased son, for the disappearance and death of
 6 their son while he was in the care of the Marianna
 7 Sunland Center, currently operated by the Agency for
 8 Persons with Disabilities; providing an appropriation
 9 to compensate them for the disappearance and death of
 10 Franklin Weekley, which were due to the negligence of
 11 the Department of Children and Families; providing a
 12 limitation on the payment of attorney fees; providing
 13 an effective date.
 14
 15 WHEREAS, in November of 2001, Franklin Weekley was
 16 diagnosed with mental retardation and a seizure disorder and was
 17 admitted to the Marianna Sunland Center, which at the time was
 18 operated by the Department of Children and Family Services, now
 19 known as Department of Children and Families, and
 20 WHEREAS, on December 6, 2002, Franklin Weekley disappeared
 21 from the center and, following a search of the premises by
 22 employees of the center, was deemed by the center to have run
 23 away, and the case was closed, and
 24 WHEREAS, on October 28, 2004, a demolition crew found the
 25 skeletal remains of Franklin Weekley in the basement of a
 26 building adjacent to the premises of the Marianna Sunland Center
 27 where Franklin had resided, and
 28 WHEREAS, legal action was filed on behalf of Franklin
 29 Weekly's parents against the Department of Children and Family

Page 1 of 3

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

590-01951-17

201750c1

30 Services and its employees or agents raising negligence, tort,
 31 statutory, and civil rights claims concerning the disappearance
 32 and death of their son, and
 33 WHEREAS, the parties and the Agency for Persons with
 34 Disabilities, which currently operates the Marianna Sunland
 35 Center, mediated and reached a settlement of all claims, and
 36 WHEREAS, the plaintiffs and the Agency for Persons with
 37 Disabilities entered into a compromise and settlement agreement
 38 in which they agreed to a claim bill under which the agency will
 39 pay \$1 million in addition to the \$300,000 it previously paid to
 40 settle claims arising out of this matter, NOW, THEREFORE,
 41
 42 Be It Enacted by the Legislature of the State of Florida:
 43
 44 Section 1. The facts stated in the preamble to this act are
 45 found and declared to be true.
 46 Section 2. The sum of \$1 million is appropriated from the
 47 General Revenue Fund to the Agency for Persons with
 48 Disabilities, as successor to the Department of Children and
 49 Family Services, to be paid for the relief of Eddie Weekley and
 50 Charlotte Williams, individually and as co-personal
 51 representatives of the Estate of Franklin Weekley, deceased.
 52 Section 3. The Chief Financial Officer is directed to draw
 53 a warrant in favor of Eddie Weekley and Charlotte Williams,
 54 individually and as co-personal representatives of the Estate of
 55 Franklin Weekley, deceased, in the sum of \$1 million upon funds
 56 of the Agency for Persons with Disabilities in the State
 57 Treasury, and to pay the same out of such funds in the State
 58 Treasury. Pursuant to the settlement agreement approved by the

Page 2 of 3

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

590-01951-17

201750c1

59 court in August 2007, the funds are to be paid into a Medicaid-
60 compliant special needs trust account established on behalf of
61 Eddie Weekley and Charlotte Williams.

62 Section 4. The amount paid by the Agency for Persons with
63 Disabilities pursuant to s. 768.28, Florida Statutes, and the
64 amount awarded under this act are intended to provide the sole
65 compensation for all present and future claims arising out of
66 the factual situation described in this act resulting in the
67 disappearance and death of Franklin Weekley. The total amount
68 paid for attorney fees relating to this claim may not exceed 25
69 percent of the amount awarded under this act.

70 Section 5. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

SENATOR AUDREY GIBSON
6th District

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.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	<u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 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 Bureau⁵ (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

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 interest¹⁸ 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 owner²¹ 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 expectancy. The first is that some viatical settlement providers stopped brokering new viatical settlements. The second, unfortunately, is that some viatical settlement providers engaged in fraudulent practices.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

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 it 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.

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 nationally³⁸ 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

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:

- Without an objectively reasonable basis for believing that the replacement or extraction will result in an actual and demonstrable benefit to the policyholder;
- In a fashion that is fraudulent, deceptive, or otherwise misleading or that involves a deceptive omission;
- 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
- 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:

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 data⁵⁸ 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	.	
	.	
	.	
	.	

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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11 anti-fraud unit or division, or contractor authorized under
12 subparagraph (2) (a) 2.

13 (b) "Designated anti-fraud unit or division" includes a
14 distinct unit or division or a unit or division made up of the
15 assignment of fraud investigation to employees whose principal
16 responsibilities are the investigation and disposition of claims
17 who are also assigned investigation of fraud. If an insurer
18 creates a distinct unit or division, hires additional employees,
19 or contracts with another entity to fulfill the requirements of
20 this section, the additional cost incurred must be included as
21 an administrative expense for ratemaking purposes.

22 (2) (1) By December 31, 2017, every insurer admitted to do
23 business in this state who in the previous calendar year, at any
24 time during that year, had \$10 million or more in direct
25 premiums written shall:

26 (a) 1. Establish and maintain a designated anti-fraud unit
27 or division within the company to investigate and report
28 possible fraudulent insurance acts ~~claims~~ by insureds or by
29 persons making claims for services or repairs against policies
30 held by insureds; or

31 2. (b) Contract with others to investigate and report
32 possible fraudulent insurance acts by insureds or by persons
33 making claims for services or repairs against policies held by
34 insureds.

35 (b) Adopt an anti-fraud plan.

36 (c) Designate at least one employee with primary
37 responsibility for implementing the requirements of this
38 section.

39 (d) Electronically ~~An insurer subject to this subsection~~



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40 ~~shall~~ file with the Division of Investigative and Forensic
41 Services of the department, and annually thereafter ~~on or before~~
42 July 1, 1996, a detailed description of the designated anti-
43 fraud unit or division ~~established pursuant to paragraph (a) or~~
44 a copy of the contract executed under subparagraph (a)2., as
45 applicable, a copy of the anti-fraud plan, and the name of the
46 employee designated under paragraph (c) and related documents
47 ~~required by paragraph (b).~~

48
49 An insurer must include the additional cost incurred in creating
50 a distinct unit or division, hiring additional employees, or
51 contracting with another entity to fulfill the requirements of
52 this section, as an administrative expense for ratemaking
53 purposes.

54 ~~(2) Every insurer admitted to do business in this state,~~
55 ~~which in the previous calendar year had less than \$10 million in~~
56 ~~direct premiums written, must adopt an anti-fraud plan and file~~
57 ~~it with the Division of Investigative and Forensic Services of~~
58 ~~the department on or before July 1, 1996. An insurer may, in~~
59 ~~lieu of adopting and filing an anti-fraud plan, comply with the~~
60 ~~provisions of subsection (1).~~

61 (3) Each ~~insurers~~ anti-fraud plan must ~~plans~~ shall include:

62 (a) An acknowledgement that the insurer has established
63 procedures for detecting and investigating possible fraudulent
64 insurance acts relating to the different types of insurance by
65 that insurer ~~A description of the insurer's procedures for~~
66 ~~detecting and investigating possible fraudulent insurance acts;~~

67 (b) An acknowledgment that the insurer has established ~~A~~
68 ~~description of the insurer's procedures for the mandatory~~



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69 reporting of possible fraudulent insurance acts to the Division
70 of Investigative and Forensic Services of the department;

71 (c) An acknowledgement that the insurer provides the A
72 description of the insurer's plan for anti-fraud education and
73 training required by this section to the anti-fraud
74 investigative unit of its claims adjusters or other personnel;
75 and

76 (d) A description of the required anti-fraud education and
77 training;

78 (e) A written description or chart outlining the
79 organizational arrangement of the insurer's anti-fraud
80 investigative unit, including the position titles and
81 descriptions of staffing; and personnel who are responsible for
82 the investigation and reporting of possible fraudulent insurance
83 acts

84 (f) The rationale for the level of staffing and resources
85 being provided for the anti-fraud investigative unit which may
86 include objective criteria, such as the number of policies
87 written, the number of claims received on an annual basis, the
88 volume of suspected fraudulent claims detected on an annual
89 basis, an assessment of the optimal caseload that one
90 investigator can handle on an annual basis, and other factors.

91 (4) By December 31, 2018, each insurer shall provide staff
92 of the anti-fraud investigative unit at least 2 hours of initial
93 anti-fraud training that is designed to assist in identifying
94 and evaluating instances of suspected fraudulent insurance acts
95 in underwriting or claims activities. Annually thereafter, an
96 insurer shall provide such employees a 1-hour course that
97 addresses detection, referral, investigation, and reporting of



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98 possible fraudulent insurance acts for the types of insurance
99 lines written by the insurer.

100 (5) Each insurer is required to report data related to
101 fraud for each line of insurance written by the insurer during
102 the prior calendar year. The data shall be reported to the
103 department by March 1, 2019, and annually thereafter, and must
104 include, at a minimum:

105 (a) The number of policies in effect;

106 (b) The amount of premiums written for policies;

107 (c) The number of claims received;

108 (d) The number of claims referred to the anti-fraud
109 investigative unit;

110 (e) The number of other insurance fraud matters referred to
111 the anti-fraud investigative unit that were not claim related;

112 (f) The number of claims investigated or accepted by the
113 anti-fraud investigative unit;

114 (g) The number of other insurance fraud matters
115 investigated or accepted by the anti-fraud investigative unit
116 that were not claim related;

117 (h) The number of cases referred to the Division of
118 Investigative and Forensic Services;

119 (i) The number of cases referred to other law enforcement
120 agencies;

121 (j) The number of cases referred to other entities; and

122 (k) The estimated dollar amount or range of damages on
123 cases referred to the Division of Investigative and Forensic
124 Services or other agencies.

125 (6) In addition to providing information required under
126 subsections (2), (4), and (5), each insurer writing workers'



127 compensation insurance shall also report the following
128 information to the department, on or before March 1, 2019, and
129 annually thereafter ~~August 1 of each year, on its experience in~~
130 ~~implementing and maintaining an anti-fraud investigative unit or~~
131 ~~an anti-fraud plan. The report must include, at a minimum:~~

132 (a) The estimated dollar amount of losses attributable to
133 workers' compensation fraud delineated by the type of fraud,
134 including claimant, employer, provider, agent, or other type.

135 (b) The estimated dollar amount of recoveries attributable
136 to workers' compensation fraud delineated by the type of fraud,
137 including claimant, employer, provider, agent, or other type.

138 (c) The number of cases referred to the Division of
139 Investigative and Forensic Services, delineated by the type of
140 fraud, including claimant, employer, provider, agent, or other
141 type.

142 ~~(a) The dollar amount of recoveries and losses attributable~~
143 ~~to workers' compensation fraud delineated by the type of fraud:~~
144 ~~claimant, employer, provider, agent, or other.~~

145 ~~(b) The number of referrals to the Bureau of Workers'~~
146 ~~Compensation Fraud for the prior year.~~

147 ~~(c) A description of the organization of the anti-fraud~~
148 ~~investigative unit, if applicable, including the position titles~~
149 ~~and descriptions of staffing.~~

150 ~~(d) The rationale for the level of staffing and resources~~
151 ~~being provided for the anti-fraud investigative unit, which may~~
152 ~~include objective criteria such as number of policies written,~~
153 ~~number of claims received on an annual basis, volume of~~
154 ~~suspected fraudulent claims currently being detected, other~~
155 ~~factors, and an assessment of optimal caseload that can be~~



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156 ~~handled by an investigator on an annual basis.~~

157 ~~(e) The inservice education and training provided to~~
158 ~~underwriting and claims personnel to assist in identifying and~~
159 ~~evaluating instances of suspected fraudulent activity in~~
160 ~~underwriting or claims activities.~~

161 ~~(f) A description of a public awareness program focused on~~
162 ~~the costs and frequency of insurance fraud and methods by which~~
163 ~~the public can prevent it.~~

164 ~~(7)(4) An~~ Any insurer who obtains a certificate of
165 authority has 6 ~~after July 1, 1995,~~ shall have 18 months in
166 which to comply with subsection (2), and one calendar year
167 thereafter, to comply with subsections (4), (5), and (6) ~~the~~
168 ~~requirements of this section.~~

169 ~~(8)(7) If an insurer fails to timely submit a final~~
170 ~~acceptable anti-fraud plan or anti-fraud investigative unit~~
171 ~~description, fails to implement the provisions of a plan or an~~
172 ~~anti-fraud investigative unit description,~~ or otherwise refuses
173 to comply with the provisions of this section, the department,
174 office, or commission may:

175 (a) Impose an administrative fine of not more than \$2,000
176 per day for such failure ~~by an insurer to submit an acceptable~~
177 ~~anti-fraud plan or anti-fraud investigative unit description,~~
178 until the department, office, or commission deems the insurer to
179 be in compliance;

180 (b) Impose an administrative fine for failure by an insurer
181 to implement or follow the provisions of an anti-fraud plan or
182 anti-fraud investigative unit description; or

183 (c) Impose the provisions of both paragraphs (a) and (b).

184 (9) On or before December 31, 2018, the Division of



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185 Investigative and Forensic Services shall create a report
186 detailing best practices for the detection, investigation,
187 prevention, and reporting of insurance fraud and other
188 fraudulent insurance acts. The report must be updated as
189 necessary but at least every 2 years. The report must provide:

190 (a) Information on the best practices for the establishment
191 of anti-fraud investigative units within insurers;

192 (b) Information on the best practices and methods for
193 detecting and investigating insurance fraud and other fraudulent
194 insurance acts;

195 (c) Information on appropriate anti-fraud education and
196 training of insurer personnel;

197 (d) Information on the best practices for reporting
198 insurance fraud and other fraudulent insurance acts to the
199 Division of Investigative and Forensic Services and to other law
200 enforcement agencies;

201 (e) Information regarding the appropriate level of staffing
202 and resources for anti-fraud investigative units within
203 insurers;

204 (f) Information detailing statistics and data relating to
205 insurance fraud which insurers should maintain; and

206 (g) Other information as determined by the Division of
207 Investigative and Forensic Services.

208 (10) ~~(8)~~ The department may adopt rules to administer this
209 section, except that it shall adopt rules to administer
210 subsection (5).

211 Section 2. Effective September 1, 2017, section 626.9896,
212 Florida Statutes, is created to read:

213 626.9896 Insurance Fraud Dedicated Prosecutor Program.—



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214 (1) LEGISLATIVE INTENT.—The Legislature recognizes the
215 increasing problem of insurance fraud, the need to adequately
216 investigate and prosecute insurance fraud, and the need to
217 create a program dedicated to the prosecution of insurance
218 fraud. The Legislature recognizes that the Division of
219 Investigative and Forensic Services of the department can
220 efficiently and effectively implement and monitor such a
221 program, and can direct and reallocate resources as insurance
222 fraud trends change and demand for prosecutorial resources shift
223 between judicial circuits.

224 (2) ESTABLISHMENT OF THE INSURANCE FRAUD DEDICATED
225 PROSECUTOR PROGRAM.—There is created within the department a
226 grant program to fund the Insurance Fraud Dedicated Prosecutor
227 Program. The purpose of the program is to provide grants to
228 state attorneys' offices to fund attorney and paralegal
229 positions that are dedicated exclusively to the prosecution of
230 insurance fraud. The program shall consist only of funds
231 appropriated by the state specifically for this program.

232 (3) GRANT APPLICATIONS.—Beginning in 2018, a state
233 attorney's office seeking grant funds must submit an application
234 to the Division of Investigative and Forensic Services detailing
235 the proposed number of dedicated prosecutors and paralegals
236 requested for the prosecution of insurance fraud. Applications
237 must be received by July 1 of each even-numbered year and shall
238 identify funding needs for 2 years. Grant awards are contingent
239 upon legislative appropriation in the Insurance Regulatory Trust
240 Fund and Workers' Compensation Administration Trust Fund and
241 subject to renewal by the department. The division must compile
242 and review the timely submitted applications to establish its



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243 legislative budget request for the program for the upcoming two
244 years.

245 (4) AWARD OF GRANTS.—The division is authorized to award
246 grants to state attorneys' offices using a formula adopted by
247 rule of the department and based on metrics and data compiled by
248 the division which allocate funds to the judicial circuits based
249 on trends in insurance fraud and the performance and output
250 measures reported as required by this section. A grant awarded
251 to a state attorney's office may only be used to fund attorney
252 and paralegal positions that are dedicated exclusively to the
253 prosecution of insurance fraud. Grants are subject to the
254 provisions of s. 215.971. The division shall establish the
255 annual maximum grant amount, based on funds appropriated to the
256 department for funding the Insurance Fraud Dedicated Prosecutor
257 Program.

258 (5) REPORTING.—The division must track and report on the
259 effectiveness and efficiency of each state attorney's office's
260 use of the awarded grant funds. To help complete the report,
261 each state attorney's office that is awarded a grant under this
262 section must submit performance and output information as
263 determined by the division. The report must be provided to the
264 Executive Office of the Governor, the Speaker of the House of
265 Representatives, and the President of the Senate by September 1,
266 2020, and annually thereafter. The report must include, but is
267 not limited to, the following:

268 (a) The amount of grant funds received and expended by each
269 state attorney's office;

270 (b) A description of the purposes for which the funds were
271 expended, including payment of salaries, expenses, and any other



272 costs needed to support the delivery of services;

273 (c) The results achieved from the expenditures made,
274 including the number of complaints filed, the number of
275 investigations initiated, the number of arrests made, the number
276 of convictions, and the amount of restitution or fines paid as a
277 result of the cases presented for prosecution.

278 (6) RULES.—The department may adopt rules pursuant to ss.
279 120.536(1) and 120.54 for the administration and implementation
280 of the Insurance Fraud Dedicated Prosecutor Program. Such rules
281 may establish procedures for the Insurance Fraud Dedicated
282 Prosecutor Program, including forms to be used by the state
283 attorney's offices. The department may establish a formula for
284 allocating grant funds, eligibility criteria, renewal
285 requirements, and standards for evaluating the effectiveness and
286 efficiency of expended funds.

287 Section 3. Present subsections (2) through (7) of section
288 626.9911, Florida Statutes, are renumbered as subsections (3)
289 through (8), respectively, present subsections (8) through (14)
290 of that section are renumbered as subsections (10) through (16),
291 respectively, and new subsections (2) and (9) are added to that
292 section, to read:

293 626.9911 Definitions.—As used in this act, the term:

294 (2) "Fraudulent viatical settlement act" means an act or
295 omission committed by a person who knowingly, or with intent to
296 defraud for the purpose of depriving another of property or for
297 pecuniary gain, commits or allows an employee or agent to commit
298 any of the following acts:

299 (a) Presenting, causing to be presented, or preparing with
300 the knowledge or belief that it will be presented to or by



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301 another person, false or concealed material information as part
302 of, in support of, or concerning a fact material to:
303 1. An application for the issuance of a viatical settlement
304 contract or a life insurance policy;
305 2. The underwriting of a viatical settlement contract or a
306 life insurance policy;
307 3. A claim for payment or benefit pursuant to a viatical
308 settlement contract or a life insurance policy;
309 4. Premiums paid on a life insurance policy;
310 5. Payments and changes in ownership or beneficiary made in
311 accordance with the terms of a viatical settlement contract or a
312 life insurance policy;
313 6. The reinstatement or conversion of a life insurance
314 policy;
315 7. The solicitation, offer, effectuation, or sale of a
316 viatical settlement contract or a life insurance policy;
317 8. The issuance of written evidence of a viatical
318 settlement contract or a life insurance policy; or
319 9. A financing transaction for a viatical settlement
320 contract or life insurance policy.
321 (b) Employing a plan, financial structure, device, scheme,
322 or artifice relating to viaticated policies for the purpose of
323 perpetrating fraud.
324 (c) Engaging in a stranger-originated life insurance
325 practice.
326 (d) Failing to disclose, upon request by an insurer, that
327 the prospective insured has undergone a life expectancy
328 evaluation by a person other than the insurer or its authorized
329 representatives in connection with the issuance of the life



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330 insurance policy.

331 (e) Perpetuating a fraud or preventing the detection of a
332 fraud by:

333 1. Removing, concealing, altering, destroying, or
334 sequestering from the office the assets or records of a licensee
335 or other person engaged in the business of viatical settlements;

336 2. Misrepresenting or concealing the financial condition of
337 a licensee, financing entity, insurer, or other person;

338 3. Transacting in the business of viatical settlements in
339 violation of laws requiring a license, certificate of authority,
340 or other legal authority to transact such business; or

341 4. Filing with the office or the equivalent chief insurance
342 regulatory official of another jurisdiction a document that
343 contains false information or conceals information about a
344 material fact from the office or other regulatory official.

345 (f) Embezzlement, theft, misappropriation, or conversion of
346 moneys, funds, premiums, credits, or other property of a
347 viatical settlement provider, insurer, insured, viator,
348 insurance policyowner, or other person engaged in the business
349 of viatical settlements or life insurance.

350 (g) Entering into, negotiating, brokering, or otherwise
351 dealing in a viatical settlement contract, the subject of which
352 is a life insurance policy that was obtained based on
353 information that was falsified or concealed for the purpose of
354 defrauding the policy's issuer, viatical settlement provider, or
355 viator.

356 (h) Facilitating the viator's change of residency state to
357 avoid the provisions of this act.

358 (i) Facilitating or causing the creation of a trust with a



359 non-Florida or other nonresident entity for the purpose of
360 owning a life insurance policy covering a Florida resident to
361 avoid the provisions of this act.

362 (j) Facilitating or causing the transfer of the ownership
363 of an insurance policy covering a Florida resident to a trust
364 with a situs outside this state or to another nonresident entity
365 to avoid the provisions of this act.

366 (k) Applying for or obtaining a loan that is secured
367 directly or indirectly by an interest in a life insurance policy
368 with intent to defraud, for the purpose of depriving another of
369 property or for pecuniary gain.

370 (l) Attempting to commit, assisting, aiding, or abetting in
371 the commission of, or conspiring to commit, an act or omission
372 specified in this subsection.

373 (9) "Stranger-originated life insurance practice" means an
374 act, practice, arrangement, or agreement to initiate a life
375 insurance policy for the benefit of a third-party investor who,
376 at the time of policy origination, has no insurable interest in
377 the insured. Stranger-originated life insurance practices
378 include, but are not limited to:

379 (a) The purchase of a life insurance policy with resources
380 or guarantees from or through a person who, at the time of such
381 policy's inception, could not lawfully initiate the policy and
382 the execution of a verbal or written arrangement or agreement to
383 directly or indirectly transfer the ownership of such policy or
384 policy benefits to a third party.

385 (b) The creation of a trust or other entity that has the
386 appearance of an insurable interest in order to initiate
387 policies for investors, in violation of insurable interest laws



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388 and the prohibition against wagering on life.

389 Section 4. Subsection (7) of section 626.9924, Florida
390 Statutes, is amended to read:

391 626.9924 Viatical settlement contracts; procedures;
392 rescission.—

393 (7) At any time during the contestable period, within 20
394 days after a viator executes documents necessary to transfer
395 rights under an insurance policy or within 20 days of any
396 agreement, option, promise, or any other form of understanding,
397 express or implied, to viaticate the policy, the provider must
398 give notice to the insurer of the policy that the policy has or
399 will become a viaticated policy. The notice must be accompanied
400 by the documents required by s. 626.99287 ~~626.99287(5)(a)~~ ~~in~~
401 ~~their entirety.~~

402 Section 5. Subsection (2) of section 626.99245, Florida
403 Statutes, is amended to read:

404 626.99245 Conflict of regulation of viaticals.—

405 (2) This section does not affect the requirement of ss.
406 626.9911(14) ~~626.9911(12)~~ and 626.9912(1) that a viatical
407 settlement provider doing business from this state must obtain a
408 viatical settlement license from the office. As used in this
409 subsection, the term "doing business from this state" includes
410 effectuating viatical settlement contracts from offices in this
411 state, regardless of the state of residence of the viator.

412 Section 6. Subsection (1) of section 626.99275, Florida
413 Statutes, is amended to read:

414 626.99275 Prohibited practices; penalties.—

415 (1) It is unlawful for a ~~any~~ person to:

416 (a) ~~To~~ Knowingly enter into, broker, or otherwise deal in a



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417 viatical settlement contract the subject of which is a life
418 insurance policy, knowing that the policy was obtained by
419 presenting materially false information concerning any fact
420 material to the policy or by concealing, for the purpose of
421 misleading another, information concerning any fact material to
422 the policy, where the viator or the viator's agent intended to
423 defraud the policy's issuer.

424 (b) ~~Te~~ Knowingly or with the intent to defraud, for the
425 purpose of depriving another of property or for pecuniary gain,
426 issue or use a pattern of false, misleading, or deceptive life
427 expectancies.

428 (c) ~~Te~~ Knowingly engage in any transaction, practice, or
429 course of business intending thereby to avoid the notice
430 requirements of s. 626.9924(7).

431 (d) ~~Te~~ Knowingly or intentionally facilitate the change of
432 state of residency of a viator to avoid the provisions of this
433 chapter.

434 (e) Knowingly enter into a viatical settlement contract
435 before the application for or issuance of a life insurance
436 policy that is the subject of a viatical settlement contract or
437 during an applicable period specified in s. 626.99287(1) or (2),
438 unless the viator provides a sworn affidavit and accompanying
439 independent evidentiary documentation in accordance with s.
440 626.99287.

441 (f) Engage in a fraudulent viatical settlement act, as
442 defined in s. 626.9911.

443 (g) Knowingly issue, solicit, market, or otherwise promote
444 the purchase of a life insurance policy for the purpose of or
445 with an emphasis on selling the policy to a third party.



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446 (h) Engage in a stranger-originated life insurance
447 practice, as defined in s. 626.9911.

448 Section 7. Section 626.99287, Florida Statutes, is amended
449 to read:

450 626.99287 Contestability of viaticated policies.—

451 (1) Except as hereinafter provided, if a viatical
452 settlement contract is entered into within the 2-year period
453 commencing with the date of issuance of the insurance policy or
454 certificate to be acquired, the viatical settlement contract is
455 void and unenforceable by either party.

456 (2) Except as hereinafter provided, if a viatical
457 settlement policy is subject to a loan secured directly or
458 indirectly by an interest in the policy within a 5-year period
459 commencing on the date of issuance of the policy or certificate,
460 the viatical settlement contract is void and unenforceable by
461 either party.

462 (3) Notwithstanding the limitations in subsections (1) and
463 (2) ~~this limitation~~, such a viatical settlement contract is not
464 void and unenforceable if the viator provides a sworn affidavit
465 and accompanying independent evidentiary documentation
466 certifying to the viatical settlement provider that one or more
467 of the following conditions were met during the periods
468 applicable to the viaticated policy as stated in subsections (1)
469 or (2):

470 (a) ~~(1)~~ The policy was issued upon the owner's exercise of
471 conversion rights arising out of a group or term policy, if the
472 total time covered under the prior policy is at least 60 months.
473 The time covered under a group policy must be calculated without
474 regard to any change in insurance carriers, provided the



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475 coverage has been continuous and under the same group
476 sponsorship.

477 (b)(2) The owner of the policy is a charitable organization
478 exempt from taxation under 26 U.S.C. s. 501(c)(3).

479 ~~(3) The owner of the policy is not a natural person;~~

480 ~~(4) The viatical settlement contract was entered into~~
481 ~~before July 1, 2000;~~

482 (c)(5) The viator certifies by producing independent
483 evidence to the viatical settlement provider that one or more of
484 the following conditions were ~~have been~~ met ~~within the 2-year~~
485 ~~period:~~

486 ~~(a)1.~~ The viator or insured is terminally or chronically
487 ill ~~diagnosed with an illness or condition that is either:~~

488 ~~a. Catastrophic or life threatening; or~~

489 ~~b. Requires a course of treatment for a period of at least~~
490 ~~3 years of long term care or home health care; and~~

491 ~~2.~~ the condition was not known to the insured at the time
492 the life insurance contract was entered into;

493 ~~2.(b)~~ The viator's spouse dies;

494 ~~3.(e)~~ The viator divorces his or her spouse;

495 ~~4.(d)~~ The viator retires from full-time employment;

496 ~~5.(e)~~ The viator becomes physically or mentally disabled
497 and a physician determines that the disability prevents the
498 viator from maintaining full-time employment;

499 ~~6.(f)~~ The owner of the policy was the insured's employer at
500 the time the policy or certificate was issued and the employment
501 relationship terminated;

502 ~~7.(g)~~ A final order, judgment, or decree is entered by a
503 court of competent jurisdiction, on the application of a



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504 creditor of the viator, adjudicating the viator bankrupt or
505 insolvent, or approving a petition seeking reorganization of the
506 viator or appointing a receiver, trustee, or liquidator to all
507 or a substantial part of the viator's assets; or

508 8.-(h) The viator experiences a significant decrease in
509 income which is unexpected by the viator and which impairs his
510 or her reasonable ability to pay the policy premium.

511 (d) The viator entered into a viatical settlement contract
512 more than 2 years after the policy's issuance date and, with
513 respect to the policy, at all times before the date that is 2
514 years after policy issuance, each of the following conditions is
515 met:

516 1. Policy premiums have been funded exclusively with
517 unencumbered assets, including an interest in the life insurance
518 policy being financed only to the extent of its net cash
519 surrender value, provided by, or fully recourse liability
520 incurred by, the insured;

521 2. There is no agreement or understanding with any other
522 person to guarantee any such liability or to purchase, or stand
523 ready to purchase, the policy, including through an assumption
524 or forgiveness of the loan; and

525 3. Neither the insured or the policy has been evaluated for
526 settlement.

527
528 ~~If the viatical settlement provider submits to the insurer a~~
529 ~~copy of the viator's or owner's certification described above,~~
530 ~~then the provider submits a request to the insurer to effect the~~
531 ~~transfer of the policy or certificate to the viatical settlement~~
532 ~~provider, the viatical settlement agreement shall not be void or~~



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533 ~~unenforceable by operation of this section. The insurer shall~~
534 ~~timely respond to such request. Nothing in this section shall~~
535 ~~prohibit an insurer from exercising its right during the~~
536 ~~contestability period to contest the validity of any policy on~~
537 ~~grounds of fraud.~~

538 Section 8. Section 626.99289, Florida Statutes, is created
539 to read:

540 626.99289 Void and unenforceable contracts, agreements,
541 arrangements, and transactions.—Notwithstanding s. 627.455, a
542 contract, agreement, arrangement, or transaction, including, but
543 not limited to, a financing agreement or any other arrangement
544 or understanding entered into, whether written or verbal, for
545 the furtherance or aid of a stranger-originated life insurance
546 practice is void and unenforceable.

547 Section 9. Section 626.99291, Florida Statutes, is created
548 to read:

549 626.99291 Contestability of life insurance policies.—
550 Notwithstanding s. 627.455, a life insurer may contest a life
551 insurance policy if the policy was obtained by a stranger-
552 originated life insurance practice, as defined in s. 626.9911.

553 Section 10. Section 626.99292, Florida Statutes, is created
554 to read:

555 626.99292 Notice to insureds.—

556 (1) A life insurer shall provide an individual life
557 insurance policyholder with a statement informing him or her
558 that if he or she is considering making changes in the status of
559 his or her policy, he or she should consult with a licensed
560 insurance or financial advisor. The statement may accompany or
561 be included in notices or mailings otherwise provided to the



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562 policyholder.

563 (2) The statement must also advise the policyholder that he
564 or she may contact the office for more information and include a
565 website address or other location or manner by which the
566 policyholder may contact the office.

567 Section 11. Effective September 1, 2017, section 641.3915,
568 Florida Statutes, is amended to read:

569 641.3915 Health maintenance organization anti-fraud plans
570 and investigative units.—Each authorized health maintenance
571 organization and applicant for a certificate of authority shall
572 comply with the provisions of ss. 626.989 and 626.9891 as though
573 such organization or applicant were an authorized insurer. ~~For~~
574 ~~purposes of this section, the reference to the year 1996 in s.~~
575 ~~626.9891 means the year 2000 and the reference to the year 1995~~
576 ~~means the year 1999.~~

577 Section 12. Except as otherwise expressly provided in this
578 act, this act shall take effect upon becoming a law.

579
580 ===== T I T L E A M E N D M E N T =====

581 And the title is amended as follows:

582 Delete lines 2 - 37

583 and insert:

584 An act relating to insurance fraud; reordering and
585 amending s. 626.9891, F.S.; defining and revising
586 definitions; requiring every insurer to designate at
587 least one primary anti-fraud employee for certain
588 purposes; requiring insurers to adopt an anti-fraud
589 plan; revising insurer requirements in providing anti-
590 fraud information to the Department of Financial



591 Services; requiring specified information to be filed
592 annually with the department; revising the information
593 to be provided by insurers who write workers'
594 compensation insurance; requiring each insurer to
595 provide annual anti-fraud education and training;
596 requiring insurers who submit an application for a
597 certificate of authority after a specified date to
598 comply with the section; providing penalties for the
599 failure to comply with requirements of the section;
600 requiring the Division of Investigative and Forensic
601 Services of the department to create, by a specified
602 date, a report detailing best practices for the
603 detection, investigation, prevention, and reporting of
604 insurance fraud and other fraudulent insurance acts;
605 requiring such report to be updated at certain
606 intervals; specifying required information in the
607 report; requiring the department to adopt rules
608 relating to insurers' annual reporting of certain
609 data; creating s. 626.9896, F.S.; providing
610 legislative intent; creating a grant program to fund
611 the Insurance Fraud Dedicated Prosecutor Program
612 within the department; requiring moneys that are
613 appropriated for the program be used to fund specific
614 attorney and paralegal positions; specifying
615 procedures to be used by state attorneys' offices when
616 applying for biennial grants; specifying that grants
617 are for 2 years but authorizing the division to renew
618 the grants; specifying procedures to be used by the
619 department in awarding grant funds; requiring the



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620 Division of Investigative and Forensic Services to
621 provide an annual report to the Executive Office of
622 the Governor, the Speaker of the House of
623 Representatives, and the Senate President; specifying
624 information to be contained in the report; authorizing
625 the department to adopt rules to administer and
626 implement the insurance fraud dedicated prosecutor
627 program; amending s. 626.9911, F.S.; defining the
628 terms "fraudulent viatical settlement act" and
629 "stranger-originated life insurance practice" for
630 purposes of provisions relating to the Viatical
631 Settlement Act; amending ss. 626.9924 and 626.99245,
632 F.S.; conforming cross-references; amending s.
633 626.99275, F.S.; providing additional prohibited acts
634 related to viatical settlement contracts; amending s.
635 626.99287, F.S.; providing that a viatical settlement
636 contract is void and unenforceable by either party if
637 the viatical settlement policy is subject, within a
638 specified timeframe, to a loan secured by an interest
639 in the policy; revising conditions and requirements in
640 which viatical settlement contracts entered into
641 within specified timeframes are valid and enforceable;
642 deleting provisions related to the transfer of
643 insurance policies or certificates to viatical
644 settlement providers; creating s. 626.99289, F.S.;
645 providing that certain contracts, agreements,
646 arrangements, or transactions relating to stranger-
647 originated life insurance practices are void and
648 unenforceable; creating s. 626.99291, F.S.;



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649 authorizing a life insurer to contest policies
650 obtained through such practices; creating s.
651 626.99292, F.S.; requiring life insurers to provide a
652 specified statement to individual life insurance
653 policyholders; authorizing such statements to
654 accompany or be included in notices or mailings
655 provided to the policyholders; requiring such
656 statements to include contact information; amending s.
657 641.3915, F.S.; deleting obsolete provisions;
658 providing effective dates.



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LEGISLATIVE ACTION

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

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



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LEGISLATIVE ACTION

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

The Committee on Appropriations (Brandes) recommended the following:

1 **Senate Amendment to Amendment (167518) (with title**
2 **amendment)**

3
4 Between lines 566 and 567
5 insert:

6 Section 11. Effective January 1, 2019, section 627.744,
7 Florida Statutes, is amended to read:

8 627.744 ~~Required~~ Preinsurance inspection of private
9 passenger motor vehicles.—

10 (1) A private passenger motor vehicle insurance policy



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11 providing physical damage coverage, including collision or
12 comprehensive coverage, may not be issued in this state unless
13 the insurer has inspected the motor vehicle in accordance with
14 this section.

15 (2) This section does not apply:

16 (a) To a policy for a policyholder who has been insured for
17 2 years or longer, without interruption, under a private
18 passenger motor vehicle policy that provides physical damage
19 coverage for any vehicle if the agent of the insurer verifies
20 the previous coverage.

21 (b) To a new, unused motor vehicle purchased or leased from
22 a licensed motor vehicle dealer or leasing company. The insurer
23 may require:

24 1. A bill of sale, buyer's order, or lease agreement that
25 contains a full description of the motor vehicle; or

26 2. A copy of the title or registration that establishes
27 transfer of ownership from the dealer or leasing company to the
28 customer and a copy of the window sticker.

29
30 For the purposes of this paragraph, the physical damage coverage
31 on the motor vehicle may not be suspended during the term of the
32 policy due to the applicant's failure to provide or the
33 insurer's option not to require the documents. However, if the
34 insurer requires a document under this paragraph at the time the
35 policy is issued, payment of a claim may be conditioned upon the
36 receipt by the insurer of the required documents, and no
37 physical damage loss occurring after the effective date of the
38 coverage may be payable until the documents are provided to the
39 insurer.



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40 (c) To a temporary substitute motor vehicle.

41 (d) To a motor vehicle which is leased for less than 6
42 months, if the insurer receives the lease or rental agreement
43 containing a description of the leased motor vehicle, including
44 its condition. Payment of a physical damage claim is conditioned
45 upon receipt of the lease or rental agreement.

46 (e) To a vehicle that is 10 years old or older, as
47 determined by reference to the model year.

48 (f) To any renewal policy.

49 (g) To a motor vehicle policy issued in a county with a
50 1988 estimated population of less than 500,000.

51 (h) To any other vehicle or policy exempted by rule of the
52 commission. The commission may base a rule under this paragraph
53 only on a determination that the likelihood of a fraudulent
54 physical damage claim is remote or that the inspection would
55 cause a serious hardship to the insurer or the applicant.

56 (i) When the insurer's authorized inspection service has no
57 inspection facility either in the municipality in which the
58 automobile is principally garaged or within 10 miles of such
59 municipality.

60 (j) When the insured vehicle is insured under a
61 commercially rated policy that insures five or more vehicles.

62 (k) When an insurance producer is transferring a book of
63 business from one insurer to another.

64 (l) When an individual insured's coverage is being
65 transferred and initiated by a producer to a new insurer.

66 ~~(3) This subsection does not prohibit an insurer from~~
67 ~~requiring a preinsurance inspection of any motor vehicle as a~~
68 ~~condition of issuance of physical damage coverage.~~



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69 (3)~~(4)~~ The inspection required by this section shall be
70 provided by the insurer or by a person or organization
71 authorized by the insurer. The applicant may be required to pay
72 the cost of the inspection, not to exceed \$5. The inspection
73 shall be recorded on a form prescribed by the commission, and
74 the form or a copy shall be retained by the insurer with its
75 policy records for the insured. The insurer shall provide a copy
76 of the form to the insured upon request. Any inspection fee paid
77 directly by the applicant may not be considered part of the
78 premium. However, an insurer that provides the inspection at no
79 cost to the applicant may include the expense of the inspection
80 within a rate filing.

81 (4)~~(5)~~ The inspection shall include at least the following:

82 (a) Taking a physical imprint of the vehicle identification
83 number of the vehicle or otherwise recording the vehicle
84 identification number in a manner prescribed by the commission.

85 (b) Recording the presence of accessories required by the
86 commission to be recorded.

87 (c) Recording the locations of and a description of
88 existing damage to the vehicle.

89 (5)~~(6)~~ An insurer may defer an inspection for 30 calendar
90 days following the effective date of coverage for a new policy,
91 but not for a renewal policy, and for additional or replacement
92 vehicles to an existing policy, if an inspection at the time of
93 the request for coverage would create a serious inconvenience
94 for the applicant and such hardship is documented in the
95 insured's policy record.

96 (6)~~(7)~~ The commission may, by rule, establish such
97 procedures and notice requirements that it finds necessary to



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98 implement this section.

99 (7) Notwithstanding any other provision of this section, an
100 insurer may opt out of the inspection requirements of this
101 section. An insurer opting out of the inspection must file a
102 manual rule with the office indicating that the insurer will not
103 participate in the inspection program under this section. An
104 insurer that files such a manual rule with the office may
105 establish its own preinsurance inspection requirements as a
106 condition to issuing a private passenger motor vehicle insurance
107 policy. The insurer's preinsurance inspection requirements must
108 be included in the manual rule filed with the office. An insurer
109 opting out of the inspection requirements of this section may
110 not require an applicant to pay for the cost of an inspection.

111 ~~(8) The Division of Insurance Fraud of the Department of~~
112 ~~Financial Services shall provide a report of data from the~~
113 ~~required preinsurance inspection of motor vehicles to the~~
114 ~~Governor, the President of the Senate, and the Speaker of the~~
115 ~~House of Representatives by December 1, 2016.~~

116 ~~(a) The data must include, but need not be limited to:~~

117 ~~1. A written estimate of the total cost incurred by~~
118 ~~insurers and policyholders in order to comply with the~~
119 ~~inspections.~~

120 ~~2. A written estimate of the total cost incurred by~~
121 ~~insurers to have their motor vehicles inspected.~~

122 ~~3. Documentation regarding the total premium savings for~~
123 ~~policyholders as a result of the inspections.~~

124 ~~4. Documentation of the total number of inspected motor~~
125 ~~vehicles that had a preexisting condition.~~

126 ~~5. Documentation regarding the potential fraud in motor~~



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127 ~~vehicle claims incurred within the first 125 days after issuance~~
128 ~~of a new policy.~~

129 ~~6. Documentation of the total number of referrals of~~
130 ~~fraudulent acts to the National Insurance Crime Bureau by~~
131 ~~preinsurance inspectors during the past 5 years.~~

132 ~~(b) The Legislature may use the report data in determining~~
133 ~~the future public necessity for this section.~~

134

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

136 And the title is amended as follows:

137 Delete line 656

138 and insert:

139 statements to include contact information; amending s.
140 627.744, F.S.; deleting a provision that provides
141 construction; authorizing insurers to opt out of the
142 preinsurance inspection requirements for private
143 passenger motor vehicles; requiring insurers opting
144 out to file a certain manual rule with the Office of
145 Insurance Regulation; authorizing such insurers to
146 establish their own preinsurance inspection
147 requirements, which must be included in the filed
148 manual rule; prohibiting such insurers from requiring
149 applicants to pay for the cost of inspections;
150 deleting an obsolete provision; amending s.



364756

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2017	.	
	.	
	.	
	.	

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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11 (a) Information on the best practices for the establishment
12 of anti-fraud investigative units within insurers;

13 (b) Information on the best practices and methods for
14 detecting and investigating insurance fraud and other fraudulent
15 insurance acts;

16 (c) Information on appropriate anti-fraud education and
17 training of insurer personnel;

18 (d) Information on the best practices for reporting
19 insurance fraud and other fraudulent insurance acts to the
20 Division of Investigative and Forensic Services and to other law
21 enforcement agencies;

22 (e) Information regarding the appropriate level of staffing
23 and resources for anti-fraud investigative units within
24 insurers;

25 (f) Information detailing statistics and data relating to
26 insurance fraud which insurers should maintain; and

27 (g) Other information as determined by the Division of
28 Investigative and Forensic Services.

29 (10)~~(8)~~ The department may adopt rules to administer this
30 section, except that it shall adopt rules to administer
31 subsection (5).

32
33 ===== T I T L E A M E N D M E N T =====

34 And the title is amended as follows:

35 Delete line 17

36 and insert:

37 the failure to comply with requirements of the
38 section; requiring the Division of Investigative and
39 Forensic Services of the department to create, by a



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40 specified date, a report detailing best practices for
41 the detection, investigation, prevention, and
42 reporting of insurance fraud and other fraudulent
43 insurance acts; requiring such report to be updated at
44 certain intervals; specifying required information in
45 the report; requiring the department to adopt rules
46 relating to insurers' annual reporting of certain
47 data;

By the Committee on Banking and Insurance; and Senator Brandes

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1 A bill to be entitled
 2 An act relating to insurer anti-fraud efforts;
 3 reordering and amending s. 626.9891, F.S.; defining
 4 and revising definitions; requiring every insurer to
 5 designate at least one primary anti-fraud employee for
 6 certain purposes; requiring insurers to adopt an anti-
 7 fraud plan; revising insurer requirements in providing
 8 anti-fraud information to the Department of Financial
 9 Services; requiring specified information to be filed
 10 annually with the department; revising the information
 11 to be provided by insurers who write workers'
 12 compensation insurance; requiring each insurer to
 13 provide annual anti-fraud education and training;
 14 requiring insurers who submit an application for a
 15 certificate of authority after a specified date to
 16 comply with the section; providing penalties for
 17 failure to comply with requirements of the section;
 18 creating s. 626.9896, F.S.; providing legislative
 19 intent; creating a grant program to fund the Insurance
 20 Fraud Dedicated Prosecutor Program within the
 21 department; requiring moneys that are appropriated for
 22 the program be used to fund specific attorney and
 23 paralegal positions; specifying procedures to be used
 24 by state attorneys' offices when applying for biennial
 25 grants; specifying that grants are for two years but
 26 authorizing the division to renew the grants;
 27 specifying procedures to be used by the department in
 28 awarding grant funds; requiring the Division of
 29 Investigative and Forensic Services to provide an

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

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30 annual report to the Executive Office of the Governor,
 31 the Speaker of the House of Representatives, and the
 32 Senate President; specifying information to be
 33 contained in the report; authorizing the department to
 34 adopt rules to administer and implement the insurance
 35 fraud dedicated prosecutor program; amending s.
 36 641.3915, F.S.; deleting obsolete provisions;
 37 providing an effective date.
 38

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

40
 41 Section 1. Section 626.9891, Florida Statutes, is reordered
 42 and amended to read:

43 626.9891 Insurer anti-fraud investigative units; reporting
 44 requirements; penalties for noncompliance.—

45 (1)(5) As used in For purposes of this section, the term:
 46 (a) "Anti-fraud investigative unit" means the designated
 47 anti-fraud unit or division, or contractor authorized under
 48 subparagraph (2) (a)2.

49 (b) "Designated anti-fraud unit or division" includes a
 50 distinct unit or division or a unit or division made up of the
 51 assignment of fraud investigation to employees whose principal
 52 responsibilities are the investigation and disposition of claims
 53 who are also assigned investigation of fraud. If an insurer
 54 creates a distinct unit or division, hires additional employees,
 55 or contracts with another entity to fulfill the requirements of
 56 this section, the additional cost incurred must be included as
 57 an administrative expense for ratemaking purposes.

58 (2)(1) By December 31, 2017, every insurer admitted to do

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

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59 business in this state ~~who in the previous calendar year, at any~~
 60 ~~time during that year, had \$10 million or more in direct~~
 61 ~~premiums written shall:~~

62 (a) 1. Establish and maintain a designated anti-fraud unit
 63 or division within the company to investigate and report
 64 possible fraudulent insurance acts ~~claims~~ by insureds or by
 65 persons making claims for services or repairs against policies
 66 held by insureds; or

67 2. ~~(b)~~ Contract with others to investigate and report
 68 possible fraudulent insurance acts by insureds or by persons
 69 making claims for services or repairs against policies held by
 70 insureds.

71 (b) Adopt an anti-fraud plan.

72 (c) Designate at least one employee with primary
 73 responsibility for implementing the requirements of this
 74 section.

75 (d) Electronically ~~An insurer subject to this subsection~~
 76 ~~shall file with the Division of Investigative and Forensic~~
 77 ~~Services of the department, and annually thereafter on or before~~
 78 ~~July 1, 1996, a detailed description of the designated anti-~~
 79 ~~fraud unit or division established pursuant to paragraph (a) or~~
 80 ~~a copy of the contract executed under subparagraph (a)2., as~~
 81 ~~applicable, a copy of the anti-fraud plan, and the name of the~~
 82 ~~employee designated under paragraph (c) and related documents~~
 83 ~~required by paragraph (b).~~

84
 85 An insurer must include the additional cost incurred in creating
 86 a distinct unit or division, hiring additional employees, or
 87 contracting with another entity to fulfill the requirements of

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88 this section, as an administrative expense for ratemaking
 89 purposes.

90 ~~(2) Every insurer admitted to do business in this state,~~
 91 ~~which in the previous calendar year had less than \$10 million in~~
 92 ~~direct premiums written, must adopt an anti fraud plan and file~~
 93 ~~it with the Division of Investigative and Forensic Services of~~
 94 ~~the department on or before July 1, 1996. An insurer may, in~~
 95 ~~lieu of adopting and filing an anti-fraud plan, comply with the~~
 96 ~~provisions of subsection (1).~~

97 (3) Each ~~insurers~~ anti-fraud plan must ~~plans~~ shall include:

98 (a) An acknowledgement that the insurer has established
 99 procedures for detecting and investigating possible fraudulent
 100 insurance acts relating to the different types of insurance by
 101 that insurer ~~A description of the insurer's procedures for~~
 102 ~~detecting and investigating possible fraudulent insurance acts;~~

103 (b) An acknowledgment that the insurer has established A
 104 ~~description of the insurer's~~ procedures for the mandatory
 105 reporting of possible fraudulent insurance acts to the Division
 106 of Investigative and Forensic Services of the department;

107 (c) An acknowledgement that the insurer provides the A
 108 ~~description of the insurer's plan for~~ anti-fraud education and
 109 training required by this section to the anti-fraud
 110 investigative unit of its claims adjusters or other personnel;
 111 and

112 (d) A description of the required anti-fraud education and
 113 training;

114 (e) A written description or chart outlining the
 115 ~~organizational arrangement~~ of the insurer's anti-fraud
 116 investigative unit, including the position titles and

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117 ~~descriptions of staffing; and personnel who are responsible for~~
 118 ~~the investigation and reporting of possible fraudulent insurance~~
 119 ~~acts~~

120 (f) The rationale for the level of staffing and resources
 121 being provided for the anti-fraud investigative unit which may
 122 include objective criteria, such as the number of policies
 123 written, the number of claims received on an annual basis, the
 124 volume of suspected fraudulent claims detected on an annual
 125 basis, an assessment of the optimal caseload that one
 126 investigator can handle on an annual basis, and other factors.

127 (4) By December 31, 2018, each insurer shall provide staff
 128 of the anti-fraud investigative unit at least 2 hours of initial
 129 anti-fraud training that is designed to assist in identifying
 130 and evaluating instances of suspected fraudulent insurance acts
 131 in underwriting or claims activities. Annually thereafter, an
 132 insurer shall provide such employees a 1-hour course that
 133 addresses detection, referral, investigation, and reporting of
 134 possible fraudulent insurance acts for the types of insurance
 135 lines written by the insurer.

136 (5) Each insurer is required to report data related to
 137 fraud for each line of insurance written by the insurer during
 138 the prior calendar year. The data shall be reported to the
 139 department by March 1, 2019, and annually thereafter, and must
 140 include, at a minimum:

- 141 (a) The number of policies in effect;
- 142 (b) The amount of premiums written for policies;
- 143 (c) The number of claims received;
- 144 (d) The number of claims referred to the anti-fraud
 145 investigative unit;

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146 (e) The number of other insurance fraud matters referred to
 147 the anti-fraud investigative unit that were not claim related;

148 (f) The number of claims investigated or accepted by the
 149 anti-fraud investigative unit;

150 (g) The number of other insurance fraud matters
 151 investigated or accepted by the anti-fraud investigative unit
 152 that were not claim related;

153 (h) The number of cases referred to the Division of
 154 Investigative and Forensic Services;

155 (i) The number of cases referred to other law enforcement
 156 agencies;

157 (j) The number of cases referred to other entities; and

158 (k) The estimated dollar amount or range of damages on
 159 cases referred to the Division of Investigative and Forensic
 160 Services or other agencies.

161 (6) In addition to providing information required under
 162 subsections (2), (4), and (5), each insurer writing workers'
 163 compensation insurance shall also report the following
 164 information to the department, on or before March 1, 2019, and
 165 annually thereafter August 1 of each year, on its experience in
 166 implementing and maintaining an anti-fraud investigative unit or
 167 an anti-fraud plan. The report must include, at a minimum:

168 (a) The estimated dollar amount of losses attributable to
 169 workers' compensation fraud delineated by the type of fraud,
 170 including claimant, employer, provider, agent, or other type.

171 (b) The estimated dollar amount of recoveries attributable
 172 to workers' compensation fraud delineated by the type of fraud,
 173 including claimant, employer, provider, agent, or other type.

174 (c) The number of cases referred to the Division of

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175 Investigative and Forensic Services, delineated by the type of
 176 fraud, including claimant, employer, provider, agent, or other
 177 type.

178 ~~(a) The dollar amount of recoveries and losses attributable~~
 179 ~~to workers' compensation fraud delineated by the type of fraud:~~
 180 ~~claimant, employer, provider, agent, or other.~~

181 ~~(b) The number of referrals to the Bureau of Workers'~~
 182 ~~Compensation Fraud for the prior year.~~

183 ~~(c) A description of the organization of the anti-fraud~~
 184 ~~investigative unit, if applicable, including the position titles~~
 185 ~~and descriptions of staffing.~~

186 ~~(d) The rationale for the level of staffing and resources~~
 187 ~~being provided for the anti fraud investigative unit, which may~~
 188 ~~include objective criteria such as number of policies written,~~
 189 ~~number of claims received on an annual basis, volume of~~
 190 ~~suspected fraudulent claims currently being detected, other~~
 191 ~~factors, and an assessment of optimal caseload that can be~~
 192 ~~handled by an investigator on an annual basis.~~

193 ~~(e) The inservice education and training provided to~~
 194 ~~underwriting and claims personnel to assist in identifying and~~
 195 ~~evaluating instances of suspected fraudulent activity in~~
 196 ~~underwriting or claims activities.~~

197 ~~(f) A description of a public awareness program focused on~~
 198 ~~the costs and frequency of insurance fraud and methods by which~~
 199 ~~the public can prevent it.~~

200 (7)(4) An Any insurer who obtains a certificate of
 201 authority has 6 after July 1, 1995, shall have 18 months in
 202 which to comply with subsection (2), and one calendar year
 203 thereafter, to comply with subsections (4), (5), and (6) the

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204 ~~requirements of this section.~~

205 ~~(8)(7) If an insurer fails to timely submit a final~~
 206 ~~acceptable anti-fraud plan or anti-fraud investigative unit~~
 207 ~~description, fails to implement the provisions of a plan or an~~
 208 ~~anti fraud investigative unit description, or otherwise refuses~~
 209 ~~to comply with the provisions of this section, the department,~~
 210 ~~office, or commission may:~~

211 (a) Impose an administrative fine of not more than \$2,000
 212 per day for such failure ~~by an insurer to submit an acceptable~~
 213 ~~anti-fraud plan or anti-fraud investigative unit description,~~
 214 until the department, office, or commission deems the insurer to
 215 be in compliance;

216 (b) Impose an administrative fine for failure by an insurer
 217 to implement or follow the provisions of an anti-fraud plan or
 218 anti-fraud investigative unit description; or

219 (c) Impose the provisions of both paragraphs (a) and (b).

220 ~~(9)(8) The department may adopt rules to administer this~~
 221 ~~section.~~

222 Section 2. Section 626.9896, Florida Statutes, is created
 223 to read:

224 626.9896 Insurance Fraud Dedicated Prosecutor Program.—

225 (1) LEGISLATIVE INTENT.—The Legislature recognizes the
 226 increasing problem of insurance fraud, the need to adequately
 227 investigate and prosecute insurance fraud, and the need to
 228 create a program dedicated to the prosecution of insurance
 229 fraud. The Legislature recognizes that the Division of
 230 Investigative and Forensic Services of the department can
 231 efficiently and effectively implement and monitor such a
 232 program, and can direct and reallocate resources as insurance

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233 fraud trends change and demand for prosecutorial resources shift
 234 between judicial circuits.

235 (2) ESTABLISHMENT OF THE INSURANCE FRAUD DEDICATED
 236 PROSECUTOR PROGRAM.—There is created within the department a
 237 grant program to fund the Insurance Fraud Dedicated Prosecutor
 238 Program. The purpose of the program is to provide grants to
 239 state attorneys' offices to fund attorney and paralegal
 240 positions that are dedicated exclusively to the prosecution of
 241 insurance fraud. The program shall consist only of funds
 242 appropriated by the state specifically for this program.

243 (3) GRANT APPLICATIONS.—Beginning in 2018, a state
 244 attorney's office seeking grant funds must submit an application
 245 to the Division of Investigative and Forensic Services detailing
 246 the proposed number of dedicated prosecutors and paralegals
 247 requested for the prosecution of insurance fraud. Applications
 248 must be received by July 1 of each even-numbered year and shall
 249 identify funding needs for 2 years. Grant awards are contingent
 250 upon legislative appropriation in the Insurance Regulatory Trust
 251 Fund and Workers' Compensation Administration Trust Fund and
 252 subject to renewal by the department. The division must compile
 253 and review the timely submitted applications to establish its
 254 legislative budget request for the program for the upcoming two
 255 years.

256 (4) AWARD OF GRANTS.—The division is authorized to award
 257 grants to state attorneys' offices using a formula adopted by
 258 rule of the department and based on metrics and data compiled by
 259 the division which allocate funds to the judicial circuits based
 260 on trends in insurance fraud and the performance and output
 261 measures reported as required by this section. A grant awarded

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262 to a state attorney's office may only be used to fund attorney
 263 and paralegal positions that are dedicated exclusively to the
 264 prosecution of insurance fraud. Grants are subject to the
 265 provisions of s. 215.971. The division shall establish the
 266 annual maximum grant amount, based on funds appropriated to the
 267 department for funding the Insurance Fraud Dedicated Prosecutor
 268 Program.

269 (5) REPORTING.—The division must track and report on the
 270 effectiveness and efficiency of each state attorney's office's
 271 use of the awarded grant funds. To help complete the report,
 272 each state attorney's office that is awarded a grant under this
 273 section must submit performance and output information as
 274 determined by the division. The report must be provided to the
 275 Executive Office of the Governor, the Speaker of the House of
 276 Representatives, and the President of the Senate by September 1,
 277 2020, and annually thereafter. The report must include, but is
 278 not limited to, the following:

279 (a) The amount of grant funds received and expended by each
 280 state attorney's office;

281 (b) A description of the purposes for which the funds were
 282 expended, including payment of salaries, expenses, and any other
 283 costs needed to support the delivery of services;

284 (c) The results achieved from the expenditures made,
 285 including the number of complaints filed, the number of
 286 investigations initiated, the number of arrests made, the number
 287 of convictions, and the amount of restitution or fines paid as a
 288 result of the cases presented for prosecution.

289 (6) RULES.—The department may adopt rules pursuant to ss.
 290 120.536(1) and 120.54 for the administration and implementation

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291 of the Insurance Fraud Dedicated Prosecutor Program. Such rules
292 may establish procedures for the Insurance Fraud Dedicated
293 Prosecutor Program, including forms to be used by the state
294 attorney's offices. The department may establish a formula for
295 allocating grant funds, eligibility criteria, renewal
296 requirements, and standards for evaluating the effectiveness and
297 efficiency of expended funds.

298 Section 3. Section 641.3915, Florida Statutes, is amended
299 to read:

300 641.3915 Health maintenance organization anti-fraud plans
301 and investigative units.—Each authorized health maintenance
302 organization and applicant for a certificate of authority shall
303 comply with the provisions of ss. 626.989 and 626.9891 as though
304 such organization or applicant were an authorized insurer. ~~For~~
305 ~~purposes of this section, the reference to the year 1996 in s.~~
306 ~~626.9891 means the year 2000 and the reference to the year 1995~~
307 ~~means the year 1999.~~

308 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.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
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 SIATER BAYLISS

Job Title _____

Address 204 S. MONROE ST
Street
TALLAHASSEE FL 32301
City State Zip

Phone 222 8900

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.

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.

Phone 850-413-2890

Street

Tallahassee

City

FL

State

32399

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

1012

Meeting Date

Bill Number (if applicable)

167518

Topic Preinsurance inspection

Amendment Barcode (if applicable)

Name Ashley Kalifeh

Job Title lobbyist

Address 101 E. College Avenue Suite 502

Phone 2229075

Street

Tallahassee

fl

32301

Email akalifeh@capcityconsult.com

City

State

Zip

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

Phone 2229075

Street

Tallahassee

fl

32301

Email akalifeh@capcityconsult.com

City

State

Zip

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)

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.

Phone 813-334-5288

Street

Tallahassee, FL 32301

City

State

Zip

Email jan@ballardfl.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.

APPEARANCE RECORD

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

4-25-2017

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

Phone 850-510-9257

Street

Tall. FL 32307

Email msnowden@colodun
fass.com

City

State

Zip

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.

The Florida Senate
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.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Ferrin</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>

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

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.

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 acknowledgement 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.

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

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

597-03364-17

20171014c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 626.9891, F.S.; providing an exemption from public
 4 records requirements for reports, documents, or other
 5 information relating to the investigation and tracking
 6 of insurance fraud submitted by insurers to the
 7 Department of Financial Services; providing for future
 8 legislative review and repeal of the exemption;
 9 providing retroactive applicability; providing a
 10 statement of public necessity; providing a contingent
 11 effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Subsection (10) is added to section 626.9891,
 16 Florida Statutes, to read:
 17 626.9891 Insurer anti-fraud investigative units; reporting
 18 requirements; penalties for noncompliance.—
 19 (10) (a) The information submitted to the department
 20 pursuant to paragraphs (3) (d), (e), and (f) and paragraphs
 21 (5) (d), (e), (f), (g), and (k) is exempt from s. 119.07(1) and
 22 s. 24(a), Art. I of the State Constitution.
 23 (b) This subsection is subject to the Open Government
 24 Sunset Review Act in accordance with s. 119.15 and shall stand
 25 repealed on October 2, 2022, unless reviewed and saved from
 26 repeal through reenactment by the Legislature.
 27 (c) This exemption applies to records held before, on, or
 28 after the effective date of this exemption.
 29 Section 2. (1) The Legislature finds that it is a public

Page 1 of 4

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

597-03364-17

20171014c1

30 necessity to make exempt from s. 119.07(1), Florida Statutes,
 31 and s. 24(a), Article I of the State Constitution the
 32 description of an insurer's anti-fraud education and training,
 33 the description of an insurer's anti-fraud investigative unit,
 34 and an insurer's rationale for the level of staffing and
 35 resources it provides to the anti-fraud investigative unit as
 36 required in s. 626.9891(3) (d), (e), and (f), Florida Statutes,
 37 and filed with the Division of Investigative and Forensic
 38 Services pursuant to s. 626.9891(2), Florida Statutes, and the
 39 data collected and reported to the Division of Investigative and
 40 Forensic Services pursuant to s. 626.9891(5) (d), (e), (f), (g),
 41 and (k), Florida Statutes.
 42 (2) The description of an insurer's anti-fraud education
 43 and training that assists in identifying and evaluating
 44 instances of suspected fraudulent insurance acts, the
 45 description of an insurer's anti-fraud investigative unit, and
 46 an insurer's rationale for the level of staffing and resources
 47 it provides to the anti-fraud investigative unit will allow the
 48 Department of Financial Services to ensure that insurers have
 49 adequate procedures in place to properly detect, investigate,
 50 and report potential insurance fraud. The public disclosure of
 51 this information would allow criminal elements to use such
 52 information to identify fraud prevention or detection strategies
 53 employed by insurers and use this information to commit
 54 insurance fraud. The Legislature further finds that disclosure
 55 of this information would allow persons suspected of fraud to be
 56 alerted to a potential or ongoing investigation and alter
 57 behavior to impede an investigation. To ensure the integrity of
 58 such records already in the possession of the department, this

Page 2 of 4

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597-03364-17

20171014c1

59 exemption is made retroactive in its application.

60 (3) The data submitted pursuant to s. 626.9891(5)(d), (e),
61 (f), (g), and (k), Florida Statutes, allow the department to
62 track and assess trends in insurance fraud in this state. Such
63 information includes the number of claims referred to the anti-
64 fraud investigative unit, the number of matters referred to the
65 anti-fraud investigative unit which were not claim-related, the
66 number of claims investigated or accepted by the anti-fraud
67 investigative unit, the number of other insurance fraud matters
68 investigated or accepted by the anti-fraud investigative unit
69 which were not claim-related, and the estimated dollar amount or
70 range of damages on cases referred to the Division of
71 Investigative and Forensic Services or other agencies. The
72 public disclosure of this information could injure a business in
73 the marketplace by providing its competitors with detailed
74 insights into the claim investigation processes and statistics
75 of the company, thereby diminishing the advantage that the
76 business maintains over competitors that do not possess such
77 information. Without this exemption, insurers might refrain from
78 providing accurate and unbiased data, thus impairing the
79 department's ability to track and assess insurance fraud in this
80 state. This data will allow insurance fraud investigators to
81 better track, predict, and curb fraud trends in this state by
82 providing access to data gathered by insurers' anti-fraud
83 investigative units. Information regarding the amount of
84 insurance fraud experienced, referred, and addressed internally
85 will be valuable material for the department and will better
86 enable law enforcement agencies to assist state prosecutors in
87 the successful prosecution of fraudulent behavior.

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597-03364-17

20171014c1

88 Section 3. This act shall take effect on the same date that
89 CS/SB 1012 or similar legislation takes effect, if such
90 legislation is adopted in the same legislative session or an
91 extension thereof and becomes a law.

Page 4 of 4

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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/Investigation and Tracking of Insurance Fraud/Department of Financial Services** be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
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.

Phone 850-413-2890

Street

Tallahassee

City

FL

State

32399

Zip

Email _____

Speaking: For Against Information

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

Representing 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 systems¹⁰ 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

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

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/FIReBuildsProgOp_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

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_\(IP\)](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.

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)(1), 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 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 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.



728698

LEGISLATIVE ACTION

Senate

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House

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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11 compensation, undertakes to, submits a bid to, or does himself
12 or herself or by others construct, repair, alter, remodel, add
13 to, demolish, subtract from, or improve any building or
14 structure, including related improvements to real estate, for
15 others or for resale to others; and whose job scope is
16 substantially similar to the job scope described in one of the
17 paragraphs of this subsection. For the purposes of regulation
18 under this part, the term "demolish" applies only to demolition
19 of steel tanks more than 50 feet in height; towers more than 50
20 feet in height; other structures more than 50 feet in height;
21 and all buildings or residences. Contractors are subdivided into
22 two divisions, Division I, consisting of those contractors
23 defined in paragraphs (a)-(c), and Division II, consisting of
24 those contractors defined in paragraphs (d)-(q):

25 (f) "Class A air-conditioning contractor" means a
26 contractor whose services are unlimited in the execution of
27 contracts requiring the experience, knowledge, and skill to
28 install, maintain, repair, fabricate, alter, extend, or design,
29 if not prohibited by law, central air-conditioning,
30 refrigeration, heating, and ventilating systems, including duct
31 work in connection with a complete system if such duct work is
32 performed by the contractor as necessary to complete an air-
33 distribution system, boiler and unfired pressure vessel systems,
34 and all appurtenances, apparatus, or equipment used in
35 connection therewith, and any duct cleaning and equipment
36 sanitizing that requires at least a partial disassembling of the
37 system; to install, maintain, repair, fabricate, alter, extend,
38 or design, if not prohibited by law, piping, insulation of
39 pipes, vessels and ducts, pressure and process piping, and



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40 pneumatic control piping; to replace, disconnect, or reconnect
41 power wiring on the load side of the dedicated existing
42 electrical disconnect switch; to install, disconnect, and
43 reconnect low voltage heating, ventilating, and air-conditioning
44 control wiring; to install, replace, or disconnect dedicated
45 heat pump systems used for the heating of water for swimming
46 pools or spas and the disconnection or reconnection of
47 associated piping and electrical power wiring from the load side
48 of the disconnects and related low voltage control wiring; and
49 to install a condensate drain from an air-conditioning unit to
50 an existing safe waste or other approved disposal other than a
51 direct connection to a sanitary system. The scope of work for
52 such contractor also includes any excavation work incidental
53 thereto, but does not include any work such as liquefied
54 petroleum or natural gas fuel lines within buildings, except for
55 disconnecting or reconnecting changeouts of liquefied petroleum
56 or natural gas appliances within buildings; potable water lines
57 or connections thereto; sanitary sewer lines; swimming pool
58 piping and filters; or electrical power wiring. A Class A air-
59 conditioning contractor may test and evaluate central air-
60 conditioning, refrigeration, heating, and ventilating systems,
61 including duct work; however, a mandatory licensing requirement
62 is not established for the performance of these specific
63 services.

64 (g) "Class B air-conditioning contractor" means a
65 contractor whose services are limited to 25 tons of cooling and
66 500,000 Btu of heating in any one system in the execution of
67 contracts requiring the experience, knowledge, and skill to
68 install, maintain, repair, fabricate, alter, extend, or design,



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69 if not prohibited by law, central air-conditioning,
70 refrigeration, heating, and ventilating systems, including duct
71 work in connection with a complete system only to the extent
72 such duct work is performed by the contractor as necessary to
73 complete an air-distribution system being installed under this
74 classification, and any duct cleaning and equipment sanitizing
75 that requires at least a partial disassembling of the system; to
76 install, maintain, repair, fabricate, alter, extend, or design,
77 if not prohibited by law, piping and insulation of pipes,
78 vessels, and ducts; to replace, disconnect, or reconnect power
79 wiring on the load side of the dedicated existing electrical
80 disconnect switch; to install, disconnect, and reconnect low
81 voltage heating, ventilating, and air-conditioning control
82 wiring; to install, replace, or disconnect dedicated heat pump
83 systems used for the heating of water for swimming pools or spas
84 and the disconnection or reconnection of associated piping and
85 electrical power wiring from the load side of the disconnects
86 and related low voltage control wiring; and to install a
87 condensate drain from an air-conditioning unit to an existing
88 safe waste or other approved disposal other than a direct
89 connection to a sanitary system. The scope of work for such
90 contractor also includes any excavation work incidental thereto,
91 but does not include any work such as liquefied petroleum or
92 natural gas fuel lines within buildings, except for
93 disconnecting or reconnecting changeouts of liquefied petroleum
94 or natural gas appliances within buildings; potable water lines
95 or connections thereto; sanitary sewer lines; swimming pool
96 piping and filters; or electrical power wiring. A Class B air-
97 conditioning contractor may test and evaluate central air-



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98 conditioning, refrigeration, heating, and ventilating systems,
99 including duct work; however, a mandatory licensing requirement
100 is not established for the performance of these specific
101 services.

102

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

104 And the title is amended as follows:

105 Delete line 14

106 and insert:

107 purposes; amending s. 489.105, F.S.; redefining the
108 terms "class A air-conditioning contractor" and "class
109 B air-conditioning contractor"; amending s. 489.113,
110 F.S.; providing that



692516

LEGISLATIVE ACTION

Senate

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House

The Committee on Appropriations (Perry) recommended the following:

1 **Senate Substitute for Amendment (728698) (with title**
2 **amendment)**

3
4 Delete lines 151 - 657
5 and insert:

6 Section 2. Subsection (5) of section 489.103, Florida
7 Statutes, is amended to read:

8 489.103 Exemptions.—This part does not apply to:

9 (5) Public utilities, including municipal gas utilities and
10 special gas districts as defined in chapter 189,



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11 telecommunications companies as defined in s. 364.02(13), and
12 natural gas transmission companies as defined in s. 368.103(4),
13 on construction, maintenance, and development work performed by
14 their employees, ~~which work, including, but not limited to, work~~
15 ~~on bridges, roads, streets, highways, or railroads, is~~
16 ~~incidental to their business. The board shall define, by rule,~~
17 ~~the term "incidental to their business" for purposes of this~~
18 ~~subsection.~~

19 Section 3. Section 553.721, Florida Statutes, is amended to
20 read:

21 553.721 Surcharge.—In order for the Department of Business
22 and Professional Regulation to administer and carry out the
23 purposes of this part and related activities, there is created a
24 surcharge, to be assessed at the rate of 1.5 percent of the
25 permit fees associated with enforcement of the Florida Building
26 Code as defined by the uniform account criteria and specifically
27 the uniform account code for building permits adopted for local
28 government financial reporting pursuant to s. 218.32. The
29 minimum amount collected on any permit issued shall be \$2. The
30 unit of government responsible for collecting a permit fee
31 pursuant to s. 125.56(4) or s. 166.201 shall collect the
32 surcharge and electronically remit the funds collected to the
33 department on a quarterly calendar basis for the preceding
34 quarter and continuing each third month thereafter. The unit of
35 government shall retain 10 percent of the surcharge collected to
36 fund the participation of building departments in the national
37 and state building code adoption processes and to provide
38 education related to enforcement of the Florida Building Code.
39 All funds remitted to the department pursuant to this section



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40 shall be deposited in the Professional Regulation Trust Fund.
41 Funds collected from the surcharge shall be allocated to fund
42 the Florida Building Commission and the Florida Building Code
43 Compliance and Mitigation Program under s. 553.841. Funds
44 allocated to the Florida Building Code Compliance and Mitigation
45 Program shall be \$925,000 each fiscal year. The Florida Building
46 Code Compliance and Mitigation Program shall fund the
47 recommendations made by the Building Code System Uniform
48 Implementation Evaluation Workgroup, dated April 8, 2013, from
49 existing resources, not to exceed \$30,000 in the 2016-2017
50 fiscal year. The department shall provide \$150,000 for the 2017-
51 2018 fiscal year from surcharge funds available to the
52 University of Florida M. E. Rinker, Sr., School of Construction
53 Management for the continuation of the Construction Industry
54 Workforce Task Force. Funds collected from the surcharge shall
55 also be used to fund Florida Fire Prevention Code informal
56 interpretations managed by the State Fire Marshal and shall be
57 limited to \$15,000 each fiscal year. The State Fire Marshal
58 shall adopt rules to address the implementation and expenditure
59 of the funds allocated to fund the Florida Fire Prevention Code
60 informal interpretations under this section. The funds collected
61 from the surcharge may not be used to fund research on
62 techniques for mitigation of radon in existing buildings. Funds
63 used by the department as well as funds to be transferred to the
64 Department of Health and the State Fire Marshal shall be as
65 prescribed in the annual General Appropriations Act. The
66 department shall adopt rules governing the collection and
67 remittance of surcharges pursuant to chapter 120.

68 Section 4. For the 2017-2018 fiscal year, the sum of



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69 \$150,000 in nonrecurring funds from the Professional Regulation
70 Trust Fund is appropriated to the Department of Business and
71 Professional Regulation Trust Fund for the transfer to the
72 University of Florida M. E. Rinker, Sr., School of Construction
73 Management for the continuation of the Construction Industry
74 Workforce Task Force.

75 Section 5. Subsection (3) of section 553.73, Florida
76 Statutes, is amended, paragraph (d) is added to subsection (4)
77 of that section, subsections (7) and (8) and paragraphs (a) and
78 (b) of subsection (9) of that section are amended, and
79 subsection (20) is added to that section, to read:

80 553.73 Florida Building Code.—

81 (3) The commission shall use the ~~International Codes~~
82 ~~published by the~~ International Code Council, the National
83 Electric Code (NFPA 70), or other nationally adopted model codes
84 and standards for updates to ~~needed to develop the base code in~~
85 ~~Florida to form the foundation for~~ the Florida Building Code.
86 The ~~Florida Building~~ commission may approve technical amendments
87 to the code as provided in, ~~subject to~~ subsections (8) and (9),
88 ~~after the amendments have been~~ subject to all of the following
89 conditions:

90 (a) The proposed amendment must have ~~has~~ been published on
91 the commission's website for a minimum of 45 days and all the
92 associated documentation must have ~~has~~ been made available to
93 any interested party before ~~any~~ consideration by a technical
94 advisory committee.†

95 (b) In order for a technical advisory committee to make a
96 favorable recommendation to the commission, the proposal must
97 receive a two-thirds ~~three-fourths~~ vote of the members present



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98 at the ~~technical advisory committee meeting.~~ and At least half
99 of the regular members must be present in order to conduct a
100 meeting.~~†~~

101 (c) After the technical advisory committee has considered
102 and recommended consideration and a recommendation for approval
103 of any proposed amendment, the proposal must be published on the
104 commission's website for at least 45 days before ~~any~~
105 consideration by the commission.~~†~~ and

106 (d) A proposal may be modified by the commission based on
107 public testimony and evidence from a public hearing held in
108 accordance with chapter 120.

109
110 The commission shall incorporate within ~~sections of~~ the Florida
111 Building Code provisions that ~~which~~ address regional and local
112 concerns and variations. The commission shall make every effort
113 to minimize conflicts between the Florida Building Code, the
114 Florida Fire Prevention Code, and the Life Safety Code.

115 (4)

116 (d) A technical amendment to the Florida Building Code
117 related to water conservation practices or design criteria
118 adopted by a local government pursuant to this subsection is not
119 rendered void when the code is updated if the technical
120 amendment is necessary to protect or provide for more efficient
121 use of water resources as provided in s. 373.621. However, any
122 such technical amendment carried forward into the next edition
123 of the code pursuant to this paragraph is subject to review or
124 modification as provided in this part.

125 (7) (a) The commission, ~~by rule adopted pursuant to ss.~~
126 ~~120.536(1) and 120.54,~~ shall adopt an updated ~~update~~ the Florida



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127 Building Code every 3 years through review of. ~~When updating the~~
128 ~~Florida Building Code, the commission shall select~~ the most
129 current updates ~~version~~ of the International Building Code, the
130 International Fuel Gas Code, the International Mechanical Code,
131 the International Plumbing Code, and the International
132 Residential Code, all of which are copyrighted and published by
133 ~~adopted~~ by the International Code Council, and the National
134 Electrical Code, which is copyrighted and published ~~adopted~~ by
135 the National Fire Protection Association. At a minimum, the
136 commission shall adopt any updates to such codes or any other
137 code necessary to maintain eligibility for federal funding from
138 the National Flood Insurance Program, the Federal Emergency
139 Management Agency, and the United States Department of Housing
140 and Urban Development, to form the foundation codes of the
141 ~~updated Florida Building Code, if the version has been adopted~~
142 ~~by the applicable model code entity.~~ The commission shall also
143 review and adopt updates based substantially on select the most
144 ~~current version of the International Energy Conservation Code~~
145 ~~(IECC) as a foundation code; however, the IECC shall be modified~~
146 ~~by the commission shall~~ to maintain the efficiencies of the
147 Florida Energy Efficiency Code for Building Construction adopted
148 and amended pursuant to s. 553.901. The commission shall adopt
149 updated codes by rule.

150 (b) Codes regarding noise contour lines shall be reviewed
151 annually, and the most current federal guidelines shall be
152 adopted.

153 (c) The commission may adopt as a technical amendment to
154 the Florida Building Code ~~modify~~ any portion of the ~~foundation~~
155 codes identified in paragraph (a), but only as needed to



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156 accommodate the specific needs of this state. Standards or
157 criteria adopted from these ~~referenced by the~~ codes shall be
158 incorporated by reference to the specific provisions adopted. If
159 a referenced standard or criterion requires amplification or
160 modification to be appropriate for use in this state, only the
161 amplification or modification shall be set forth in the Florida
162 Building Code. The commission may approve technical amendments
163 to the updated Florida Building Code after the amendments have
164 been subject to the conditions set forth in paragraphs (3)(a)-
165 (d). Amendments that ~~to the foundation codes which~~ are adopted
166 in accordance with this subsection shall be clearly marked in
167 printed versions of the Florida Building Code so that the fact
168 that the provisions are ~~Florida-specific~~ amendments ~~to the~~
169 ~~foundation codes~~ is readily apparent.

170 (d) The commission shall further consider the commission's
171 own interpretations, declaratory statements, appellate
172 decisions, and approved statewide and local technical amendments
173 and shall incorporate such interpretations, statements,
174 decisions, and amendments into the updated Florida Building Code
175 only to the extent that they are needed to ~~modify the foundation~~
176 ~~codes to~~ accommodate the specific needs of the state. A change
177 made by an institute or standards organization to any standard
178 or criterion that is adopted by reference in the Florida
179 Building Code does not become effective statewide until it has
180 been adopted by the commission. Furthermore, the edition of the
181 Florida Building Code which is in effect on the date of
182 application for any permit authorized by the code governs the
183 permitted work for the life of the permit and any extension
184 granted to the permit.



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185 (e) A rule updating the Florida Building Code in accordance
186 with this subsection shall take effect no sooner than 6 months
187 after publication of the updated code. Any amendment to the
188 Florida Building Code which is adopted upon a finding by the
189 commission that the amendment is necessary to protect the public
190 from immediate threat of harm takes effect immediately.

191 (f) Provisions of the Florida Building Code foundation
192 ~~codes~~, including those contained in referenced standards and
193 criteria, relating to wind resistance or the prevention of water
194 intrusion may not be modified to diminish those construction
195 requirements; however, the commission may, subject to conditions
196 in this subsection, modify the provisions to enhance those
197 construction requirements.

198 ~~(g) Amendments or modifications to the foundation code~~
199 ~~pursuant to this subsection shall remain effective only until~~
200 ~~the effective date of a new edition of the Florida Building Code~~
201 ~~every third year. Amendments or modifications related to state~~
202 ~~agency regulations which are adopted and integrated into an~~
203 ~~edition of the Florida Building Code shall be carried forward~~
204 ~~into the next edition of the code, subject to modification as~~
205 ~~provided in this part. Amendments or modifications related to~~
206 ~~the wind-resistance design of buildings and structures within~~
207 ~~the high-velocity hurricane zone of Miami-Dade and Broward~~
208 ~~Counties which are adopted to an edition of the Florida Building~~
209 ~~Code do not expire and shall be carried forward into the next~~
210 ~~edition of the code, subject to review or modification as~~
211 ~~provided in this part. If amendments that expire pursuant to~~
212 ~~this paragraph are resubmitted through the Florida Building~~
213 ~~commission code adoption process, the amendments must~~



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214 ~~specifically address whether:~~

215 ~~1. The provisions contained in the proposed amendment are~~
216 ~~addressed in the applicable international code.~~

217 ~~2. The amendment demonstrates by evidence or data that the~~
218 ~~geographical jurisdiction of Florida exhibits a need to~~
219 ~~strengthen the foundation code beyond the needs or regional~~
220 ~~variations addressed by the foundation code, and why the~~
221 ~~proposed amendment applies to this state.~~

222 ~~3. The proposed amendment was submitted or attempted to be~~
223 ~~included in the foundation codes to avoid resubmission to the~~
224 ~~Florida Building Code amendment process.~~

225
226 ~~If the proposed amendment has been addressed in the~~
227 ~~international code in a substantially equivalent manner, the~~
228 ~~Florida Building commission may not include the proposed~~
229 ~~amendment in the foundation Code.~~

230 (8) ~~Notwithstanding the provisions of~~ subsection (3) or
231 subsection (7), the commission may address issues identified in
232 this subsection by amending the code pursuant ~~only~~ to the rule
233 adoption procedures ~~contained~~ in chapter 120. ~~Provisions of The~~
234 Florida Building Code, including provisions ~~those~~ contained in
235 referenced standards and criteria which relate, ~~relating~~ to wind
236 resistance or the prevention of water intrusion, may not be
237 amended pursuant to this subsection to diminish those standards
238 construction requirements; however, the commission may, ~~subject~~
239 ~~to conditions in this subsection,~~ amend the Florida Building
240 Code the provisions to enhance such standards ~~those construction~~
241 requirements. Following the approval of any amendments to the
242 Florida Building Code by the commission and publication of the



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243 amendments on the commission's website, authorities having
244 jurisdiction to enforce the Florida Building Code may enforce
245 the amendments. The commission may approve amendments that are
246 needed to address:

247 (a) Conflicts within the updated code;

248 (b) Conflicts between the updated code and the Florida Fire
249 Prevention Code adopted pursuant to chapter 633;

250 (c) Unintended results from the integration of previously
251 adopted ~~Florida-specific~~ amendments with the model code;

252 (d) Equivalency of standards;

253 (e) Changes to or inconsistencies with federal or state
254 law; or

255 (f) Adoption of an updated edition of the National
256 Electrical Code if the commission finds that delay of
257 implementing the updated edition causes undue hardship to
258 stakeholders or otherwise threatens the public health, safety,
259 and welfare.

260 (9) (a) The commission may approve technical amendments to
261 the Florida Building Code once each year for statewide or
262 regional application upon a finding that the amendment:

263 1. Is needed in order to accommodate the specific needs of
264 this state.

265 2. Has a reasonable and substantial connection with the
266 health, safety, and welfare of the general public.

267 3. Strengthens or improves the Florida Building Code, or in
268 the case of innovation or new technology, will provide
269 equivalent or better products or methods or systems of
270 construction.

271 4. Does not discriminate against materials, products,



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272 methods, or systems of construction of demonstrated
273 capabilities.

274 5. Does not degrade the effectiveness of the Florida
275 Building Code.

276

277 The Florida Building Commission may approve technical amendments
278 to the code once each year to incorporate into the Florida
279 Building Code its own interpretations of the code which are
280 embodied in its opinions, final orders, declaratory statements,
281 and interpretations of hearing officer panels under s.
282 553.775(3)(c), but only to the extent that the incorporation of
283 interpretations is needed to modify the code ~~foundation codes~~ to
284 accommodate the specific needs of this state. Amendments
285 approved under this paragraph shall be adopted by rule after the
286 amendments have been subjected to subsection (3).

287 (b) A proposed amendment must include a fiscal impact
288 statement that documents the costs and benefits of the proposed
289 amendment. Criteria for the fiscal impact statement shall be
290 established by rule by the commission and shall include the
291 impact to local government relative to enforcement, the impact
292 to property and building owners, and the impact to industry,
293 relative to the cost of compliance. The amendment must
294 demonstrate by evidence or data that the state's geographical
295 jurisdiction exhibits a need to strengthen the ~~foundation~~ code
296 beyond the needs or regional variations addressed by the
297 ~~foundation~~ code and why the proposed amendment applies to this
298 state.

299 (20) The Florida Building Commission may not:

300 (a) Adopt the 2016 version of the American Society of



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301 Heating, Refrigerating and Air-Conditioning Engineers Standard
302 9.4.1.1(g).

303 (b) Adopt any provision that requires a door located in the
304 opening between a garage and a residence to be equipped with a
305 self-closing device.

306 Section 6. Subsection (2) of section 553.76, Florida
307 Statutes, is amended to read:

308 553.76 General powers of the commission.—The commission is
309 authorized to:

310 (2) Issue memoranda of procedure for its internal
311 management and control. The commission may adopt rules related
312 to its consensus-based decisionmaking process, including, but
313 not limited to, super majority voting requirements ~~for~~
314 ~~commission actions relating to the adoption of the Florida~~
315 ~~Building Code or amendments to the code.~~ However, the commission
316 must adopt the Florida Building Code, and amendments thereto, by
317 at least a two-thirds vote of the members present at a meeting.

318 Section 7. Subsection (20) is added to section 553.79,
319 Florida Statutes, to read:

320 553.79 Permits; applications; issuance; inspections.—

321 (20) A political subdivision of this state may not adopt or
322 enforce any ordinance or impose any building permit or other
323 development order requirement that:

324 (a)1. Contains any building, construction, or aesthetic
325 requirement or condition that conflicts with or impairs
326 corporate trademarks, service marks, trade dress, logos, color
327 patterns, design scheme insignia, image standards, or other
328 features of corporate branding identity on real property or
329 improvements thereon used in activities conducted under chapter



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330 526 or in carrying out business activities defined as a
331 franchise by Federal Trade Commission regulations in 16 C.F.R.
332 ss. 436.1, et. seq.; or

333 2. Imposes any requirement on the design, construction, or
334 location of signage advertising the retail price of gasoline in
335 accordance with the requirements of ss. 526.111 and 526.121
336 which prevents the signage from being clearly visible and
337 legible to drivers of approaching motor vehicles in any lane of
338 traffic in either direction on a roadway abutting the gas
339 station premises and which meets height, width, and spacing
340 standards for Series C, D, or E signs, as applicable, published
341 in the latest edition of Standard Alphabets for Highway Signs
342 and Pavement Markings published by the Federal Highway
343 Administration, Office of Traffic Operations.

344 (b) This subsection does not affect any requirement for
345 design and construction in the Florida Building Code.

346 (c) All such ordinances and requirements are hereby
347 preempted and superseded by general law. This subsection shall
348 apply retroactively.

349 (d) This subsection does not apply to property located in a
350 designated historic district.

351 Section 8. Subsection (2) of section 553.791, Florida
352 Statutes, is amended to read:

353 553.791 Alternative plans review and inspection.—

354 (2) (a) Notwithstanding any other law or local government
355 ordinance or local policy, the fee owner of a building or
356 structure, or the fee owner's contractor upon written
357 authorization from the fee owner, may choose to use a private
358 provider to provide building code inspection services with



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359 regard to such building or structure and may make payment
360 directly to the private provider for the provision of such
361 services. All such services shall be the subject of a written
362 contract between the private provider, or the private provider's
363 firm, and the fee owner or the fee owner's contractor, upon
364 written authorization of the fee owner. The fee owner may elect
365 to use a private provider to provide plans review or required
366 building inspections, or both. However, if the fee owner or the
367 fee owner's contractor uses a private provider to provide plans
368 review, the local building official, in his or her discretion
369 and pursuant to duly adopted policies of the local enforcement
370 agency, may require the fee owner or the fee owner's contractor
371 to use a private provider to also provide required building
372 inspections.

373 (b) It is the intent of the Legislature that owners and
374 contractors not be required to pay extra costs related to
375 building permitting requirements when hiring a private provider
376 for plans reviews and building inspections. A local jurisdiction
377 must calculate the cost savings to the local enforcement agency,
378 based on a fee owner or contractor hiring a private provider to
379 perform plans reviews and building inspections in lieu of the
380 local building official, and reduce the permit fees accordingly.

381 Section 9. Paragraph (d) of subsection (7) of section
382 553.80, Florida Statutes, is amended to read:

383 553.80 Enforcement.—

384 (7) The governing bodies of local governments may provide a
385 schedule of reasonable fees, as authorized by s. 125.56(2) or s.
386 166.222 and this section, for enforcing this part. These fees,
387 and any fines or investment earnings related to the fees, shall



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388 be used solely for carrying out the local government's
389 responsibilities in enforcing the Florida Building Code. When
390 providing a schedule of reasonable fees, the total estimated
391 annual revenue derived from fees, and the fines and investment
392 earnings related to the fees, may not exceed the total estimated
393 annual costs of allowable activities. Any unexpended balances
394 shall be carried forward to future years for allowable
395 activities or shall be refunded at the discretion of the local
396 government. The basis for a fee structure for allowable
397 activities shall relate to the level of service provided by the
398 local government and shall include consideration for refunding
399 fees due to reduced services based on services provided as
400 prescribed by s. 553.791, but not provided by the local
401 government. Fees charged shall be consistently applied.

402 (d) The local enforcement agency, independent district, or
403 special district may not require at any time, including at the
404 time of application for a permit, the payment of any additional
405 fees, charges, or expenses associated with:

- 406 1. Providing proof of licensure pursuant to chapter 489;
407 2. Recording or filing a license issued pursuant to this
408 chapter; or
409 3. Providing, recording, or filing evidence of workers'
410 compensation insurance coverage as required by chapter 440.

411 Section 10. Section 553.9081, Florida Statutes, is created
412 to read:

413 553.9081 Florida Building Code; required amendments.—The
414 Florida Building Commission shall amend the Florida Building
415 Code—Energy Conservation to:

416 (1) (a) Eliminate duplicative commissioning reporting



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417 requirements for HVAC and electrical systems; and
418 (b) Authorize commissioning reports to be provided by a
419 licensed design professional, electrical engineer, or mechanical
420 engineer.

421 (2) Prohibit the adoption of American Society of Heating,
422 Refrigerating and Air-Conditioning Engineers Standard
423 9.4.1.1(g).

424 Section 11. Subsection (8) of section 633.208, Florida
425 Statutes, is amended to read:

426 633.208 Minimum firesafety standards.-

427 (8) (a) The provisions of the Life Safety Code, as contained
428 in the Florida Fire Prevention Code, do not apply to one-family
429 and two-family dwellings. However, fire sprinkler protection may
430 be permitted by local government in lieu of other fire
431 protection-related development requirements for such structures.
432 While local governments may adopt fire sprinkler requirements
433 for one-family ~~one-~~ and two-family dwellings under this
434 subsection, it is the intent of the Legislature that the
435 economic consequences of the fire sprinkler mandate on home
436 owners be studied before the enactment of such a requirement.
437 After the effective date of this act, any local government that
438 desires to adopt a fire sprinkler requirement on one-family ~~one-~~
439 or two-family dwellings must prepare an economic cost and
440 benefit report that analyzes the application of fire sprinklers
441 to one-family ~~one-~~ or two-family dwellings or any proposed
442 residential subdivision. The report must consider the tradeoffs
443 and specific cost savings and benefits of fire sprinklers for
444 future owners of property. The report must include an assessment
445 of the cost savings from any reduced or eliminated impact fees



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446 if applicable, the reduction in special fire district tax,
447 insurance fees, and other taxes or fees imposed, and the waiver
448 of certain infrastructure requirements including the reduction
449 of roadway widths, the reduction of water line sizes, increased
450 fire hydrant spacing, increased dead-end roadway length, and a
451 reduction in cul-de-sac sizes relative to the costs from fire
452 sprinkling. A failure to prepare an economic report shall result
453 in the invalidation of the fire sprinkler requirement to any
454 one-family ~~one-~~ or two-family dwelling or any proposed
455 subdivision. In addition, a local jurisdiction or utility may
456 not charge any additional fee, above what is charged to a non-
457 fire sprinklered dwelling, on the basis that a one-family ~~one-~~
458 or two-family dwelling unit is protected by a fire sprinkler
459 system.

460 (b)1. A county, municipality, special taxing district,
461 public utility, or private utility may not require a separate
462 water connection for a one-family or two-family dwelling fire
463 sprinkler system if the hydraulic design has proven the existing
464 connection is capable of supplying the needed hydraulic demand.

465 2. A county, municipality, special district, public
466 utility, or private utility may not charge a water or sewer rate
467 to a one-family or two-family dwelling that requires a larger
468 water meter solely due to the installation of fire sprinklers
469 above that which is charged to a one-family and two-family
470 dwelling with a base meter. If the installation of fire
471 sprinklers in a one-family or two-family dwelling requires the
472 installation of a larger water meter, only the difference in
473 actual cost between the base water meter and the larger water
474 meter may be charged by the water utility provider.



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475 Section 12. A local government may not require an owner of
476 a residence to obtain a permit to paint such residence,
477 regardless of whether the residence is owned by a limited
478 liability company.

479 Section 13. The Department of Education, in conjunction
480 with the Department of Economic Opportunity, shall develop a
481 plan to implement the recommendations of the Construction
482 Industry Workforce Task Force Report dated January 20, 2017. The
483 Department of Education shall provide the plan to the
484 Construction Industry Workforce Task Force on or before July 31,
485 2017.

486 Section 14. CareerSource Florida, Inc., shall develop and
487 submit a plan to the Construction Industry Workforce Task Force
488 on the potential opportunities for training programs to
489 implement the recommendations of the Construction Industry
490 Workforce Task Force Report dated January 20, 2017, using
491 existing federal funds awarded to the corporation and using the
492 previous statewide Florida ReBuilds program as an implementation
493 model for such programs. CareerSource Florida, Inc., shall
494 provide the plan to the Construction Industry Workforce Task
495 Force on or before July 31, 2017.

496
497 ===== T I T L E A M E N D M E N T =====

498 And the title is amended as follows:

499 Delete lines 6 - 59

500 and insert:

501 engineers; amending s. 489.103, F.S.; revising an
502 exemption from construction contracting regulation for
503 certain public utilities; deleting responsibility of



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504 the Construction Industry Licensing Board to define
505 the term "incidental to their business" for certain
506 purposes; amending s. 553.721, F.S.; requiring the
507 Department of Business and Professional Regulation to
508 provide certain funds allocated to the University of
509 Florida M. E. Rinker, Sr., School of Construction
510 Management for specified purposes; providing an
511 appropriation; amending s. 553.73, F.S.; requiring the
512 Florida Building Commission to use certain entities
513 and codes for updates to the Florida Building Code;
514 revising voting requirements for a technical advisory
515 committee to make a favorable recommendation to the
516 commission; providing that certain technical
517 amendments to the Florida Building Code which are
518 adopted by a local government are not rendered void
519 when the code is updated; specifying that such
520 amendments are subject to review or modification if
521 carried forward into the next edition of the code;
522 requiring the commission to update the Florida
523 Building Code through a review of the most current
524 updates of specified codes; requiring the commission
525 to adopt specified provisions from certain codes;
526 deleting provisions limiting how long an amendment or
527 modification is effective; deleting a provision
528 requiring certain amendments or modifications to be
529 carried forward into the next edition of the code,
530 subject to certain conditions; deleting certain
531 requirements for the resubmission of expired
532 amendments; deleting a provision prohibiting a



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533 proposed amendment from being included in the code if
534 it has been addressed in the international code;
535 conforming provisions to changes made by the act;
536 prohibiting the commission from adopting certain
537 provisions into the Florida Building Code; amending s.
538 553.76, F.S.; requiring the commission to adopt the
539 Florida Building Code, and amendments thereto, by a
540 minimum percentage of votes; amending s. 553.79, F.S.;
541 prohibiting a political subdivision from adopting or
542 enforcing certain building permits or other
543 development order requirements; providing
544 construction; providing for preemption of certain
545 local laws and regulations; providing for retroactive
546 applicability; providing an exemption; amending s.
547 553.791, F.S.; providing



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
	.	
	.	
	.	

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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11 responsibilities who are charged with the responsibility for
12 direct regulatory administration or supervision of plan review,
13 enforcement, or inspection of building construction, erection,
14 repair, addition, remodeling, demolition, or alteration projects
15 that require permitting indicating compliance with building,
16 plumbing, mechanical, electrical, gas, fire prevention, energy,
17 accessibility, and other construction codes as required by state
18 law or municipal or county ordinance. This term is synonymous
19 with "building official" as used in the ~~administrative chapter~~
20 ~~of the Standard Building Code and the South Florida Building~~
21 Code. One person employed or contracted by each municipal or
22 county government as a building code administrator or building
23 official and who is so certified under this part may be
24 authorized to perform any plan review or inspection for which
25 certification is required by this part, including performing any
26 plan review or inspection as a currently designated standard-
27 certified building official under an interagency service
28 agreement with a jurisdiction having a population of 50,000 or
29 fewer.

30 (4)-(2) "Building code inspector" means any of those
31 employees of local governments or state agencies, or any person
32 contracted, with building construction regulation
33 responsibilities who themselves conduct inspections of building
34 construction, erection, repair, addition, or alteration projects
35 that require permitting indicating compliance with building,
36 plumbing, mechanical, electrical, gas, fire prevention, energy,
37 accessibility, and other construction codes as required by state
38 law or municipal or county ordinance.

39 (1)-(3) "Board" means the Florida Building Code



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40 Administrators and Inspectors Board.

41 ~~(7)~~~~(4)~~ "Department" means the Department of Business and
42 Professional Regulation.

43 ~~(6)~~~~(5)~~ "Certificate" means a certificate of qualification
44 issued by the department as provided in this part.

45 ~~(5)~~~~(6)~~ "Categories of building code inspectors" include the
46 following:

47 (a) "Building inspector" means a person who is qualified to
48 inspect and determine that buildings and structures are
49 constructed in accordance with the provisions of the governing
50 building codes and state accessibility laws.

51 (b) "Coastal construction inspector" means a person who is
52 qualified to inspect and determine that buildings and structures
53 are constructed to resist near-hurricane and hurricane velocity
54 winds in accordance with the provisions of the governing
55 building code.

56 (c) "Commercial electrical inspector" means a person who is
57 qualified to inspect and determine the electrical safety of
58 commercial buildings and structures by inspecting for compliance
59 with the provisions of the National Electrical Code.

60 ~~(h)~~~~(d)~~ "Residential electrical inspector" means a person
61 who is qualified to inspect and determine the electrical safety
62 of one and two family dwellings and accessory structures by
63 inspecting for compliance with the applicable provisions of the
64 governing electrical code.

65 (e) "Mechanical inspector" means a person who is qualified
66 to inspect and determine that the mechanical installations and
67 systems for buildings and structures are in compliance with the
68 provisions of the governing mechanical code.



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69 (g)~~(f)~~ "Plumbing inspector" means a person who is qualified
70 to inspect and determine that the plumbing installations and
71 systems for buildings and structures are in compliance with the
72 provisions of the governing plumbing code.

73 (f)~~(g)~~ "One and two family dwelling inspector" means a
74 person who is qualified to inspect and determine that one and
75 two family dwellings and accessory structures are constructed in
76 accordance with the provisions of the governing building,
77 plumbing, mechanical, accessibility, and electrical codes.

78 (d)~~(h)~~ "Electrical inspector" means a person who is
79 qualified to inspect and determine the electrical safety of
80 commercial and residential buildings and accessory structures by
81 inspecting for compliance with the provisions of the National
82 Electrical Code.

83 (8)~~(7)~~ "Plans examiner" means a person who is qualified to
84 determine that plans submitted for purposes of obtaining
85 building and other permits comply with the applicable building,
86 plumbing, mechanical, electrical, gas, fire prevention, energy,
87 accessibility, and other applicable construction codes. The term
88 includes a residential plans examiner who is qualified to
89 determine that plans submitted for purposes of obtaining
90 building and other permits comply with the applicable
91 residential building, plumbing, mechanical, electrical, gas,
92 energy, accessibility, and other applicable construction codes.

93 Categories of plans examiners include:

- 94 (a) Building plans examiner.
- 95 (b) Plumbing plans examiner.
- 96 (c) Mechanical plans examiner.
- 97 (d) Electrical plans examiner.



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98 (3)~~(8)~~ "Building code enforcement official" or "enforcement
99 official" means a licensed building code administrator, building
100 code inspector, or plans examiner.

101 Section 10. Paragraph (c) of subsection (2), paragraphs (a)
102 and (d) of subsection (7), and subsection (10) of section
103 468.609, Florida Statutes, are amended to read:

104 468.609 Administration of this part; standards for
105 certification; additional categories of certification.—

106 (2) A person may take the examination for certification as
107 a building code inspector or plans examiner pursuant to this
108 part if the person:

109 (c) Meets eligibility requirements according to one of the
110 following criteria:

111 1. Demonstrates 5 years' combined experience in the field
112 of construction or a related field, building code inspection, or
113 plans review corresponding to the certification category sought;

114 2. Demonstrates a combination of postsecondary education in
115 the field of construction or a related field and experience
116 which totals 4 years, with at least 1 year of such total being
117 experience in construction, building code inspection, or plans
118 review;

119 3. Demonstrates a combination of technical education in the
120 field of construction or a related field and experience which
121 totals 4 years, with at least 1 year of such total being
122 experience in construction, building code inspection, or plans
123 review;

124 4. Currently holds a standard certificate issued by the
125 board or a firesafety inspector license issued pursuant to
126 chapter 633, has a minimum of 3 years' verifiable full-time



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127 experience in inspection or plan review, and has satisfactorily
128 completed a building code inspector or plans examiner training
129 program that provides at least 100 hours but not more than 200
130 hours of cross-training in the certification category sought.
131 The board shall establish by rule criteria for the development
132 and implementation of the training programs. The board shall
133 accept all classroom training offered by an approved provider if
134 the content substantially meets the intent of the classroom
135 component of the training program;

136 5. Demonstrates a combination of the completion of an
137 approved training program in the field of building code
138 inspection or plan review and a minimum of 2 years' experience
139 in the field of building code inspection, plan review, fire code
140 inspections and fire plans review of new buildings as a
141 firesafety inspector certified under s. 633.216, or
142 construction. The approved training portion of this requirement
143 shall include proof of satisfactory completion of a training
144 program that provides at least 200 hours but not more than 300
145 hours of cross-training that is approved by the board in the
146 chosen category of building code inspection or plan review in
147 the certification category sought with at least 20 hours but not
148 more than 30 hours of instruction in state laws, rules, and
149 ethics relating to professional standards of practice, duties,
150 and responsibilities of a certificateholder. The board shall
151 coordinate with the Building Officials Association of Florida,
152 Inc., to establish by rule the development and implementation of
153 the training program. However, the board shall accept all
154 classroom training offered by an approved provider if the
155 content substantially meets the intent of the classroom



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156 component of the training program; ~~or~~

157 6. Currently holds a standard certificate issued by the
158 board or a firesafety inspector license issued pursuant to
159 chapter 633 and:

160 a. Has at least 5 years' verifiable full-time experience as
161 an inspector or plans examiner in a standard certification
162 category currently held or has a minimum of 5 years' verifiable
163 full-time experience as a firesafety inspector licensed pursuant
164 to chapter 633.

165 b. Has satisfactorily completed a building code inspector
166 or plans examiner classroom training course or program that
167 provides at least 200 but not more than 300 hours in the
168 certification category sought, except for one-family and two-
169 family dwelling training programs, which must provide at least
170 500 but not more than 800 hours of training as prescribed by the
171 board. The board shall establish by rule criteria for the
172 development and implementation of classroom training courses and
173 programs in each certification category; or

174 7.a. Has completed a 4-year internship certification
175 program as a building code inspector or plans examiner while
176 employed full-time by a municipality, county, or other local
177 government jurisdiction, under the direct supervision of a
178 certified building official. Proof of graduation with a related
179 vocational degree or college degree or of verifiable work
180 experience may be exchanged for the internship experience
181 requirement year for year, but may reduce the requirement to no
182 less than 1 year;

183 b. Has passed an examination administered by the
184 International Code Council in the certification category sought.



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185 Such examination must be passed before beginning the internship
186 certification program;

187 c. Has passed the principles and practice examination
188 before completing the internship certification program;

189 d. Has passed a board-approved 40-hour code training course
190 in the certification category sought before completing the
191 internship certification program; and

192 e. Has obtained a favorable recommendation from the
193 supervising building official after completion of the internship
194 certification program.

195 (7) (a) The board shall provide for the issuance of
196 provisional certificates valid for 1 year, as specified by board
197 rule, to any ~~newly employed or promoted~~ building code inspector
198 or plans examiner who meets the eligibility requirements
199 described in subsection (2) and any newly employed or promoted
200 building code administrator who meets the eligibility
201 requirements described in subsection (3). The provisional
202 license may be renewed by the board for just cause; however, a
203 provisional license is not valid for longer than 3 years.

204 (d) A ~~newly employed or hired~~ person may perform the duties
205 of a plans examiner or building code inspector for 120 days if a
206 provisional certificate application has been submitted if such
207 person is under the direct supervision of a certified building
208 code administrator who holds a standard certification and who
209 has found such person qualified for a provisional certificate.
210 Direct supervision and the determination of qualifications may
211 also be provided by a building code administrator who holds a
212 limited or provisional certificate in a county having a
213 population of fewer than 75,000 and in a municipality located



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214 within such county.

215 (10) (a) The board may by rule create categories of
216 certification in addition to those defined in s. 468.603(5) and
217 (8) ~~468.603(6) and (7)~~. Such certification categories shall not
218 be mandatory and shall not act to diminish the scope of any
219 certificate created by statute.

220 (b) The board shall by rule establish:

221 1. Reciprocity of certification with any other state that
222 requires an examination administered by the International Code
223 Council.

224 2. That an applicant for certification as a building code
225 inspector or plans examiner may apply for a provisional
226 certificate valid for the duration of the internship period.

227 3. That partial completion of an internship program may be
228 transferred between jurisdictions on a form prescribed by the
229 board.

230 4. That an applicant may apply for a standard certificate
231 on a form prescribed by the board upon successful completion of
232 an internship certification program.

233 5. That an applicant may apply for a standard certificate
234 at least 30 days and no more than 60 days before completing the
235 internship certification program.

236 6. That a building code inspector or plans examiner who has
237 a standard certificate may seek an additional certification in
238 another category by completing an additional nonconcurrent 1-
239 year internship program in the certification category sought and
240 passing an examination administered by the International Code
241 Council and a board-approved 40-hour code training course.

242 Section 11. Subsection (3) of section 468.617, Florida



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243 Statutes, is amended to read:

244 468.617 Joint building code inspection department; other
245 arrangements.—

246 (3) Nothing in this part shall prohibit any county or
247 municipal government, school board, community college board,
248 state university, or state agency from entering into any
249 contract with any person or entity for the provision of building
250 code administrator, building official, or building code
251 inspection services regulated under this part, and
252 notwithstanding any other statutory provision, such county or
253 municipal governments may enter into contracts.

254 Section 12. Paragraphs (d) and (i) of subsection (1) and
255 subsection (2) of section 553.791, Florida Statutes, are amended
256 to read:

257 553.791 Alternative plans review and inspection.—

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

259 (d) "Building code inspection services" means those
260 services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~
261 involving the review of building plans to determine compliance
262 with applicable codes and those inspections required by law of
263 each phase of construction for which permitting by a local
264 enforcement agency is required to determine compliance with
265 applicable codes.

266 (i) "Private provider" means a person licensed as a
267 building code administrator under part XII of chapter 468, as an
268 engineer under chapter 471, or as an architect under chapter
269 481. For purposes of performing inspections under this section
270 for additions and alterations that are limited to 1,000 square
271 feet or less to residential buildings, the term "private



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272 provider" also includes a person who holds a standard
273 certificate under part XII of chapter 468.

274 (2) (a) Notwithstanding any other law or local government
275 ordinance or local policy, the fee owner of a building or
276 structure, or the fee owner's contractor upon written
277 authorization from the fee owner, may choose to use a private
278 provider to provide building code inspection services with
279 regard to such building or structure and may make payment
280 directly to the private provider for the provision of such
281 services. All such services shall be the subject of a written
282 contract between the private provider, or the private provider's
283 firm, and the fee owner or the fee owner's contractor, upon
284 written authorization of the fee owner. The fee owner may elect
285 to use a private provider to provide plans review or required
286 building inspections, or both. However, if the fee owner or the
287 fee owner's contractor uses a private provider to provide plans
288 review, the local building official, in his or her discretion
289 and pursuant to duly adopted policies of the local enforcement
290 agency, may require the fee owner or the fee owner's contractor
291 to use a private provider to also provide required building
292 inspections.

293 (b) It is the intent of the Legislature that owners and
294 contractors not be required to pay extra costs related to
295 building permitting requirements when hiring a private provider
296 for plans reviews and building inspections. A local jurisdiction
297 must calculate the cost savings to the local enforcement agency,
298 based on a fee owner or contractor hiring a private provider to
299 perform plans reviews and building inspections in lieu of the
300 local building official, and reduce the permit fees accordingly.



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301 Section 13. Subsection (10) of section 468.609, Florida
302 Statutes, is amended to read:

303 468.609 Administration of this part; standards for
304 certification; additional categories of certification.—

305 (10) The board may by rule create categories of
306 certification in addition to those defined in s. 468.603(5) and
307 (8) ~~468.603(6) and (7)~~. Such certification categories shall not
308 be mandatory and shall not act to diminish the scope of any
309 certificate created by statute.

310 Section 14. Section 471.045, Florida Statutes, is amended
311 to read:

312 471.045 Professional engineers performing building code
313 inspector duties.—Notwithstanding any other provision of law, a
314 person who is currently licensed under this chapter to practice
315 as a professional engineer may provide building code inspection
316 services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~
317 to a local government or state agency upon its request, without
318 being certified by the Florida Building Code Administrators and
319 Inspectors Board under part XII of chapter 468. When performing
320 these building code inspection services, the professional
321 engineer is subject to the disciplinary guidelines of this
322 chapter and s. 468.621(1)(c)-(h). Any complaint processing,
323 investigation, and discipline that arise out of a professional
324 engineer's performing building code inspection services shall be
325 conducted by the Board of Professional Engineers rather than the
326 Florida Building Code Administrators and Inspectors Board. A
327 professional engineer may not perform plans review as an
328 employee of a local government upon any job that the
329 professional engineer or the professional engineer's company



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330 designed.

331 Section 15. Section 481.222, Florida Statutes, is amended
332 to read:

333 481.222 Architects performing building code inspection
334 services.—Notwithstanding any other provision of law, a person
335 who is currently licensed to practice as an architect under this
336 part may provide building code inspection services described in
337 s. 468.603(5) and (8) ~~468.603(6) and (7)~~ to a local government
338 or state agency upon its request, without being certified by the
339 Florida Building Code Administrators and Inspectors Board under
340 part XII of chapter 468. With respect to the performance of such
341 building code inspection services, the architect is subject to
342 the disciplinary guidelines of this part and s. 468.621(1)(c)-
343 (h). Any complaint processing, investigation, and discipline
344 that arise out of an architect's performance of building code
345 inspection services shall be conducted by the Board of
346 Architecture and Interior Design rather than the Florida
347 Building Code Administrators and Inspectors Board. An architect
348 may not perform plans review as an employee of a local
349 government upon any job that the architect or the architect's
350 company designed.

351
352 ===== T I T L E A M E N D M E N T =====

353 And the title is amended as follows:

354 Delete lines 59 - 61

355 and insert:

356 applicability; amending s. 468.603, F.S.; revising
357 definitions; amending s. 468.609, F.S.; revising
358 eligibility requirements for the examination for



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359 certification as a building code inspector or plans
360 examiner to include an internship certification
361 program and other requirements; removing an
362 eligibility condition from provisions related to
363 provisional certificates; requiring the Florida
364 Building Code Administrators and Inspectors Board to
365 establish rules; amending s. 468.617, F.S.;
366 authorizing specified entities to contract for the
367 provision of building code administrator and building
368 official services; amending s. 553.791, F.S.;
369 conforming cross-references; revising the definition
370 of the term "private provider"; providing legislative
371 intent; requiring local jurisdictions to reduce
372 certain permit fees; amending ss. 468.609, 471.045,
373 and 481.222; conforming cross-references; amending s.
374 553.80, F.S.;

By the Committee on Community Affairs; and Senator Perry

578-03983-17

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1 A bill to be entitled
 2 An act relating to construction; amending s. 377.705,
 3 F.S.; revising legislative findings and intent;
 4 authorizing solar energy systems manufactured or sold
 5 in the state to be certified by professional
 6 engineers; amending s. 471.033, F.S.; prohibiting
 7 professional engineers from contracting with customers
 8 without disclosing whether they maintain certain
 9 insurance; amending s. 489.103, F.S.; revising an
 10 exemption from construction contracting regulation for
 11 certain public utilities; deleting responsibility of
 12 the Construction Industry Licensing Board to define
 13 the term "incidental to their business" for certain
 14 purposes; amending s. 489.113, F.S.; providing that
 15 specified pool/spa contractors are not required to
 16 subcontract certain work relating to power wiring;
 17 requiring such contractors to subcontract all work
 18 requiring the installation, removal, replacement, or
 19 upgrading of a circuit breaker; providing
 20 applicability; amending s. 553.721, F.S.; requiring
 21 the Department of Business and Professional Regulation
 22 to provide certain funds allocated to the University
 23 of Florida M. E. Rinker, Sr., School of Construction
 24 Management for specified purposes; amending s. 553.73,
 25 F.S.; requiring the Florida Building Commission to use
 26 certain entities and codes for updates to the Florida
 27 Building Code; revising voting requirements for a
 28 technical advisory committee to make a favorable
 29 recommendation to the commission; providing that

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30 certain technical amendments to the Florida Building
 31 Code which are adopted by a local government are not
 32 rendered void when the code is updated; specifying
 33 that such amendments are subject to review or
 34 modification if carried forward into the next edition
 35 of the code; requiring the commission to update the
 36 Florida Building Code through a review of the most
 37 current updates of specified codes; requiring the
 38 commission to adopt specified provisions from certain
 39 codes; deleting provisions limiting how long an
 40 amendment or modification is effective; deleting a
 41 provision requiring certain amendments or
 42 modifications to be carried forward into the next
 43 edition of the code, subject to certain conditions;
 44 deleting certain requirements for the resubmission of
 45 expired amendments; deleting a provision prohibiting a
 46 proposed amendment from being included in the code if
 47 it has been addressed in the international code;
 48 conforming provisions to changes made by the act;
 49 prohibiting the commission from adopting certain
 50 provisions into the Florida Building Code; amending s.
 51 553.76, F.S.; requiring the commission to adopt the
 52 Florida Building Code, and amendments thereto, by a
 53 minimum percentage of votes; amending s. 553.79, F.S.;
 54 prohibiting a political subdivision from adopting or
 55 enforcing certain building permits or other
 56 development order requirements; providing
 57 construction; providing for preemption of certain
 58 local laws and regulations; providing for retroactive

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59 applicability; amending s. 553.791, F.S.; providing
 60 legislative intent; requiring local jurisdictions to
 61 reduce certain permit fees; amending s. 553.80, F.S.;
 62 prohibiting local enforcement agencies, independent
 63 districts, and special districts from charging certain
 64 fees; creating s. 553.9081, F.S.; requiring the
 65 Florida Building Commission to amend certain
 66 provisions of the Florida Building Code; amending s.
 67 633.208, F.S.; prohibiting a county, municipality,
 68 special taxing district, public utility, or private
 69 utility from requiring a separate water connection or
 70 charging a specified water or sewage rate under
 71 certain conditions; prohibiting a local government
 72 from requiring a permit for painting a residence;
 73 requiring the Department of Education to develop a
 74 plan for specified purposes; requiring the department
 75 to provide the plan to the Construction Industry
 76 Workforce Task Force by a specified date; requiring
 77 CareerSource Florida, Inc., to develop a plan for
 78 specified purposes; requiring CareerSource Florida,
 79 Inc., to provide the plan to the Construction Industry
 80 Workforce Task Force by a specified date; requiring
 81 the Florida Building Commission to amend specified
 82 provisions of the Florida Building Code related to
 83 door components; providing an effective date.

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

87 Section 1. Section 377.705, Florida Statutes, is amended to

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88 read:

89 377.705 Solar Energy Center; development of solar energy
 90 standards.-

91 (1) SHORT TITLE.—This act shall be known and may be cited
 92 as the Solar Energy Standards Act of 1976.

93 (2) LEGISLATIVE FINDINGS AND INTENT.—

94 ~~(a) Because of increases in the cost of conventional fuel,~~
 95 ~~certain applications of solar energy are becoming competitive,~~
 96 ~~particularly when life-cycle costs are considered. It is the~~
 97 ~~intent of the Legislature in formulating a sound and balanced~~
 98 ~~energy policy for the state to encourage the development of an~~
 99 ~~alternative energy capability in the form of incident solar~~
 100 ~~energy.~~

101 ~~(b) Toward this purpose, The Legislature intends to provide~~
 102 ~~incentives for the production and sale of, and to set standards~~
 103 ~~for, solar energy systems. Such standards shall ensure that~~
 104 solar energy systems manufactured or sold within the state are
 105 effective and represent a high level of quality of materials,
 106 workmanship, and design.

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

108 (a) "Center" means ~~is defined as~~ the Florida Solar Energy
 109 Center of the Board of Governors.

110 (b) "Solar energy systems" means ~~is defined as~~ equipment
 111 which provides for the collection and use of incident solar
 112 energy for water heating, space heating or cooling, or other
 113 applications which normally require or would require a
 114 conventional source of energy such as petroleum products,
 115 natural gas, or electricity and which performs primarily with
 116 solar energy. In such other systems in which solar energy is

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117 used in a supplemental way, only those components which collect
118 and transfer solar energy shall be included in this definition.

119 (4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE
120 DISCLOSURE, SET TESTING FEES.—

121 (a) The center shall develop and ~~adopt promulgate~~ standards
122 for solar energy systems manufactured or sold in this state
123 based on the best currently available information and shall
124 consult with scientists, engineers, or persons in research
125 centers who are engaged in the construction of, experimentation
126 with, and research of solar energy systems to properly identify
127 the most reliable designs and types of solar energy systems.

128 (b) The center shall establish criteria for testing
129 performance of solar energy systems and shall maintain the
130 necessary capability for testing or evaluating performance of
131 solar energy systems. The center may accept results of tests on
132 solar energy systems made by other organizations, companies, or
133 persons ~~if when~~ such tests are conducted according to the
134 criteria established by the center and ~~if when~~ the testing
135 entity does not have a ~~has no~~ vested interest in the
136 manufacture, distribution, or sale of solar energy systems.

137 (c) The center shall be entitled to receive a testing fee
138 sufficient to cover the costs of such testing. All testing fees
139 shall be transmitted by the center to the Chief Financial
140 Officer to be deposited in the Solar Energy Center Testing Trust
141 Fund, which is ~~hereby~~ created in the State Treasury, and
142 disbursed for the payment of expenses incurred in testing solar
143 energy systems.

144 (d) All solar energy systems manufactured or sold in the
145 state must meet the standards established by the center and

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146 shall display accepted results of approved performance tests in
147 a manner prescribed by the center, unless otherwise certified by
148 an engineer licensed pursuant to chapter 471 using the standards
149 contained in the most recent version of the Florida Building
150 Code.

151 Section 2. Paragraph (m) is added to subsection (1) of
152 section 471.033, Florida Statutes, to read:

153 471.033 Disciplinary proceedings.—

154 (1) The following acts constitute grounds for which the
155 disciplinary actions in subsection (3) may be taken:

156 (m) Failing to disclose to a customer before contracting
157 for engineering service whether the licensee maintains
158 professional liability insurance and the policy limits if the
159 licensee does maintain such insurance.

160 Section 3. Subsection (5) of section 489.103, Florida
161 Statutes, is amended to read:

162 489.103 Exemptions.—This part does not apply to:

163 (5) Public utilities, including municipal gas utilities and
164 special gas districts as defined in chapter 189,
165 telecommunications companies as defined in s. 364.02(13), and
166 natural gas transmission companies as defined in s. 368.103(4),
167 on construction, maintenance, and development work performed by
168 their employees, ~~which work, including, but not limited to, work~~
169 ~~on bridges, roads, streets, highways, or railroads, is~~
170 ~~incidental to their business. The board shall define, by rule,~~
171 ~~the term "incidental to their business" for purposes of this~~
172 ~~subsection.~~

173 Section 4. Paragraph (h) is added to subsection (3) of
174 section 489.113, Florida Statutes, to read:

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175 489.113 Qualifications for practice; restrictions.-
 176 (3) A contractor shall subcontract all electrical,
 177 mechanical, plumbing, roofing, sheet metal, swimming pool, and
 178 air-conditioning work, unless such contractor holds a state
 179 certificate or registration in the respective trade category,
 180 however:
 181 (h) A pool/spa contractor, as defined in s. 489.105(3)(j),
 182 (k), or (l), is not required to subcontract electrical work for
 183 the installation, replacement, disconnection, or reconnection of
 184 power wiring on the load side of the dedicated existing
 185 electrical disconnecting means, but is required to subcontract
 186 all electrical work that requires installation, removal,
 187 replacement, or upgrading of a circuit breaker. This paragraph
 188 does not apply to other contractor classifications or
 189 professions.
 190 Section 5. Section 553.721, Florida Statutes, is amended to
 191 read:
 192 553.721 Surcharge.—In order for the Department of Business
 193 and Professional Regulation to administer and carry out the
 194 purposes of this part and related activities, there is created a
 195 surcharge, to be assessed at the rate of 1.5 percent of the
 196 permit fees associated with enforcement of the Florida Building
 197 Code as defined by the uniform account criteria and specifically
 198 the uniform account code for building permits adopted for local
 199 government financial reporting pursuant to s. 218.32. The
 200 minimum amount collected on any permit issued shall be \$2. The
 201 unit of government responsible for collecting a permit fee
 202 pursuant to s. 125.56(4) or s. 166.201 shall collect the
 203 surcharge and electronically remit the funds collected to the

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204 department on a quarterly calendar basis for the preceding
 205 quarter and continuing each third month thereafter. The unit of
 206 government shall retain 10 percent of the surcharge collected to
 207 fund the participation of building departments in the national
 208 and state building code adoption processes and to provide
 209 education related to enforcement of the Florida Building Code.
 210 All funds remitted to the department pursuant to this section
 211 shall be deposited in the Professional Regulation Trust Fund.
 212 Funds collected from the surcharge shall be allocated to fund
 213 the Florida Building Commission and the Florida Building Code
 214 Compliance and Mitigation Program under s. 553.841. Funds
 215 allocated to the Florida Building Code Compliance and Mitigation
 216 Program shall be \$925,000 each fiscal year. The Florida Building
 217 Code Compliance and Mitigation Program shall fund the
 218 recommendations made by the Building Code System Uniform
 219 Implementation Evaluation Workgroup, dated April 8, 2013, from
 220 existing resources, not to exceed \$30,000 in the 2016-2017
 221 fiscal year. The department shall provide \$150,000 for the 2017-
 222 2018 fiscal year from surcharge funds available to the
 223 University of Florida M. E. Rinker, Sr., School of Construction
 224 Management for the continuation of the Construction Industry
 225 Workforce Task Force. Funds collected from the surcharge shall
 226 also be used to fund Florida Fire Prevention Code informal
 227 interpretations managed by the State Fire Marshal and shall be
 228 limited to \$15,000 each fiscal year. The State Fire Marshal
 229 shall adopt rules to address the implementation and expenditure
 230 of the funds allocated to fund the Florida Fire Prevention Code
 231 informal interpretations under this section. The funds collected
 232 from the surcharge may not be used to fund research on

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233 techniques for mitigation of radon in existing buildings. Funds
 234 used by the department as well as funds to be transferred to the
 235 Department of Health and the State Fire Marshal shall be as
 236 prescribed in the annual General Appropriations Act. The
 237 department shall adopt rules governing the collection and
 238 remittance of surcharges pursuant to chapter 120.

239 Section 6. Subsection (3) of section 553.73, Florida
 240 Statutes, is amended, paragraph (d) is added to subsection (4)
 241 of that section, subsections (7) and (8) and paragraphs (a) and
 242 (b) of subsection (9) of that section are amended, and
 243 subsection (20) is added to that section, to read:

244 553.73 Florida Building Code.—

245 (3) The commission shall use the International Codes
 246 ~~published by the International Code Council, the National~~
 247 ~~Electric Code (NFPA 70), or other nationally adopted model codes~~
 248 ~~and standards for updates to needed to develop the base code in~~
 249 ~~Florida to form the foundation for the Florida Building Code.~~
 250 The ~~Florida Building~~ commission may approve technical amendments
 251 to the code as provided in, subject to subsections (8) and (9),
 252 ~~after the amendments have been~~ subject to all of the following
 253 conditions:

254 (a) The proposed amendment must have ~~has~~ been published on
 255 the commission's website for a minimum of 45 days and all the
 256 associated documentation must have ~~has~~ been made available to
 257 any interested party before ~~any~~ consideration by a technical
 258 advisory committee.†

259 (b) In order for a technical advisory committee to make a
 260 favorable recommendation to the commission, the proposal must
 261 receive a two-thirds ~~three-fourths~~ vote of the members present

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262 at the ~~technical advisory committee meeting.~~ and At least half
 263 of the regular members must be present in order to conduct a
 264 meeting.†

265 (c) After the technical advisory committee has considered
 266 and recommended ~~consideration and a recommendation for~~ approval
 267 of any proposed amendment, the proposal must be published on the
 268 commission's website for at least 45 days before ~~any~~
 269 consideration by the commission.†~~and~~

270 (d) A proposal may be modified by the commission based on
 271 public testimony and evidence from a public hearing held in
 272 accordance with chapter 120.

273
 274 The commission shall incorporate within ~~sections of~~ the Florida
 275 Building Code provisions that which address regional and local
 276 concerns and variations. The commission shall make every effort
 277 to minimize conflicts between the Florida Building Code, the
 278 Florida Fire Prevention Code, and the Life Safety Code.

279 (4)

280 (d) A technical amendment to the Florida Building Code
 281 related to water conservation practices or design criteria
 282 adopted by a local government pursuant to this subsection is not
 283 rendered void when the code is updated if the technical
 284 amendment is necessary to protect or provide for more efficient
 285 use of water resources as provided in s. 373.621. However, any
 286 such technical amendment carried forward into the next edition
 287 of the code pursuant to this paragraph is subject to review or
 288 modification as provided in this part.

289 (7) (a) The commission, ~~by rule adopted pursuant to ss.~~
 290 ~~120.536(1) and 120.54,~~ shall adopt an updated ~~update the~~ Florida

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291 Building Code every 3 years through review of. ~~When updating the~~
 292 ~~Florida Building Code, the commission shall select the most~~
 293 ~~current updates version~~ of the International Building Code, the
 294 International Fuel Gas Code, the International Mechanical Code,
 295 the International Plumbing Code, and the International
 296 Residential Code, all of which are copyrighted and published by
 297 ~~adopted~~ by the International Code Council, and the National
 298 Electrical Code, which is copyrighted and published ~~adopted~~ by
 299 the National Fire Protection Association. At a minimum, the
 300 commission shall adopt any updates to such codes or any other
 301 code necessary to maintain eligibility for federal funding from
 302 the National Flood Insurance Program, the Federal Emergency
 303 Management Agency, and the United States Department of Housing
 304 and Urban Development, to form the foundation codes of the
 305 updated Florida Building Code, if the version has been adopted
 306 by the applicable model code entity. The commission shall also
 307 review and adopt updates based substantially on ~~select the most~~
 308 ~~current version of~~ the International Energy Conservation Code
 309 (IECC) ~~as a foundation code; however, the IECC shall be modified~~
 310 ~~by~~ the commission shall ~~to~~ maintain the efficiencies of the
 311 Florida Energy Efficiency Code for Building Construction adopted
 312 and amended pursuant to s. 553.901. The commission shall adopt
 313 updated codes by rule.

314 (b) Codes regarding noise contour lines shall be reviewed
 315 annually, and the most current federal guidelines shall be
 316 adopted.

317 (c) The commission may adopt as a technical amendment to
 318 the Florida Building Code ~~modify~~ any portion of the ~~foundation~~
 319 ~~codes~~ identified in paragraph (a), but only as needed to

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320 accommodate the specific needs of this state. Standards or
 321 criteria adopted from these ~~referenced by the~~ codes shall be
 322 incorporated by reference to the specific provisions adopted. If
 323 a referenced standard or criterion requires amplification or
 324 modification to be appropriate for use in this state, only the
 325 amplification or modification shall be set forth in the Florida
 326 Building Code. The commission may approve technical amendments
 327 to the updated Florida Building Code after the amendments have
 328 been subject to the conditions set forth in paragraphs (3)(a)-
 329 (d). Amendments that ~~to the foundation codes which~~ are adopted
 330 in accordance with this subsection shall be clearly marked in
 331 printed versions of the Florida Building Code so that the fact
 332 that the provisions are ~~Florida-specific amendments to the~~
 333 ~~foundation codes~~ is readily apparent.

334 (d) The commission shall further consider the commission's
 335 own interpretations, declaratory statements, appellate
 336 decisions, and approved statewide and local technical amendments
 337 and shall incorporate such interpretations, statements,
 338 decisions, and amendments into the updated Florida Building Code
 339 only to the extent that they are needed to ~~modify the foundation~~
 340 ~~codes~~ to accommodate the specific needs of the state. A change
 341 made by an institute or standards organization to any standard
 342 or criterion that is adopted by reference in the Florida
 343 Building Code does not become effective statewide until it has
 344 been adopted by the commission. Furthermore, the edition of the
 345 Florida Building Code which is in effect on the date of
 346 application for any permit authorized by the code governs the
 347 permitted work for the life of the permit and any extension
 348 granted to the permit.

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349 (e) A rule updating the Florida Building Code in accordance
 350 with this subsection shall take effect no sooner than 6 months
 351 after publication of the updated code. Any amendment to the
 352 Florida Building Code which is adopted upon a finding by the
 353 commission that the amendment is necessary to protect the public
 354 from immediate threat of harm takes effect immediately.

355 (f) Provisions of the Florida Building Code foundation
 356 codes, including those contained in referenced standards and
 357 criteria, relating to wind resistance or the prevention of water
 358 intrusion may not be modified to diminish those construction
 359 requirements; however, the commission may, subject to conditions
 360 in this subsection, modify the provisions to enhance those
 361 construction requirements.

362 ~~(g) Amendments or modifications to the foundation code~~
 363 ~~pursuant to this subsection shall remain effective only until~~
 364 ~~the effective date of a new edition of the Florida Building Code~~
 365 ~~every third year. Amendments or modifications related to state~~
 366 ~~agency regulations which are adopted and integrated into an~~
 367 ~~edition of the Florida Building Code shall be carried forward~~
 368 ~~into the next edition of the code, subject to modification as~~
 369 ~~provided in this part. Amendments or modifications related to~~
 370 ~~the wind resistance design of buildings and structures within~~
 371 ~~the high-velocity hurricane zone of Miami-Dade and Broward~~
 372 ~~Counties which are adopted to an edition of the Florida Building~~
 373 ~~Code do not expire and shall be carried forward into the next~~
 374 ~~edition of the code, subject to review or modification as~~
 375 ~~provided in this part. If amendments that expire pursuant to~~
 376 ~~this paragraph are resubmitted through the Florida Building~~
 377 ~~commission code adoption process, the amendments must~~

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378 ~~specifically address whether:~~

379 1. ~~The provisions contained in the proposed amendment are~~
 380 ~~addressed in the applicable international code.~~

381 2. ~~The amendment demonstrates by evidence or data that the~~
 382 ~~geographical jurisdiction of Florida exhibits a need to~~
 383 ~~strengthen the foundation code beyond the needs or regional~~
 384 ~~variations addressed by the foundation code, and why the~~
 385 ~~proposed amendment applies to this state.~~

386 3. ~~The proposed amendment was submitted or attempted to be~~
 387 ~~included in the foundation codes to avoid resubmission to the~~
 388 ~~Florida Building Code amendment process.~~

389
 390 If the proposed amendment has been addressed in the
 391 international code in a substantially equivalent manner, the
 392 Florida Building commission may not include the proposed
 393 amendment in the foundation Code.

394 (8) Notwithstanding the provisions of subsection (3) or
 395 subsection (7), the commission may address issues identified in
 396 this subsection by amending the code pursuant only to the rule
 397 adoption procedures ~~contained~~ in chapter 120. Provisions of The
 398 Florida Building Code, including provisions these contained in
 399 referenced standards and criteria which relate, relating to wind
 400 resistance or the prevention of water intrusion, may not be
 401 amended pursuant to this subsection to diminish those standards
 402 construction requirements; however, the commission may, subject
 403 to conditions in this subsection, amend the Florida Building
 404 Code the provisions to enhance such standards ~~those construction~~
 405 requirements. Following the approval of any amendments to the
 406 Florida Building Code by the commission and publication of the

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407 amendments on the commission's website, authorities having
 408 jurisdiction to enforce the Florida Building Code may enforce
 409 the amendments. The commission may approve amendments that are
 410 needed to address:

411 (a) Conflicts within the updated code;

412 (b) Conflicts between the updated code and the Florida Fire
 413 Prevention Code adopted pursuant to chapter 633;

414 (c) Unintended results from the integration of previously
 415 adopted ~~Florida-specific~~ amendments with the model code;

416 (d) Equivalency of standards;

417 (e) Changes to or inconsistencies with federal or state
 418 law; or

419 (f) Adoption of an updated edition of the National
 420 Electrical Code if the commission finds that delay of
 421 implementing the updated edition causes undue hardship to
 422 stakeholders or otherwise threatens the public health, safety,
 423 and welfare.

424 (9) (a) The commission may approve technical amendments to
 425 the Florida Building Code once each year for statewide or
 426 regional application upon a finding that the amendment:

427 1. Is needed in order to accommodate the specific needs of
 428 this state.

429 2. Has a reasonable and substantial connection with the
 430 health, safety, and welfare of the general public.

431 3. Strengthens or improves the Florida Building Code, or in
 432 the case of innovation or new technology, will provide
 433 equivalent or better products or methods or systems of
 434 construction.

435 4. Does not discriminate against materials, products,

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436 methods, or systems of construction of demonstrated
 437 capabilities.

438 5. Does not degrade the effectiveness of the Florida
 439 Building Code.

440

441 The Florida Building Commission may approve technical amendments
 442 to the code once each year to incorporate into the Florida
 443 Building Code its own interpretations of the code which are
 444 embodied in its opinions, final orders, declaratory statements,
 445 and interpretations of hearing officer panels under s.
 446 553.775(3)(c), but only to the extent that the incorporation of
 447 interpretations is needed to modify the code foundation codes to
 448 accommodate the specific needs of this state. Amendments
 449 approved under this paragraph shall be adopted by rule after the
 450 amendments have been subjected to subsection (3).

451 (b) A proposed amendment must include a fiscal impact
 452 statement that documents the costs and benefits of the proposed
 453 amendment. Criteria for the fiscal impact statement shall be
 454 established by rule by the commission and shall include the
 455 impact to local government relative to enforcement, the impact
 456 to property and building owners, and the impact to industry,
 457 relative to the cost of compliance. The amendment must
 458 demonstrate by evidence or data that the state's geographical
 459 jurisdiction exhibits a need to strengthen the ~~foundation~~ code
 460 beyond the needs or regional variations addressed by the
 461 ~~foundation~~ code and why the proposed amendment applies to this
 462 state.

463 (20) The Florida Building Commission may not:

464 (a) Adopt the 2016 version of the American Society of

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465 Heating, Refrigerating and Air-Conditioning Engineers Standard
466 9.4.1.1(g).

467 (b) Adopt any provision that requires a door located in the
468 opening between a garage and a residence to be equipped with a
469 self-closing device.

470 Section 7. Subsection (2) of section 553.76, Florida
471 Statutes, is amended to read:

472 553.76 General powers of the commission.—The commission is
473 authorized to:

474 (2) Issue memoranda of procedure for its internal
475 management and control. The commission may adopt rules related
476 to its consensus-based decisionmaking process, including, but
477 not limited to, super majority voting requirements ~~for~~
478 ~~commission actions relating to the adoption of the Florida~~
479 ~~Building Code or amendments to the code. However, the commission~~
480 ~~must adopt the Florida Building Code, and amendments thereto, by~~
481 ~~at least a two-thirds vote of the members present at a meeting.~~

482 Section 8. Subsection (20) is added to section 553.79,
483 Florida Statutes, to read:

484 553.79 Permits; applications; issuance; inspections.—

485 (20) A political subdivision of this state may not adopt or
486 enforce any ordinance or impose any building permit or other
487 development order requirement that:

488 (a)1. Contains any building, construction, or aesthetic
489 requirement or condition that conflicts with or impairs
490 corporate trademarks, service marks, trade dress, logos, color
491 patterns, design scheme insignia, image standards, or other
492 features of corporate branding identity on real property or
493 improvements thereon used in activities conducted under chapter

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494 526 or in carrying out business activities defined as a
495 franchise by Federal Trade Commission regulations in 16 C.F.R.
496 ss. 436.1, et. seq.; or

497 2. Imposes any requirement on the design, construction, or
498 location of signage advertising the retail price of gasoline in
499 accordance with the requirements of ss. 526.111 and 526.121
500 which prevents the signage from being clearly visible and
501 legible to drivers of approaching motor vehicles in any lane of
502 traffic in either direction on a roadway abutting the gas
503 station premises and which meets height, width, and spacing
504 standards for Series C, D, or E signs, as applicable, published
505 in the latest edition of Standard Alphabets for Highway Signs
506 and Pavement Markings published by the Federal Highway
507 Administration, Office of Traffic Operations.

508 (b) This subsection does not affect any requirement for
509 design and construction in the Florida Building Code.

510 (c) All such ordinances and requirements are hereby
511 preempted and superseded by general law. This subsection shall
512 apply retroactively.

513 Section 9. Subsection (2) of section 553.791, Florida
514 Statutes, is amended to read:

515 553.791 Alternative plans review and inspection.—

516 (2) (a) Notwithstanding any other law or local government
517 ordinance or local policy, the fee owner of a building or
518 structure, or the fee owner's contractor upon written
519 authorization from the fee owner, may choose to use a private
520 provider to provide building code inspection services with
521 regard to such building or structure and may make payment
522 directly to the private provider for the provision of such

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523 services. All such services shall be the subject of a written
 524 contract between the private provider, or the private provider's
 525 firm, and the fee owner or the fee owner's contractor, upon
 526 written authorization of the fee owner. The fee owner may elect
 527 to use a private provider to provide plans review or required
 528 building inspections, or both. However, if the fee owner or the
 529 fee owner's contractor uses a private provider to provide plans
 530 review, the local building official, in his or her discretion
 531 and pursuant to duly adopted policies of the local enforcement
 532 agency, may require the fee owner or the fee owner's contractor
 533 to use a private provider to also provide required building
 534 inspections.

535 (b) It is the intent of the Legislature that owners and
 536 contractors not be required to pay extra costs related to
 537 building permitting requirements when hiring a private provider
 538 for plans reviews and building inspections. A local jurisdiction
 539 must calculate the cost savings to the local enforcement agency,
 540 based on a fee owner or contractor hiring a private provider to
 541 perform plans reviews and building inspections in lieu of the
 542 local building official, and reduce the permit fees accordingly.

543 Section 10. Paragraph (d) of subsection (7) of section
 544 553.80, Florida Statutes, is amended to read:

545 553.80 Enforcement.—

546 (7) The governing bodies of local governments may provide a
 547 schedule of reasonable fees, as authorized by s. 125.56(2) or s.
 548 166.222 and this section, for enforcing this part. These fees,
 549 and any fines or investment earnings related to the fees, shall
 550 be used solely for carrying out the local government's
 551 responsibilities in enforcing the Florida Building Code. When

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552 providing a schedule of reasonable fees, the total estimated
 553 annual revenue derived from fees, and the fines and investment
 554 earnings related to the fees, may not exceed the total estimated
 555 annual costs of allowable activities. Any unexpended balances
 556 shall be carried forward to future years for allowable
 557 activities or shall be refunded at the discretion of the local
 558 government. The basis for a fee structure for allowable
 559 activities shall relate to the level of service provided by the
 560 local government and shall include consideration for refunding
 561 fees due to reduced services based on services provided as
 562 prescribed by s. 553.791, but not provided by the local
 563 government. Fees charged shall be consistently applied.

564 (d) The local enforcement agency, independent district, or
 565 special district may not require at any time, including at the
 566 time of application for a permit, the payment of any additional
 567 fees, charges, or expenses associated with:

- 568 1. Providing proof of licensure pursuant to chapter 489;
- 569 2. Recording or filing a license issued pursuant to this
 570 chapter; or
- 571 3. Providing, recording, or filing evidence of workers'
 572 compensation insurance coverage as required by chapter 440.

573 Section 11. Section 553.9081, Florida Statutes, is created
 574 to read:

575 553.9081 Florida Building Code; required amendments.—The
 576 Florida Building Commission shall amend the Florida Building
 577 Code—Energy Conservation to:

578 (1) (a) Eliminate duplicative commissioning reporting
 579 requirements for HVAC and electrical systems; and

580 (b) Authorize commissioning reports to be provided by a

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581 licensed design professional, electrical engineer, or mechanical
582 engineer.

583 (2) Prohibit the adoption of American Society of Heating,
584 Refrigerating and Air-Conditioning Engineers Standard
585 9.4.1.1(g).

586 Section 12. Subsection (8) of section 633.208, Florida
587 Statutes, is amended to read:

588 633.208 Minimum firesafety standards.—

589 (8) (a) The provisions of the Life Safety Code, as contained
590 in the Florida Fire Prevention Code, do not apply to one-family
591 and two-family dwellings. However, fire sprinkler protection may
592 be permitted by local government in lieu of other fire
593 protection-related development requirements for such structures.
594 While local governments may adopt fire sprinkler requirements
595 for one-family ~~one-~~ and two-family dwellings under this
596 subsection, it is the intent of the Legislature that the
597 economic consequences of the fire sprinkler mandate on home
598 owners be studied before the enactment of such a requirement.
599 After the effective date of this act, any local government that
600 desires to adopt a fire sprinkler requirement on one-family ~~one-~~
601 or two-family dwellings must prepare an economic cost and
602 benefit report that analyzes the application of fire sprinklers
603 to one-family ~~one-~~ or two-family dwellings or any proposed
604 residential subdivision. The report must consider the tradeoffs
605 and specific cost savings and benefits of fire sprinklers for
606 future owners of property. The report must include an assessment
607 of the cost savings from any reduced or eliminated impact fees
608 if applicable, the reduction in special fire district tax,
609 insurance fees, and other taxes or fees imposed, and the waiver

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610 of certain infrastructure requirements including the reduction
611 of roadway widths, the reduction of water line sizes, increased
612 fire hydrant spacing, increased dead-end roadway length, and a
613 reduction in cul-de-sac sizes relative to the costs from fire
614 sprinkling. A failure to prepare an economic report shall result
615 in the invalidation of the fire sprinkler requirement to any
616 one-family ~~one-~~ or two-family dwelling or any proposed
617 subdivision. In addition, a local jurisdiction or utility may
618 not charge any additional fee, above what is charged to a non-
619 fire sprinklered dwelling, on the basis that a one-family ~~one-~~
620 or two-family dwelling unit is protected by a fire sprinkler
621 system.

622 (b)1. A county, municipality, special taxing district,
623 public utility, or private utility may not require a separate
624 water connection for a one-family or two-family dwelling fire
625 sprinkler system if the hydraulic design has proven the existing
626 connection is capable of supplying the needed hydraulic demand.

627 2. A county, municipality, special district, public
628 utility, or private utility may not charge a water or sewer rate
629 to a one-family or two-family dwelling that requires a larger
630 water meter solely due to the installation of fire sprinklers
631 above that which is charged to a one-family and two-family
632 dwelling with a base meter. If the installation of fire
633 sprinklers in a one-family or two-family dwelling requires the
634 installation of a larger water meter, only the difference in
635 actual cost between the base water meter and the larger water
636 meter may be charged by the water utility provider.

637 Section 13. A local government may not require an owner of
638 a residence to obtain a permit to paint such residence,

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639 regardless of whether the residence is owned by a limited
 640 liability company.

641 Section 14. The Department of Education, in conjunction
 642 with the Department of Economic Opportunity, shall develop a
 643 plan to implement the recommendations of the Construction
 644 Industry Workforce Task Force Report dated January 20, 2017. The
 645 Department of Education shall provide the plan to the
 646 Construction Industry Workforce Task Force on or before July 1,
 647 2018.

648 Section 15. CareerSource Florida, Inc., shall develop and
 649 submit a plan to the Construction Industry Workforce Task Force
 650 on the potential opportunities for training programs to
 651 implement the recommendations of the Construction Industry
 652 Workforce Task Force Report dated January 20, 2017, using
 653 existing federal funds awarded to the corporation and using the
 654 previous statewide Florida ReBuilds program as an implementation
 655 model for such programs. CareerSource Florida, Inc., shall
 656 provide the plan to the Construction Industry Workforce Task
 657 Force on or before July 1, 2018.

658 Section 16. The Florida Building Commission shall adopt an
 659 amendment to the Florida Building Code-Residential, relating to
 660 door components, to provide that, regarding substitution of door
 661 components, such components must either:

- 662 (1) Comply with ANSI/WMA 100; or
 663 (2) Be evaluated by an approved product evaluation entity,
 664 certification agency, testing laboratory, or engineer and may be
 665 interchangeable in exterior door assemblies if the components
 666 provide equal or greater structural performance as demonstrated
 667 by accepted engineering practices.

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668 Section 17. This act shall take effect July 1, 2017.

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THE FLORIDA SENATE

APPEARANCE RECORD

H-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)

Topic BUILDING CODES - Workforce

Amendment Barcode (if applicable)

Name MARI HEBRANK

Job Title

Address 113 EAST CONCRETE AVE

Phone 566-9824

Street
City TALLAHASSEE FL 32301
State Zip

Email

Speaking: For Against Information

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

Representing FLORIDA HOME BUILDERS & NCLC of FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

4-25-14

Meeting Date

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

SB 1312

Bill Number (if applicable)

692516

Amendment Barcode (if applicable)

Topic BUILDING CODES

Name KARI HEHRANK

Job Title

Address 113 EAST CORTEZ AVE.

Phone 850-566-7824

Tallahassee FL 32301

Email khehrank@wilsonmg.com

Speaking: [X] 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: [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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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)

Topic BUILDING CODES / CONSTRUCTION

692516
Amendment Barcode (if applicable)

Name CAM FENTRISS

Job Title LOBBYIST

Address 1400 VILLAGES SQ # 3-243

Phone 850-222-2772

TALL FL 32312
City State Zip

Email AFENTRISS@YAHOO.COM

Speaking: For Against Information

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

Representing FCA. 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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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 LEG. COUNSEL

Address 1400 VILLAGE SQ # 3-243

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TALL

City

FL

State

32312

Zip

Email AFENTRISS@AOL.COM

Speaking: For Against Information

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

Representing FCA, ROOFING + SHEET METAL 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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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)

1312

Bill Number (if applicable)

692516

Amendment Barcode (if applicable)

Topic _____

Name Dale Calhoun

Job Title _____

Address 201 S Monroe St Unit A

Phone 850 681 0496

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 Natural Gas Association & Florida Propane Gas Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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

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

Phone 850-443-4444

TAUHAASSEE FL 32301
City State 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.

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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

(1312)
Bill Number (if applicable)

Topic BUILDING COMMISSION

* [Redacted]
Amendment Barcode (if applicable)

Name JEFF STARKY

Job Title GAG, PRESIDENT

Address 106 E COLLEGE AVE

Phone 850 224 1660

TCH FL 32301
City State Zip

Email JEFF@STARKY.COM

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17

Meeting Date

CSB 1312

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Buddy Dewar

Job Title _____

Address 5501 Touraine Dr

Phone 850-566-8733

Street

Email GR8Bud@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Fire Sprinkler 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

(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

Phone (850) 216-1002

Tallahassee Florida 32301
City State Zip

Email jasmyne@pittmanlaw.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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

4.26.17

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 SYRANE SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. BOX 1757

Phone 850.701.3655

Street

TALLAHASSEE FL 32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

1312
Bill Number (if applicable)

Topic Construction (Perry)

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title Florida Assoc. Counties

Address 100 Mound St Phone _____
Street

T.11 FL 32311 Email _____
City State Zip

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

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

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

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Appropriations Committee

Judge:

Started: 4/25/2017 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 Marilyn 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 Truillo, 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 Russeau 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.)