Tab 1	**SB 34** by **Montford**; (Identical to H 06531) Relief of Shuler Limited Partnership by the Department of Agriculture and Consumer Services

Tab 2	**CS/SB 280** by **BI, Bean**; (Similar to H 00793) Telehealth

Tab 3	**CS/SB 310** by **CJ, Steube (CO-INTRODUCERS) Baxley**; (Identical to CS/CS/CS/H 00165) Threats to Kill or do Great Bodily Injury

116576	A	S	RCS	AP, Steube	Delete L.25 - 37:	02/28 02:55 PM

Tab 4	**CS/SB 324** by **CA, Young**; (Compare to CS/CS/CS/H 00697) Impact Fees

841860	PCS	S	RCS	AP, AFT		02/28 03:44 PM
484394	A	S	RCS	AP, Young	Delete L.53 - 66:	02/28 03:44 PM
532634	A	S	RCS	AP, Bean	Delete L.87 - 248.	02/28 03:44 PM

Tab 5	**SB 328** by **Baxley**; (Similar to H 00107) Veteran Identification

939294	A	S		AP, Powell	Delete L.482 - 484:	02/22 01:27 PM
660814	A	S		AP, Baxley	btw L.496 - 497:	02/20 09:38 AM
118946	A	S		AP, Stewart	btw L.496 - 497:	02/22 12:59 PM
896042	A	S		AP, Stewart	btw L.496 - 497:	02/22 01:00 PM
125810	A	S		AP, Gibson	btw L.496 - 497:	02/22 01:27 PM

Tab 6	**SB 408** by **Flores**; (Similar to H 00283) Licensure of Cardiovascular Programs

Tab 7	**CS/SB 438** by **BI, Lee (CO-INTRODUCERS) Campbell**; (Compare to CS/CS/H 00783) Continuing Care Contracts

583222	PCS	S	RCS	AP, AGG	02/22 06:55 PM

Tab 8	**SB 440** by **Garcia (CO-INTRODUCERS) Bean, Young, Flores, Simpson, Mayfield, Perry, Galvano, Gainer, Passidomo, Taddeo, Campbell, Gibson**; (Identical to H 00403) Florida Veterans Care Program

Tab 9	**SB 460** by **Gainer (CO-INTRODUCERS) Broxson, Taddeo**; (Similar to H 00075) Postsecondary Fee Waivers

Tab 10	**CS/SB 632** by **TR, Montford (CO-INTRODUCERS) Powell**; (Similar to H 00247) Vessel Registration

Tab 11	**SB 648** by **Baxley (CO-INTRODUCERS) Campbell**; (Identical to H 01437) Employment Services for Persons with Disabilities

Tab 12	**SB 654** by **Perry**; Early Childhood Music Education Incentive Pilot Program

362096	PCS	S	RCS	AP, AED	02/22 07:13 PM

Tab 13	**SB 694** by **Brandes (CO-INTRODUCERS) Bracy**; (Compare to H 00481) Mandatory Sentences

960376	PCS	S	RCS	AP, ACJ	02/22 07:50 PM

Tab 14	**CS/SB 710** by **HP, Book**; (Compare to CS/H 00291) Prescription Drug Donation Program

471064	PCS	S	RCS	AP, AHS	02/27 09:15 PM

Tab 15	**CS/SB 740** by **AG, Stargel**; (Similar to CS/CS/H 00553) Department of Agriculture and Consumer Services					
~~615634~~	D	S	WD	AP, Stargel	Delete everything after	02/19 03:51 PM
350294	D	S	RCS	AP, Stargel	Delete everything after	02/22 07:29 PM
106924	AA	S	RCS	AP, Grimsley	Delete L.5 - 26:	02/22 07:29 PM
844272	AA	S	RCS	AP, Grimsley	btw L.26 - 27:	02/22 07:29 PM
~~322238~~	AA	S	WD	AP, Grimsley	btw L.26 - 27:	02/22 11:18 AM
591144	AA	S	RCS	AP, Grimsley	btw L.26 - 27:	02/22 07:29 PM
~~318746~~	A	S	WD	AP, Braynon	Delete L.2472 - 2512.	02/22 07:29 PM

Tab 16	**SB 764** by **Bean (CO-INTRODUCERS) Mayfield, Perry**; (Similar to CS/H 00369) Dental Student Loan Repayment Program					
631516	PCS	S	RCS	AP, AHE		02/22 07:24 PM

Tab 17	**CS/SB 854** by **CJ, Brandes**; (Similar to CS/H 00365) Correctional Officers

Tab 18	**SB 856** by **Montford (CO-INTRODUCERS) Broxson**; (Identical to H 00577) High School Graduation Requirements

Tab 19	**SB 872** by **Grimsley**; (Similar to CS/H 00645) Young Farmers and Ranchers					
620914	PCS	S	RCS	AP, AEN		02/22 07:54 PM

Tab 20	**SB 1002** by **Passidomo (CO-INTRODUCERS) Bean**; (Similar to CS/H 01187) Guardianship					
799584	PCS	S	RCS	AP, ACJ		02/22 07:43 PM
167214	A	S	RCS	AP, Passidomo	Delete L.46 - 50:	02/22 07:43 PM

Tab 21	**CS/SB 1046** by **CF, Book (CO-INTRODUCERS) Campbell**; (Similar to CS/H 00169) Trust Fund for Victims of Human Trafficking and Prevention/Department of Law Enforcement

Tab 22	**SB 1066** by **Baxley**; (Compare to CS/1ST ENG/H 00171) Transportation Facility Designations/Nelle W. Needham Memorial Highway					
723622	A	S	RCS	AP, Baxley	Delete L.10 - 17:	03/02 07:45 PM

Tab 23	**SB 1132** by **Hutson**; (Identical to H 00915) Vessel Safety Inspection Decals					
237298	PCS	S	RCS	AP, AEN		02/22 06:34 PM

Tab 24	**SB 1184** by **Gibson**; (Identical to H 01009) Closing the Gap Grant Program

Tab 25	**SB 1224** by **Bradley**; (Similar to CS/H 00961) Beverage Law					
413734	A	S	RCS	AP, Bradley	Delete L.33 - 50:	02/22 07:34 PM

Tab 26	**CS/SB 1226** by **CJ, Book (CO-INTRODUCERS) Hutson**; (Similar to CS/H 01301) Sentencing for Sexual Offenders and Sexual Predators

Tab 27	**CS/CS/SB 1308** by **CA, EP, Perry**; (Similar to CS/CS/H 01149) Environmental Regulation					
960706	A	S	RCS	AP, Perry	Delete L.95 - 102:	02/22 07:17 PM
778974	A	S	RCS	AP, Brandes	Delete L.646 - 650:	02/22 07:17 PM

Tab 28	**SB 1398** by **Benacquisto**; (Identical to H 01145) Florida ABLE Program Trust Fund/State Board of Administration

Tab 29	**SB 1402** by **Simmons (CO-INTRODUCERS) Galvano, Grimsley**; (Identical to H 07043) State Assumption of Federal Section 404 Dredge and Fill Permitting Authority

Tab 30	**SB 1426** by **Lee**; (Similar to H 00007) Local Government Fiscal Transparency

Tab 31	**SB 1500** by **Baxley**; (Identical to H 06033) Direct-support Organization of the Florida Commission on Community Service

Tab 32	**SB 1526** by **Gibson**; (Similar to CS/H 00859) Historically Black Colleges and Universities Matching Endowment Scholarship Program

440736	PCS	S	RCS	AP, AHE		02/22 07:35 PM

Tab 33	**SB 1528** by **Gibson**; (Similar to H 00861) Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund/DOE

449902	PCS	S	RCS	AP, AHE		02/22 07:37 PM

Tab 34	**SB 1552** by **Bracy**; (Compare to H 00195) Juvenile Justice

517024	PCS	S	RCS	AP, ACJ		02/22 07:56 PM

Tab 35	**SB 1562** by **Passidomo**; (Similar to CS/CS/CS/H 01059) Elder Abuse

Tab 36	**CS/SB 1594** by **HP, Brandes**; (Similar to CS/CS/1ST ENG/H 01337) Nursing

Tab 37	**CS/CS/SB 1622** by **MS, EP, Flores**; (Similar to CS/CS/1ST ENG/H 01173) Lands Used for Governmental Purposes

Tab 38	**CS/SB 1788** by **CF, Passidomo**; (Compare to CS/CS/H 01373) Medication Administration Training

847484	PCS	S	RCS	AP, AHS		02/22 07:48 PM
677650	PCS:D	S	RCS	AP, Passidomo	Delete everything after	02/22 07:48 PM

Tab 39	**CS/SB 1876** by **HP, Young**; (Compare to CS/H 01165) Trauma Services

764628	PCS	S	RCS	AP, AHS		02/22 06:52 PM
917002	PCS:D	S	RCS	AP, Young	Delete everything after	02/22 06:52 PM
~~788174~~	A	S	WD	AP, Braynon	Delete L.1024 - 1029:	02/22 06:52 PM

Tab 40	**SB 1884** by **Broxson (CO-INTRODUCERS) Passidomo**; (Compare to CS/1ST ENG/H 00029) Military and Veterans Affairs

259984	PCS	S	RCS	AP, ATD		02/22 07:41 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Bradley, Chair
Senator Flores, Vice Chair

MEETING DATE: Thursday, February 22, 2018
TIME: 2:00—5:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 34** Montford (Identical H 6531)	Relief of Shuler Limited Partnership by the Department of Agriculture and Consumer Services; Providing for the relief of Shuler Limited Partnership by the Florida Forest Service of the Department of Agriculture and Consumer Services, formerly known as the Division of Forestry, and the Board of Trustees of the Internal Improvement Trust Fund; providing for an appropriation to compensate Shuler Limited Partnership for costs and fees and for damages sustained to 835 acres of its timber as a result of the negligence, negligence per se, and gross negligence of employees of the Florida Forest Service and their violation of ch. 590, F.S., etc. SM JU 10/24/2017 Favorable AEN 01/10/2018 Favorable AP 02/22/2018 Favorable	Favorable Yeas 19 Nays 1
	With subcommittee recommendation – Environment and Natural Resources		
2	**CS/SB 280** Banking and Insurance / Bean (Similar H 793)	Telehealth; Establishing the standard of care for telehealth providers; providing that telehealth providers, under certain circumstances, are not required to research a patient's history or conduct physical examinations before providing services through telehealth; providing recordkeeping requirements for telehealth providers, etc. BI 01/16/2018 Fav/CS HP 01/30/2018 Favorable AHS 02/14/2018 Favorable AP 02/22/2018 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation – Health and Human Services		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 310** Criminal Justice / Steube (Identical CS/CS/CS/H 165)	Threats to Kill or do Great Bodily Injury; Prohibiting a person from making a threat to kill or do great bodily injury in a writing or other record and transmitting that threat in any manner that would allow another person to view the threat; deleting requirements that a threat be sent to a specific recipient to be prohibited, etc. CJ 01/29/2018 Fav/CS AP 02/22/2018 Not Considered RC	Not Considered

A proposed committee substitute for the following bill (CS/SB 324) is available:

4	**CS/SB 324** Community Affairs / Young (Compare CS/CS/CS/H 697)	Impact Fees; Revising the minimum requirements for impact fees, etc. CA 12/05/2017 Fav/CS AFT 01/29/2018 Fav/CS AP 02/22/2018 Temporarily Postponed With subcommittee recommendation – Finance and Tax	Temporarily Postponed
5	**SB 328** Baxley (Similar H 107)	Veteran Identification; Requiring the Department of Highway Safety and Motor Vehicles to create a veteran identification card for certain purposes; authorizing use of the card as proof of veteran status for expedited processing of an application for a license to carry a concealed weapon or firearm, etc. TR 10/24/2017 Favorable ATD 01/17/2018 Favorable AP 02/22/2018 Not Considered With subcommittee recommendation – Transportation, Tourism, and Economic Development	Not Considered
6	**SB 408** Flores (Similar H 283, Compare CS/CS/H 597, CS/S 622)	Licensure of Cardiovascular Programs; Establishing additional criteria that must be included by the Agency for Health Care Administration in rules relating to adult cardiovascular services at hospitals seeking licensure for a Level I program, etc. HP 12/05/2017 Favorable AHS 01/10/2018 Favorable AP 02/22/2018 Favorable With subcommittee recommendation – Health and Human Services	Favorable Yeas 20 Nays 0

A proposed committee substitute for the following bill (CS/SB 438) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 438** Banking and Insurance / Lee (Compare CS/CS/H 783)	Continuing Care Contracts; Revising applicability of specified provisions of the Florida Insurance Code to the Office of Insurance Regulation's authority to regulate providers of continuing care and continuing care at-home; specifying conditions that qualify an applicant for a certificate of authority without first obtaining a provisional certificate of authority; providing and revising applicability of certain provisions to a person seeking to assume the role of general partner of a provider or seeking specified ownership, possession, or control of a provider's assets, etc. BI 01/16/2018 Fav/CS AGG 02/08/2018 Fav/CS AP 02/22/2018 Fav/CS RC	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation – General Government		
8	**SB 440** Garcia (Identical H 403)	Florida Veterans Care Program; Creating the program within the Agency for Health Care Administration; specifying the purpose of the program; authorizing the agency, in consultation with the Department of Veterans' Affairs, to negotiate with federal agencies in order to seek federal funding for the program; prohibiting the use of state funds to support the program; providing that the act does not affect a person's eligibility for the state Medicaid program, etc. HP 11/07/2017 Favorable MS 12/06/2017 Favorable AP 02/22/2018 Favorable	Favorable Yeas 19 Nays 0
9	**SB 460** Gainer (Similar H 75)	Postsecondary Fee Waivers; Authorizing a Florida College System institution to waive any portion of certain postsecondary fees for active duty members of the Armed Forces of the United States who use military tuition assistance; specifying that the student who receives the fee waiver may be reported for state funding purposes, etc. MS 12/06/2017 Favorable AHE 01/17/2018 Favorable AP 02/22/2018 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation – Higher Education		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/SB 632** Transportation / Montford (Similar H 247, Linked S 1920)	Vessel Registration; Authorizing the Department of Highway Safety and Motor Vehicles to issue an electronic certificate of registration for a vessel, to collect electronic mail addresses, and to use electronic mail for certain purposes; authorizing a vessel operator to present such electronic certificate for inspection under certain circumstances; providing that the person displaying the device assumes the liability for any resulting damage to the device, etc. TR 12/05/2017 Fav/CS ATD 02/08/2018 Favorable AP 02/22/2018 Favorable	Favorable Yeas 19 Nays 0
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
11	**SB 648** Baxley (Identical H 1437)	Employment Services for Persons with Disabilities; Specifying that participants in certain disabled persons' work experience activities are considered state employees for workers' compensation purposes, etc. GO 12/05/2017 Favorable AGG 01/10/2018 Favorable AP 02/22/2018 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation – General Government		
	A proposed committee substitute for the following bill (SB 654) is available:		
12	**SB 654** Perry	Early Childhood Music Education Incentive Pilot Program; Extending the scheduled expiration of the pilot program, etc. ED 01/16/2018 Favorable AED 02/08/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Pre-K – 12 Education		
	A proposed committee substitute for the following bill (SB 694) is available:		
13	**SB 694** Brandes (Compare H 481, CS/S 602)	Mandatory Sentences; Authorizing a court to issue a sentence shorter than a mandatory minimum term of imprisonment for a person convicted of trafficking if the court makes certain findings on the record, etc. CJ 12/04/2017 Favorable JU 01/30/2018 Favorable ACJ 02/14/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 15 Nays 5

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Criminal and Civil Justice		
	A proposed committee substitute for the following bill (CS/SB 710) is available:		
14	**CS/SB 710** Health Policy / Book (Compare CS/H 291)	Prescription Drug Donation Program; Renaming the Cancer Drug Donation Program as the Prescription Drug Donation Program; authorizing the donation of prescription drugs, including cancer drugs, and supplies to eligible patients; authorizing nursing home facilities to participate in the program, etc. HP 12/05/2017 Fav/CS AHS 01/24/2018 Temporarily Postponed AHS 02/14/2018 Fav/CS AP 02/22/2018 Not Considered	Not Considered
	With subcommittee recommendation – Health and Human Services		
15	**CS/SB 740** Agriculture / Stargel (Similar CS/CS/H 553, Compare CS/CS/H 315, CS/CS/S 568)	Department of Agriculture and Consumer Services; Transferring authority to issue licenses for oyster harvesting in Apalachicola Bay from the department to the City of Apalachicola; revising permitting requirements and operating standards for water vending machines; revising the circumstances under which liquefied petroleum gas bulk delivery vehicles must be registered with the department; repealing provisions relating to packet vegetable and flower seed; creating the “Government Impostor and Deceptive Advertisements Act”, etc. AG 01/11/2018 Fav/CS AEN 01/24/2018 Favorable AP 02/15/2018 Not Considered AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Environment and Natural Resources		
	A proposed committee substitute for the following bill (SB 764) is available:		
16	**SB 764** Bean (Similar CS/H 369)	Dental Student Loan Repayment Program; Establishing the Dental Student Loan Repayment Program to support dentists who practice in public health programs located in certain underserved areas, etc. HP 01/16/2018 Favorable AHE 02/08/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Higher Education		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	**CS/SB 854** Criminal Justice / Brandes (Similar CS/H 365)	Correctional Officers ; Authorizing a full-time, part-time, or auxiliary correctional officer to be employed at 18 years of age; prohibiting a correctional officer who is under 19 years of age from supervising inmates, etc. CJ 01/09/2018 Fav/CS ACJ 02/08/2018 Favorable AP 02/15/2018 Not Considered AP 02/22/2018 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation – Criminal and Civil Justice		
18	**SB 856** Montford (Identical H 577)	High School Graduation Requirements; Authorizing the use of credits earned upon completion of a registered apprenticeship or preapprenticeship to satisfy specified high school graduation credit requirements, etc. ED 01/29/2018 Favorable AED 02/08/2018 Favorable AP 02/22/2018 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation – Pre-K – 12 Education		
	A proposed committee substitute for the following bill (SB 872) is available:		
19	**SB 872** Grimsley (Similar CS/H 645)	Young Farmers and Ranchers; Creating the Florida Young Farmer and Rancher Matching Grant Program within the Department of Agriculture and Consumer Services; creating the Florida Young Farmer and Rancher Advisory Council within the department; requiring the department to establish a clearinghouse on its website for resources to assist young and beginning farmers and ranchers, etc. AG 01/11/2018 Favorable AEN 01/24/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation – Environment and Natural Resources		
	A proposed committee substitute for the following bill (SB 1002) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	**SB 1002** Passidomo (Similar CS/H 1187)	Guardianship; Requiring certain medical, financial, or mental health records or financial audits that are necessary as part of an investigation of a guardian as a result of a complaint filed for certain purposes with a designee of the Office of Public and Professional Guardians to be provided to the Office of Public and Professional Guardians upon that office's request; providing that any such clerk or Office of Public and Professional Guardians investigator has a duty to maintain the confidentiality of such information, etc. JU 01/10/2018 Favorable ACJ 02/08/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Criminal and Civil Justice		
21	**CS/SB 1046** Children, Families, and Elder Affairs / Book (Similar CS/H 169, S 342, Compare CS/H 167, S 338, Linked CS/S 1044)	Trust Fund for Victims of Human Trafficking and Prevention/Department of Law Enforcement; Creating the Trust Fund for Victims of Human Trafficking and Prevention within the Department of Law Enforcement; authorizing the department to contract with certain entities, subject to availability of funds and appropriations; providing for future review and termination or re-creation of the trust fund, etc. CF 02/12/2018 Fav/CS AP 02/22/2018 Favorable	Favorable Yeas 20 Nays 0
22	**SB 1066** Baxley (Compare CS/H 171)	Transportation Facility Designations/Nelle W. Needham Memorial Highway; Providing an honorary designation of a certain transportation facility in a specified county, etc. TR 02/06/2018 Favorable ATD 02/14/2018 Favorable AP 02/22/2018 Not Considered	Not Considered
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
	A proposed committee substitute for the following bill (SB 1132) is available:		
23	**SB 1132** Hutson (Identical H 915)	Vessel Safety Inspection Decals; Providing rulemaking authority to the Fish and Wildlife Conservation Commission regarding expiration and design of safety inspection decals, etc. EP 01/16/2018 Favorable AEN 01/24/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Environment and Natural Resources		
24	**SB 1184** Gibson (Identical H 1009)	Closing the Gap Grant Program; Requiring a Closing the Gap grant proposal to address racial and ethnic disparities in morbidity and mortality rates relating to Lupus, etc. HP 01/30/2018 Favorable AHS 02/14/2018 Favorable AP 02/22/2018 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation – Health and Human Services		
25	**SB 1224** Bradley (Similar H 961)	Beverage Law; Authorizing a malt beverage distributor to give branded glassware to vendors licensed to sell malt beverages for on-premises consumption; requiring that the glassware bear certain branding; prohibiting a vendor from selling the branded glassware or returning it to a distributor for cash, credit, or replacement, etc. RI 01/23/2018 Favorable RI 01/24/2018 CM 01/29/2018 Favorable AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0
26	**CS/SB 1226** Criminal Justice / Book (Similar CS/H 1301)	Sentencing for Sexual Offenders and Sexual Predators; Redefining the terms “permanent residence,” “temporary residence,” and “transient residence” by decreasing the amount of days a person abides, lodges, or resides in a certain place to qualify for that type of residency category; revising existing criminal penalties for sexual predators to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent felony violations if the court does not impose a prison sentence, etc. CJ 02/06/2018 Fav/CS AP 02/22/2018 Favorable RC	Favorable Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	**CS/CS/SB 1308** Community Affairs / Environmental Preservation and Conservation / Perry (Similar CS/H 1149)	Environmental Regulation; Revising the required provisions of the water resource implementation rule; requiring the Department of Environmental Protection and the water management districts to develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit; requiring counties and municipalities to address contamination of recyclable material in specified contracts; prohibiting counties and municipalities from requiring the collection or transport of contaminated recyclable material by residential recycling collectors except under certain conditions, etc. EP 01/22/2018 Fav/CS CA 02/06/2018 Not Considered CA 02/13/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 18 Nays 2
28	**SB 1398** Benacquisto (Similar CS/H 7069, Identical H 1145)	Florida ABLE Program Trust Fund/State Board of Administration; Re-creating the Florida ABLE Program Trust Fund within the State Board of Administration without modification, etc. AHE 02/08/2018 Favorable AP 02/22/2018 Favorable With subcommittee recommendation – Higher Education	Favorable Yeas 20 Nays 0
29	**SB 1402** Simmons (Identical H 7043)	State Assumption of Federal Section 404 Dredge and Fill Permitting Authority; Defining the term “state assumed waters”; providing the Department of Environmental Protection with the power and authority to adopt rules to assume and implement the section 404 dredge and fill permitting program pursuant to the federal Clean Water Act; requiring the department to adopt rules to create an expedited permit review process, etc. EP 01/22/2018 Favorable AEN 02/14/2018 Favorable AP 02/22/2018 Favorable With subcommittee recommendation – Environment and Natural Resources	Favorable Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
30	**SB 1426** Lee (Similar H 7)	Local Government Fiscal Transparency; Expanding the scope of the Legislative Auditing Committee review to include compliance with local government fiscal transparency requirements; creating the "Local Government Fiscal Transparency Act"; requiring local governments to post certain voting record information on their websites, etc. CA 01/30/2018 Favorable AP 02/22/2018 Favorable RC	Favorable Yeas 12 Nays 8
31	**SB 1500** Baxley (Identical H 6033, S 1110)	Direct-support Organization of the Florida Commission on Community Service; Removing the scheduled repeal of provisions governing the commission's direct-support organization, etc. GO 01/30/2018 Favorable AP 02/15/2018 Not Considered AP 02/22/2018 Favorable RC	Favorable Yeas 20 Nays 0

A proposed committee substitute for the following bill (SB 1526) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
32	**SB 1526** Gibson (Similar CS/H 859, Compare H 861, Linked S 1528)	Historically Black Colleges and Universities Matching Endowment Scholarship Program; Establishing the Historically Black Colleges and Universities Matching Endowment Scholarship Program within the Department of Education; requiring a historically black college or university to provide a certain amount of matching funds by a specified date to participate in the program; providing that the interest the trust fund earns will be used to provide scholarships to certain students, etc. ED 01/29/2018 Favorable AHE 02/14/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0

With subcommittee recommendation – Higher Education

A proposed committee substitute for the following bill (SB 1528) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
33	**SB 1528** Gibson (Similar H 861, Compare CS/H 859, Linked S 1526)	Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund/DOE; Creating the Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund within the Department of Education; providing for the purpose of the trust fund and source of funds; providing for future review and termination or re-creation of the trust fund, etc. ED 01/29/2018 Favorable AHE 02/14/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Higher Education		

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

34	**SB 1552** Bracy (Compare H 195, H 509, CS/H 1417, S 288, S 392, CS/S 936, S 1298)	Juvenile Justice; Requiring that a prolific juvenile offender be held in secure detention until a detention hearing is held if the juvenile violated the conditions of nonsecure detention; requiring a court to receive and consider a predisposition report before committing a child if the court determines that adjudication and commitment to the Department of Juvenile Justice is appropriate; increasing the age of a child at which a state attorney may, or is required to, request a court to transfer the child to adult court for criminal prosecution, etc. CJ 02/06/2018 Favorable ACJ 02/14/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 19 Nays 1
	With subcommittee recommendation – Criminal and Civil Justice		
35	**SB 1562** Passidomo (Similar CS/CS/CS/H 1059)	Elder Abuse; Creating a cause of action for an injunction for protection against the exploitation of a vulnerable adult; providing a list of persons who may seek an injunction; requiring that a clerk of the circuit court assist the petitioner in preparing an affidavit or direct the petitioner to a certain office, under certain circumstances, etc. CF 02/06/2018 Favorable AP 02/22/2018 Favorable RC	Favorable Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
36	**CS/SB 1594** Health Policy / Brandes (Similar CS/CS/H 1337)	Nursing; Requiring any nurse desiring to be licensed as an advanced practice registered nurse to apply to the Department of Health, submit proof that he or she holds a current license to practice professional nursing, and meet one or more specified requirements as determined by the Board of Nursing; authorizing the board to adopt rules to provide for provisional state licensure of certified nurse midwives, certified nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists, and psychiatric nurses for a specified period of time; authorizing certain certified practitioners to continue practicing advanced nursing during a specified period of time, etc. HP 01/30/2018 Fav/CS AP 02/22/2018 Favorable RC	Favorable Yeas 20 Nays 0
37	**CS/CS/SB 1622** Military and Veterans Affairs, Space, and Domestic Security / Environmental Preservation and Conservation / Flores (Similar CS/CS/H 1173)	Lands Used for Governmental Purposes; Providing conditions under which specified appraisal standards are required for acquisition of military installation buffer lands; authorizing the use of certain funding sources for the immediate acquisition of lands that prevent or satisfy private property rights claims within areas of critical state concern; revising the definition of the term “nonconservation lands”; authorizing land authorities to contribute tourist impact tax revenues to counties for the construction, redevelopment, and preservation of certain affordable housing, etc. EP 02/05/2018 Fav/CS MS 02/15/2018 Fav/CS AP 02/22/2018 Favorable	Favorable Yeas 20 Nays 0

A proposed committee substitute for the following bill (CS/SB 1788) is available:

38	**CS/SB 1788** Children, Families, and Elder Affairs / Passidomo (Compare CS/CS/H 1373)	Medication Administration Training; Revising competency assessment and validation requirements for direct service providers who administer or supervise the self-administration of medication, etc. CF 01/29/2018 Fav/CS AHS 02/14/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (CS/SB 1876) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
39	**CS/SB 1876** Health Policy / Young (Compare CS/H 1165)	Trauma Services; Revising the trauma service areas and provisions relating to the number and location of trauma centers; requiring the Department of Health to establish the Florida Trauma System Advisory Council by a specified date, etc. HP 01/23/2018 Fav/CS AHS 02/14/2018 Fav/CS AP 02/22/2018 Fav/CS RC	Fav/CS Yeas 17 Nays 3
	With subcommittee recommendation – Health and Human Services		

A proposed committee substitute for the following bill (SB 1884) is available:

40	**SB 1884** Broxson (Compare CS/H 29, H 699, H 949, CS/H 1047, CS/CS/CS/H 1073, H 1191, CS/H 7055, CS/S 1090, S 1198, CS/CS/CS/S 1292, CS/S 1486, S 1566)	Military and Veterans Affairs; Providing requirements relating to licensure or qualification for a trade, occupation, or profession of persons ordered into active duty or state active duty; specifying conditions under which a spouse of a person serving on active duty in the United States Armed Forces has a defense to a citation and cause of action brought due to the unlicensed practice of a health care profession; designating March 25 of each year as “Medal of Honor Day”; revising the list of students who must be given priority by the Florida Virtual School, etc. MS 02/01/2018 Favorable ATD 02/14/2018 Fav/CS AP 02/22/2018 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		

Other Related Meeting Documents

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
10/12/17	SM	Unfavorable
10/24/17	JU	Favorable
1/10/18	AEN	Recommend: Favorable
2/22/18	AP	Favorable

October 12, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 34** – Senator Bill Montford
Relief of Shuler Limited Partnership

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $670,493. THE SUIT SEEKS COMPENSATION FROM THE GENERAL REVENUE FUND FOR THE ALLEGED NEGLIGENCE OF THE DIVISION OF FORESTRY IN DESTROYING THE SHULER LIMITED PARTNERSHIP'S TIMBER AFTER CONDUCTING A PRESCRIBED BURN IN TATE'S HELL STATE FOREST.

BACKGROUND INFORMATION:

1998 Florida Wildfires

An unprecedented number of wildfires burned in Florida between May and July, 1998, destroying approximately 500,000 acres of land, 150 structures, and 86 vehicles. The economic impact of the fires was estimated to exceed $1 billion[i] and the costs of fighting the fires surpassed $130 million.[ii]

1999 Legislative Response

In response to the devastating 1998 fires, the Legislature enacted significant statutory changes in 1999 to encourage the use of prescribed burns and thereby reduce wildfires.[iii] A prescribed burn is described as the controlled application of fire under specified environmental conditions while following precautionary measures that confine the fire to a

predetermined area.[iv] The burn destroys vegetation, which is a naturally occurring fuel source, and reduces the potential and severity of wildfires. The prescription is the written plan for starting and controlling the prescribed burn.[v]

In the 1999 legislation,[vi] the Legislature found that "prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of the state." The legislation also found that the application of periodic fire benefitted natural wildlife and when used in the state's parks and preserves, was essential to maintain the resources "for which these lands were acquired."[vii]

The Liability Standard is Changed from Negligence to Gross Negligence: To further its policy of encouraging prescribed burns, the Legislature reduced the risk of lawsuits to those conducting the burns. Specifically, the 1999 legislation, which remains current law, provides that a person who conducts a controlled burn is not liable for damages or injuries caused by smoke or fire unless the person is grossly negligent. Gross negligence means that a person's conduct is "so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct."[viii] Under the prior law, a person conducting a controlled burn could be held liable for negligence. Thus, the 1999 Legislature apparently decided that the benefits of controlled burns generally outweighed the associated risks of controlled burns.

The Two Properties Involved in the Lawsuit

Tate's Hell State Forest and Prescribed Burns: Tate's Hell State Forest is situated between the Apalachicola and Ochlockonee rivers in Franklin County. The expansive tract of land consists of more than 202,000 acres, which the state began purchasing in 1994. The forest supports a variety of ecosystems, wildlife, rare species of animals and plants, and serves to protect the Apalachicola Bay from freshwater runoff.[ix]

The Division of Forestry, as manager of Tate's Hell, endeavors to conduct prescribed burns on approximately 40,000 to 50,000 acres of the forest annually to reduce the vegetation fuels on the ground that feed forest fires. By burning this predetermined amount of acreage each year on a rotating cycle, the entire forest experiences a prescribed

burn every 3 to 5 years. The prescribed burn managers and firefighters conduct a planning meeting in advance of the next year's burns, often in October, to determine which areas will be burned and plan and schedule the burns.

Shuler Limited Partnership[x] and Shuler's Pasture: Shuler Limited Partnership owns a tract of land west of the Tate's Hell State Forest in Franklin County which consists of approximately 2,182 acres. The property is known as Shuler's Pasture and is separated from Tate's Hell by Cash Creek on its easternmost boundary. The property has been owned by the Shuler family since the 1950s and was passed down to the Shuler brothers who acquired it in 1997. Before the wildfire giving rise to this claim, Shuler's Pasture was described as being made up equally of pine flatwoods and bog or marsh.

LITIGATION HISTORY:

Litigation

On February 28, 2011, the Shuler Limited Partnership filed a Complaint in the Circuit Court of Franklin County alleging that an ember escaped from a 2008 prescribed burn conducted by the Division of Forestry in Tate's Hell State Forest and destroyed 835 acres of its timber. The Shulers' Amended Complaint named the Department of Agriculture and Consumer Services, Division of Forestry, State of Florida, and the Board of Trustees of the Internal Improvement Trust Fund, State of Florida, as Defendants. The lawsuit ultimately alleged negligence, statutory violations, negligence per se, and gross negligence.

Mediation: The parties attempted to mediate the claim in Tallahassee on September 24, 2012, 1 month in advance of the trial. After approximately 3 and one-half hours of mediation, the parties were unable to resolve the claim and the mediator declared an impasse.

Circuit Court: A 7-day jury trial was held between October 24, 2012, and November 1, 2012, at the Franklin County Courthouse in Apalachicola. The jury found in favor of the Shuler Limited Partnership on each count and rendered a verdict for $741,496 in damages and an additional $28,997 in costs. The Division of Forestry appealed.

Court of Appeal: On May 12, 2014, the First District Court of Appeal issued a succinct three paragraph, 2-1 per curiam decision upholding the lower court. Of the several arguments

raised on appeal, the court addressed only the issue of whether the evidence was insufficient to support the jury finding of gross negligence. Concluding that the jury could reasonably have found that the Division was grossly negligent and that the issue of whether negligence is ordinary or gross is a question rightfully resolved by the jury, the court affirmed the trial court. The court noted that its resolution of the negligence issue made it unnecessary to consider the other arguments on appeal.

A detailed dissenting 13-page opinion was filed by the third judge. In his dissent, the judge concluded that, due to "highly prejudicial legal errors" which were analyzed in depth in the dissent, the trial was unfair and a new trial should be held.

The Division of Forestry has stated that, while it had hoped to pursue an appeal after the Motion for Rehearing was denied, it discussed its options with the Solicitor General and concluded that the appellate rules did not provide it any basis for an appeal to the Florida Supreme Court.

Claim Bill Hearing
A day-long hearing was held on November 13, 2014, before the House and Senate special masters. Each side presented its case and was afforded the opportunity to question the opposing side's witnesses.

FINDINGS OF FACT:

The Division of Forestry conducted a certified prescribed burn on April 9 and April 10, 2008, in Tate's Hell State Forest. After the 2-day burn was complete, the Division of Forestry continued inspecting and monitoring the smoldering area to make certain that the burn was contained and that there were no spreading flames.

On May 13, 2008, a fire broke out on Shuler's Pasture. No one observed how the fire started. However, the Division stipulated that the fire probably was a spotover from the smoldering remains of a certified prescribed burn in Tate's Hell State Forest which was extinguished 33 days earlier. A spotover is a secondary fire that is ignited by an ember that is somehow lifted from the initial burn area and carried on the wind to a nearby property. For this spotover to have occurred, an ember would have apparently been picked up and carried westward by the wind over Cash Creek to the Shuler property

where it ignited. Cash Creek is estimated to be between 800 and 1,300 feet wide.

The Division of Forestry personnel were the first to observe the fire. They responded to the fire and requested and received additional firefighting equipment and personnel from nearby counties to contain the fire. However, due to several complicating factors discussed later in this report, the Division was unable to contain the growing flames. Ultimately, 835 acres of the Shuler's timber was destroyed by the fire.

The Prescription or Written Prescribed Burn Plan

According to the Tallahassee District Prescribed Burn Packet that was introduced into evidence at trial, the preliminary burn plan for the prescribed burn at Tate's Hell was developed on October 19, 2007, almost 6 months in advance of the burn. Testimony elicited at trial demonstrated that approximately 10 foresters and certified prescribed burn managers were involved in developing the written plan, referred to as the prescription. According to the burn packet, the Division was approved to burn a specific tract of 3,267 acres in the High Bluff area of Tate's Hell State Forest which was previously burned in 2005.

Before initiating the burn, the Division developed a detailed burn plan prescription describing precisely the area to be burned, the dates and hours for the burn operation, the purpose and objectives of the burn, the preferred weather factors, firing techniques and ignition methods, flame length, and equipment and personnel to be used. Certified prescribed burn manager Joseph Taranto reviewed and checked boxes on the prescription form indicating that he complied with the pre-burn checklist requirements and briefed the crew members before conducting the burn. Mr. Taranto, a certified prescribed burn manager since 2004, worked with the Division since 1999 and previously conducted 71 prescribed burns in Tate's Hell State Forest. He testified at trial through a pre-recorded video deposition because he would be deployed to Afghanistan during the trial. His check marks in the necessary boxes on the prescription form indicated, that among other things, all prescription requisites were met, the necessary authorization was obtained, all equipment that was required for the burn was at the scene and fully operational, and the crew members were properly briefed and assigned their responsibilities.

Testimony at trial showed that before the burn began, the foresters and burn managers surveyed the tract of land and determined that the burn area contained adequate firebreaks around the burn area.

Conducting the Prescribed Plan

Authorization: On the morning of April 9, 2008, Mr. Taranto called the Division's dispatch office in Tallahassee to request authorization to conduct the burn. The weather forecast for this particular day provided a wind blowing from the east which would blow the smoke from the prescribed burn away from residents in Eastpoint and away from Highway 65. Upon receiving data from Mr. Taranto, which was entered into a computer program, the dispatch office determined that the weather conditions were acceptable and authorized the burn. The employees met together and Mr. Taranto briefed them on how the burn was to be conducted, weather conditions, what each person's responsibilities were, which radio channels they would operate under, and conditions for which they should be watchful.

Ignition of the Burn and the Presence of the Prescribed Burn Manager: Mr. Taranto then lit a test fire that was favorable and instructed a helicopter crew to begin laying a baseline on the westernmost boundary of the property near Cash Creek. The purpose of the baseline was to create a burn area that increased the containment line to about 30 feet and provided a larger buffer zone next to Cash Creek. This practice is known as a backing fire that has the effect of reducing the wind's ability to move a fire beyond the containment line because the fuel it would feed upon has already been consumed and because it moves against the wind, unlike a head fire that moves with the wind. If the fire had been ignited on the easternmost boundary of the property with an east wind, it would have become a wildfire blowing with the wind.

The helicopter proceeded to drop small chemical balls that ignited upon impact on the ground along a predetermined grid pattern. The small fires eventually grew into a single fire that was more manageable than igniting one extremely large fire that burns much hotter. Mr. Taranto called in his ignition reports to headquarters throughout the day letting them know what percentage of the ignition phase was complete.

The fire developed as planned throughout the day, and the fire's progress was stopped at the end of the day. When Mr. Taranto determined that no flames were spreading, the fire was no longer consuming vegetation, and remained within the containment lines, he dismissed the work crew for the day at approximately 7:00 p.m. or slightly later. According to Mr. Taranto, he was the first person on the scene that morning and the last to leave at the end of the day. No escaping fires were reported and no trees were being burned, only the undergrowth around the trees.

On April 10, the second day authorized for the prescribed burn, Mr. Taranto again called the dispatch office in Tallahassee and received the necessary authorization to conduct the burn. The same methods and procedures were followed. Once Mr. Taranto determined that the flames were stopped and not spreading, and the burn was confined within the containment lines, the crew was released. No spotovers were reported on either day of the burn.

Mopping Up: On the days following the 2-day prescribed burn, the fire continued to smolder as planned. The crews monitored the burn area and "mopped up" which means the crews worked the outer perimeter of the fire and reduced the heat along the edges by using water, shovels, and rakes to increase the buffer area and cool it. The goal is to ensure that the burn and its continued smoldering remain contained to protect nearby property from the chances of an escaped fire. Mr. Taranto established in his deposition that the fire was checked once or twice each day by one to three firefighters who rode around in trucks or fire engines until no smoke, heat, or embers were observed in the burn area.

Mr. Taranto further testified that he saw no error in how the prescribed burn plan was prepared or implemented and that he had all of the resources that he needed to conduct the prescribed burn.

Firebreaks: The four firebreaks surrounding the prescribed burn area consisted of Highway 65 on the eastern boundary, the water bodies of Cash Creek and East Bay on the northern and western boundaries, and another road that ran along the southern boundary. Additional firebreaks consisted of interior roads in Tate's Hell State Forest which previously were created by loggers or by the Division.

Mr. Taranto demonstrated that because of the large number of interior roads in the prescribed burn area, he was able to stop the fire at any point he felt necessary to prevent its spread should the weather change with a strong wind.

Personnel: Mr. Taranto established in his deposition that seven forestry personnel were present for the prescribed burn. Six of those seven were certified prescribed burn managers. He believed that he had sufficient personnel to conduct the operation and did not need to call in any additional people.

Equipment: According to Mr. Taranto's testimony, two employees were on the scene in bulldozers that were used to suppress the fire. Two employees were present in fire engines that held 350 to 500 gallons of water each. The remaining three employees served as ground patrol and used pickup trucks equipped with 50 gallons of water or more which were used for fire suppression. The employees had radios in their vehicles to communicate with each other during the prescribed burn. If additional resources were needed, the Division had access to a few tractors in nearby Carrabelle and could request assistance from the U.S. Forest Service, local fire departments, and other agencies such as the Florida Fish and Wildlife Conservation Commission, which also had fire engines. These additional resources were not needed during the 2-day prescribed burn.

Spotovers after the Controlled Burn

As mentioned earlier, a spotover is a separate fire that is ignited by an ember that is somehow lifted from the immediate burn area and carried on the wind to a nearby area outside of the initial burn area. According to testimony at trial elicited from different workers in the Division of Forestry, these occur as often as in 10 to 20 percent of fires. A spotover may occur when an area did not burn or was not consumed during the initial ignition phase because the conditions might have been too wet or the humidity was too high, but the weather conditions change, something dries out and is rekindled by a smoldering object, and an ember travels and ignites in a second location.

On April 21, 2008, 11 days after the prescribed burn was extinguished, a spotover occurred east of the prescribed burn

area. The fire was referred to as the High Bluff fire. An ember was picked up and traveled across Highway 65 and landed on state owned property. The fire was soon contained after burning approximately 10 acres of land.

Similarly, on May 6, 2008, 26 days after the prescribed burn was extinguished, a second spotover occurred east of the burn area. This fire was referred to as the High Bluff 2 fire. The ember also traveled across Highway 65 and landed on state owned property. The fire was also contained.

Difficulties of Extinguishing The Shuler Pasture Fire
The fire on Shuler's Pasture occurred 33 days after the prescribed burn was extinguished. According to trial testimony from several forestry workers, the Division had difficulty containing the fire, unlike the other spotovers, because of the conditions on the Shuler land. The firebreaks on the property were not wide enough for the Division's equipment to progress through, much of the land was boggy and would not support the large firefighting equipment, the land contained thick undergrowth that could not be traveled through, and no prescribed burns had been conducted to eliminate the inhibiting undergrowth.

CLAIMANT'S ARGUMENTS:

The Shulers alleged that the prescribed burn conducted by the Division of Forestry on April 9 and 10, 2008, which smoldered for weeks, caused the wildfire on Shuler's Pasture on May 13, 2008. The four counts alleged in the original Complaint were:

Count I – The respondents were negligent in their decision to ignite the prescribed controlled burn and negligent in the method of conducting the burn.

Count II – The prescribed burn violated section 590.13, F.S. (2007), which regulates controlled burns.

Count III – The respondents were negligent per se.

Count IV – The respondents were strictly liable.

When the jury was asked to evaluate counts II and IV, they were instructed to consider whether the Shuler fire was foreseeable by a reasonably careful person. Later, the trial court permitted the Shulers to amend Count IV to delete a

claim for strict liability and replace it with one for gross negligence.

In an effort to demonstrate the Division of Forestry's alleged negligence, the Shulers offered testimony that:

- The prescribed burn manager received a notice of violation[xi] for the manner in which the prescribed burn was conducted, thereby demonstrating negligence on his part;
- The burn was not completed in accordance with the 2-day prescription but extended for 45 days;
- Experts believed that the burn was not conducted correctly;
- The Division of Forestry personnel who fought to extinguish the fire at Shuler's Pasture were not adequately equipped to combat the fire.

RESPONDENT'S ARGUMENTS: The Division filed a Motion to Dismiss the Complaint and argued that any claim other than gross negligence was not permitted under the law as written. At trial, the Division offered testimony from the prescribed burn manager that the burn was conducted in conformance with its standard procedures and that all other needed personnel and equipment were on the scene for the prescribed burn. Forestry officials also testified that the prescribed burn was properly conducted.

Additional forestry personnel testified about the adequacy of personnel and equipment on site to extinguish the Shuler property fire, such that no negligence was committed in trying to contain and extinguish the fire.

On appeal, the Division argued that the jury trial was unfair, that the jury was misled about the proper legal standards that applied, that evidence was improperly admitted, and that conclusions were improperly drawn from that evidence. The Division also argued that it did not commit gross negligence and that the escaped ember that started the Shuler fire was not foreseeable, due to the wide expanse of the Cash Creek firebreak.

JURY VERDICT AND DAMAGES: The jury found that the Division violated the prescribed burn statute during the time between April 10 and May 23 while the burn smoldered and was, therefore, liable for negligence, a statutory violation, negligence per se, and gross negligence.

The jury awarded damages in the amount of $741,496 and costs were taxed for an additional amount of $28,997.

CONCLUSIONS OF LAW:

Summary Statement

Under section 590.125(3), F.S. (2007), the Division is legally responsible for the Shulers' damages only if the Shulers prove that the Division was grossly negligent.

The Shulers' theory of this claim is that the ember that started the fire on Shuler's Pasture was foreseeable and the Division, when conducting the prescribed burn, should have acted in such a manner as to have prevented their loss. The Shulers focus not on the 2-day prescribed burn period, but on the activities after the 2-day prescribed burn, from April 11 through May 23, when the Division was mopping up. The Shulers' theory, however, is not persuasive because it requires the Division to be responsible for weather conditions that occurred 6 weeks after the conditions under which the burn was authorized. Moreover, the manner in which the Division planned and conducted the fire and subsequently monitored the smoldering phase demonstrate that it was not grossly negligent.

The Statute and Legal Standard Involved in this Case

The primary certified prescribed burn statute in question, s. 590.125(3)(b), F.S. (2007), requires, among other things, that:

- A written prescription be prepared before authorization from the Division of Forestry is given;
- A certified prescribed burn manager be present on site with a copy of the prescription from ignition of the burn to its completion;
- An authorization to burn be obtained from the Division of Forestry before the burn is ignited; and
- Adequate firebreaks and sufficient personnel and firefighting equipment be present to control the fire.

Section 590.125(3)(c), F.S. (2007), provides that a property owner or his or her agent is not liable for damage or injury caused by the fire … for burns conducted in accordance with the subsection unless gross negligence is proven.

Gross negligence was defined as conduct that was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of

persons exposed to such conduct. Section 768.72(2)(b), F.S. (2007).

Trial Court Errors

The trial court issued several rulings that the dissenting appellate opinion characterized as "highly prejudicial legal errors in the interpretation of the open burn statute" and concluded that the jury trial in Franklin County was "unfair and a new one warranted."[xii] After reviewing the extensive trial and appellate records that exceeded 2,000 pages, the undersigned finds the dissenting opinion to be very persuasive and accurate. The errors prohibited the Division from presenting accurate testimony and evidence to the jury. As a result of these errors, the jury was misled and the Division did not receive a fair trial.

These three errors in the trial were intertwined and involved:

- The interpretation of the gross negligence standard;
- The statutory interpretation of when the controlled burn was extinguished; and
- The interpretation of "completion" as to how long the prescribed burn manager was required to be on the site of the burn.

The Gross Negligence Standard

The trial court committed error by allowing the jury to consider any standard of negligence other than gross negligence: The Shulers argued in the trial court that the Division could be held liable for negligence, statutory violations of the prescribed burn statute, and negligence per se if the burn was not conducted in accordance with the prescribed burn statute until the burn was completely extinguished 45 days later. However, this position, which the trial court accepted, is inconsistent with the prescribed burn statute, s. 590.125(3)(c), F.S. (2007), which entitles a person to damages caused by a controlled burn only if "gross negligence is proven." The position also eviscerates the legislative policy of encouraging controlled burns in s. 590.125, F.S. (2007).

Even if the statute could be read to allow causes of action other than actions for gross negligence, the evidence shows that the Division complied with the statute. The Shulers' arguments that the Division violated the statute, making the protections of gross negligence standard inapplicable, are

based on several misinterpretations of the statute. According to the dissenting judge in the appellate decision, "the cumulative effect of [these] statutory interpretation errors resulted in the Division being denied a fair opportunity to defend itself under the correct legal standards."

Specifically, the errors by the trial court prevented the Division from showing the jury that the controlled burn was extinguished, as required by the prescription, within the 2-day period of the prescription. The errors also prevented the Division from showing that the certified prescribed burn manager was present at the controlled burn as required by statute from its ignition to completion.

The fire was "extinguished" at the end of the 2-day burn period: The Shulers argued that because the Division violated the controlled burn statute, it was not protected by the gross negligence standard. Instead, according to the Shulers, the Division was responsible for the Shulers' losses because the prescribed burn was not extinguished during the 2-day period of the prescription. The Shulers' position, however, seems based on a layman's interpretation of the term "extinguished," instead of its statutory definition. Under s. 590.125(1)(d), F.S. (2007), a fire is extinguished when the visible flames, smoke, or emissions from a certified prescribed burn cease. The evidence in this matter showed that the prescribed burn was extinguished per the statutory definition by the end of the 2-day prescribed burn period. Thus, the fact that the fire continued to smolder does not show that the Division violated the statute.

Nevertheless, the Division, before it was aware of all of the facts of the case, stipulated in the trial court proceeding that the fire was not extinguished within the 2-day prescribed burn period. When the Division became aware of its mistake, it sought to amend its pleadings. The trial court denied the request on the grounds that the proposed amendment coming so close to trial was prejudicial to the Shulers.[xiii] At that same time, October 9, 2012[xiv], the trial court permitted the Shulers to amend their complaint to add a count for gross negligence. As a result, the jury was incorrectly told to believe that the Division was continuously in violation of the controlled burn statute for 45 days.[xv] Even if the trial court's decision preventing the Division from amending its stipulation was fair under the circumstances, the stipulation is not

binding in a special master proceeding. Under Senate Rule 4.81(5), a special master hearing is a *de novo* proceeding in which stipulations are not binding on the special master or the Senate. Thus, based on the evidence and the law, I find that the prescribed burn was extinguished within the 2-day prescribed burn period.

The certified prescribed burn manager was present from the ignition of the prescribed burn until its "completion:" Under s. 590.125(3)(b)1. F.S., (2007), a certified prescribed burn manager must be present at the site of a controlled burn "from ignition of the burn to its completion." The Shulers argue that the Division violated the controlled burn statute because the certified prescribed burn manager was not present at the site of the controlled burn until its completion. The Shulers' argument, however, is based on its misinterpretation of the word "completion" which the trial court accepted during a pretrial ruling.

Under the Shulers' interpretation, the statute requires a controlled burn manager be on the site of a controlled burn continuously from the ignition of the fire until it is completely extinguished. Under this interpretation, the Division should have had a certified burn manager on site 24 hours a day for 45 days.

According to the Division, the statute requires a certified burn manager to be on the site of a controlled burn from ignition until the completion of the ignition phase of the burn. Under this interpretation, the statute required that the Division's controlled burn manager be on site only during the 2-day prescribed burn period.

In resolving the dispute over the meaning of "completion," which was not defined in the statute, the trial court heard testimony during a pre-trial hearing. In support of its position, the Division offered the expert testimony of the Director of the Florida Forest Service, who among other relevant credentials such as serving as a certified prescribed burn manager for more than 25 years, helped rewrite the controlled burn statute in 1999. The Division also offered the expert testimony of a district manager of field operation of the Florida Forest Service who served as a certified prescribed burn manager for 25 years and who had supervised several hundred controlled burns each year. In support of its position,

the Shulers presented one of its partners, an attorney who was seeking more than $800,000 in the lawsuit. He opined that the statute clearly requires that a certified controlled burn manager be onsite until a controlled burn is completely extinguished.

Although the Shulers' attorney had no previous experience with the controlled burn statute, the court accepted the Shulers' interpretation of the statute and prohibited the Division from offering testimony at trial to the contrary.[xvi]

I find that the Division's interpretation of the meaning of completion is the correct interpretation for several reasons. First, the Division administers the statute and regularly conducts prescribed burns, and courts are typically deferential to a state agency's interpretation of the statutes it administers.[xvii]

Second, the Shulers' interpretation of the statute would severely limit the ability of the Division to conduct controlled burns that reduce the risk of wildfires throughout the state. The Division's personnel would be stretched too thin. Highly qualified certified controlled burn managers would be relegated to spending most of their time dealing with smoldering burns instead of the more critical tasks of planning controlled burns and managing the ignition phase of controlled burns. After the Tate's Hell prescribed burn was extinguished or completed, the burn area was checked once or twice a day by other personnel, which was reasonable, not unreasonable or grossly negligent, under the circumstances.

Third, the wording of a related statutory provision indicates that the word "completion" is synonymous with "extinguished." In other words, a certified prescribed burn manager must be on the site of a controlled burn until no spreading flames exist. Under s. 590.125(2)(a)5., F.S. (2007), when a noncertified person conducts a controlled burn, "Someone must [be] present until the fire is extinguished." If a noncertified person, who does not have the training or experience of a certified controlled burn manager, can leave the site of a controlled burn when no spreading flames exist, certainly a certified prescribed burn manager, who is in a better position to assess the risks of spreading flames, may leave a prescribed burn when it is extinguished.

The evidence in this matter showed that the Division's prescribed burn manager was on the site of the Tate's Hell prescribed burn from ignition to the completion of the ignition phase. As a result, the Division's conduct was consistent with the prescribed burn statute.

DAMAGES

Because the Division did not commit an act of gross negligence, the Division is not legally liable to the Shulers. However, even though no one observed the origin of this fire, the Division of Forestry stipulated that the Shuler fire must have been ignited by an ember from the smoldering prescribed burn conducted in Tate's Hell State Forest. Therefore, if the Legislature believes that the state is morally responsible, though not legally culpable, for this substantial property loss of 835 acres of timber, the Legislature could award some measure of compensation to the Shulers as an act of legislative grace.

Determining the Shulers' loss is not possible based upon the evidence submitted at trial or at the special master hearing.

In closing arguments to the jury, the Shulers asked the jury to award damages of $834,018, a figure calculated by the Shulers' expert, Mr. Michael Dooner. The jury, however, apparently disagreed with Mr. Dooner's estimate because it awarded $741,496, nearly $100,000 less.

The undersigned did not find the damage estimates of Mr. Dooner as persuasive as the opinions of Mr. Leonard Wood, the expert representing the Division of Forestry. Mr. Wood noted that the Shulers, in order to arrive at accurate damages, had a responsibility to salvage the damaged trees as quickly as possible before they began to degrade and lose value. This did not occur. The better practice would have been to bring in multiple buyers to move the timber to market as quickly as possible, which also did not occur. Mr. Wood also found it unacceptable that the Shuler expert did not conduct a timber cruise to assess damages until January, 2011, more than 30 months after the fire, thereby rendering his methodology questionable and statistically unsound for assessing damages.

Mr. Wood expressed no confidence in several categories of damages put forth by the Shulers' expert including value assignments of:

- $334,846 for standing dead timber, a category that is affected by how quickly the trees are salvaged;
- $111,615 as an additional value of standing dead timber for non-forced sale;
- $91,644 for growth loss because no growth study was performed; and
- $85,342 for "downgrading" the marketability of timber to a lower, less desirable category due to the fire because the claim was not substantiated.

Mr. Wood also questioned assessments of:

- $60,747 for "forced sale" damages because he did not agree with Mr. Dooner's definition of "forced sale" damages;
- $5,985 for cut trees that were not actually hauled from the land because those would become the property of the logging company;
- $32,160 for a weight loss claim of 15 percent of the timber's weight due to a loss of moisture caused by the fire;
- $57,250 for reforestation for preparing and planting trees because it is a separate business decision which would be a form of giving them double damages since they were already being awarded the profits from the trees being removed and sold due to the fire;
- $30,249 for fees and commissions to Mr. Dooner which he felt should have been borne by the Shulers; and
- $24,180 for roadwork because it is a capital cost of the landowner who would enjoy the benefits of having a road after the cutting and removal of the timber.

To further complicate computing the actual loss, Mr. Wood did not offer any counter estimate at trial. He stated that it would be very difficult to accurately develop projections based upon the findings provided by Mr. Dooner because so much time had elapsed between the initial fire and Mr. Dooner's assessment of the land. When asked at the claim bill hearing if the Division of Forestry would like to offer an estimate for damages if there were an act of legislative grace,

the Division responded that "it respectfully declines to make such an offer."

In addition to the $100,000 award that was paid to the Shulers and their legal counsel, the Shulers also received $202,489 for selling timber from their land which was damaged in the fire.

ATTORNEYS FEES: Section 768.28, F. S., limits the claimant's attorney fees to 25 percent of the claimant's total recovery by way of any judgment or settlement obtained pursuant to s. 768.28, F.S. The claimant's attorney has acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorney fees.

RECOMMENDATIONS: Based upon the foregoing, the undersigned recommends that Senate Bill 34 be reported UNFAVORABLY.

Respectfully submitted,

Eva M. Davis
Senate Special Master

cc: Secretary of the Senate

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[i] U.S. FIRE ADMIN., USFA-TR-126, WILDLAND FIRES, FLORIDA - 1998 (1998). http://www.usfa.fema.gov/downloads/pdf/publications/tr-126.pdf (last visited October 12, 2017).
[ii] Fla. H.R. Comm on Agric., CS for HB 1535 (1999) Staff Analysis (June 15, 1999).
[iii] *Id*.
[iv] Section 590.026(3)(a), F.S. (1997).
[v] Rule 5I-2.003(21), F.A.C.
[vi] Chapter 99-292, s. 9, Laws of Fla.
[vii] *Id.*
[viii] Section 768.72, F.S. (2007).
[ix] Fla. Dep't of Agric. & Consumer Servs., http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests/Tate-s-Hell-State-Forest/Tate-s-Hell-State-Forest (last visited October 12, 2017).
[x] The Shuler Limited Partnership consists of Michael Shuler, Gordon Shuler, and two trusts. For simplicity, this report will refer to the Claimants as either the Shuler Limited Partnership or the Shulers.
[xi] The special master did not find this testimony to be persuasive because the Division presented testimony from multiple witnesses that the notice of violation was improperly issued, the notice of violation was rescinded soon after it was issued well in advance of the filing of the lawsuit, and that other similar notices of violation were also rescinded when the general counsel pointed out that their initial interpretation of the statute for issuing notices of violation was flawed.

[xii] *Department of Agriculture and Consumer Services, Division of Forestry, State of Florida, and the Board of Trustees of the Internal Improvement Trust Fund, State of Florida v. Shuler Limited Partnership*, 139 So. 3d 914, 915 (Fla. 1st DCA 2014)(Makar, J., dissenting).
[xiii] *Id*. at 919.
[xiv] *See* Initial Brief of Defendant-Appellant, p.42.
[xv] *Department of Agriculture and Consumer Services*, *supra* note xii, at 919.
[xvi] The court's error in accepting the Shulers' interpretation, was compounded by the Shulers' closing statement to the jury. The jury was told that the Division stipulated to being in violation of the controlled burn statute for 45 days because the certified controlled burn manager was not present after the burn was extinguished.
[xvii]The dissenting opinion cited in *Department of Agriculture and Consumer Services, supra* at 927, notes that "the entire case centered on the Division's regulatory functions, requiring deference to the Division's interpretation." *See Health Options, Inc. v. Agency for Health Care Admin*., 889 So. 2d 849, 851 n. 2 (Fla. 1st DCA 2004) and *Chiles v. Dep't of State, Div. of Elec*., 711 So. 2d 151, 155 (Fla. 1st DCA 1998).

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

34
Bill Number (if applicable)

Topic Shuler Brothers Partnership Claims Bill

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300
Street

Phone 222-7500

Tallahassee FL 32301
City *State* *Zip*

Email garyh@hgslaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Shuler Brothers Limited Partnership

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 280
INTRODUCER:	Banking and Insurance Committee and Senator Bean
SUBJECT:	Telehealth
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Lloyd	Stovall	HP	**Favorable**
3.	Kidd	Williams	AHS	**Recommend: Favorable**
4.	Kidd	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 280 establishes practice standards for telehealth health care services, addresses the prescribing of controlled substances and issuance of a physician certification for medical marijuana through telehealth, and prescribes recordkeeping and patient consent. Telehealth is the delivery of health care services using telecommunication technologies, which allows licensed practitioners in one location to diagnose and treat patients at a different location. The bill will remove regulatory ambiguity regarding the provision of health care services using this technology because it is not currently addressed in Florida Statutes.

The Department of Health indicates it can absorb within existing resources the costs associated with development and dissemination of education materials for telehealth licensees as required in the bill. There is no fiscal impact to the Agency for Health Care Administration.

The bill has an effective date of July 1, 2018.

II. Present Situation:

Health Care Professional Shortage

There is currently a health care provider shortage in the United States (U.S.). Approximately 20 percent of U.S. residents live in rural areas, but only 9 percent of physicians practice in these

areas.[1] As of December 31, 2017,[2] the U.S. Department of Health and Human Services has designated 7,176 Primary Care Health Professional Shortage Areas (HPSA), 5,866 Dental HPSA and 5,042 Mental Health HPSA.[3] An estimated 31,449 practitioners are needed to eliminate the shortage nationwide. Florida is experiencing a health care provider shortage. This is evidenced by the fact that there are 647 federally designated Health Professional Shortage Areas (HPSA) within the state for primary care, dental care, and mental health,[4] and it would take an estimated 2,936 practitioners to eliminate these shortage areas in Florida.

Telehealth

The term, "telehealth," is sometimes used interchangeably with telemedicine. Telehealth, however, generally refers to a wider range of health care services that may or may not include clinical services.[5] Telehealth often collectively defines the telecommunications equipment and technology that are used to collect and transmit the data for a telemedicine consultation or evaluation. Telemedicine may refer to clinical services that are provided remotely via telecommunication technologies. Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. There is no consensus among federal programs and health care providers on the definition of either term.

The federal Centers for Medicare & Medicaid Services (CMS) defines telehealth as:

> The use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision and information across distance. Telehealth includes technologies such as telephones, facsimile machines, electronic mail systems, and remote patient monitoring devises, which are used to collect and transmit data for monitoring and interpretation.[6]

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[1] Health Affairs, Health Policy Brief: *Telehealth Parity Laws*, (Aug. 15, 2016) (on file with the Banking and Insurance Committee).

[2] *See* U.S. Department of Health and Human Services, Bureau of Health Workforce, Designated Health Professional Shortage Areas Statistics, *First Quarter of Fiscal Year 2018 Designated HPSA Quarterly Summary* (as of Dec. 31, 2017), available at; https://ersrs.hrsa.gov/ReportServer?/HGDW_Reports/BCD_HPSA/BCD_HPSA_SCR50_Qtr_Smry_HTML&rc:Toolbar=false. (last viewed Jan. 25, 2018).

[3] HPSA designations are used to identify areas and population groups within the U.S. that are experiencing a shortage of health professionals. The primary factor used to determine a HPSA designation is the number of health professionals relative to the population with consideration of high need. Federal regulations stipulate that in order for an area to be considered as having a shortage of providers, an area must have a population-to-provider ratio of a certain threshold. For example, for primary medical care, the population to provider ratio must be at least 3,500 to 1 (3,000 to 1 if there are unusually high needs in the community). *See* https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D (last viewed January 25, 2018).

[4] *Id.*

[5] Anita Majerowicz and Susan Tracy, *"Telemedicine: Bridging Gaps in Healthcare Delivery,"* Journal of AHIMA 81, no. 5, (May 2010): 52-53, 56. http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_047324.hcsp?dDocName=bok1_047324 (last viewed Jan. 25, 2018).

[6] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telemedicine*, available at https://www.medicaid.gov/medicaid/benefits/telemed/index.html (last viewed Jan. 5, 2018).

The federal Medicaid statutes and regulations do not recognize telemedicine as a distinct service, but as an alternative method for the delivery of services. Medicaid defines telemedicine and telehealth separately using telemedicine to define the interactive communication between the provider and patient and telehealth to describe the technologies, such as telephones and information systems.[7]

According to the American Telemedicine Association,[8] telemedicine is a significant and rapidly growing component of health care in the U.S. There are currently about 200 telemedicine networks, with 3,500 service sites in the U.S. Nearly one million Americans are currently using remote cardiac monitors. In 2011, the Veterans Administration delivered over 300,000 remote consultations using telemedicine. Over half of all U.S. hospitals now use some form of telemedicine. Around the world, millions of patients use telemedicine to monitor their vital signs, remain healthy, and out of hospitals and emergency rooms. Consumers and physicians download health and wellness applications for use on their cell phones.

Florida Telehealth Advisory Council

In 2016, legislation[9] was enacted that required the Agency for Health Care Administration (AHCA), with assistance from the Department of Health (DOH) and the Office of Insurance Regulation (OIR), to survey health care practitioners, facilities, and insurers on telehealth utilization and coverage, and submit a report on the survey findings to the Governor, President of the Senate, and Speaker of the House of Representatives by December 31, 2016. The law also created a 15-member Telehealth Advisory Council, and required it to submit a report with recommendations based on the survey findings to the Governor, President of the Senate, and Speaker of the House of Representatives by October 31, 2017.

Summary of the Survey Findings of the Telehealth Advisory Council[10]

The types of health care services provided via telehealth in the state. The most frequent uses of telehealth reported by licensed health care facilities in Florida include neurology (including stroke care), home health/patient monitoring, primary care, behavioral health, and radiology. About 44 percent of home health agencies responding to the AHCA's survey indicated using telehealth to assist with remote patient monitoring.

The extent to which telehealth is used by health care practitioners and health care facilities nationally and in the state. At the national level, an estimated 63 percent of practitioners use some type of telehealth platform to provide services. In contrast, only 6 percent of surveyed practitioners in Florida indicated they use telehealth for the provision of health care services. About 52 percent of hospitals in the U.S. use telehealth, and 45 percent of surveyed Florida hospitals stated they offer care through some form of telehealth. Major factors driving the

[7] *Id.*
[8] *See* https://www.americantelemed.org/about/telehealth-faqs- (last viewed Jan. 5, 2018).
[9] Ch. 2016-240, Laws of Fla. The law designated the Secretary of the Agency for Health Care Administration as the council Chair, and designated the State Surgeon General and Secretary of the Department of Health as a member. The AHCA's Secretary and the Surgeon General appointed 13 council members representing specific stakeholder groups.
[10] *See* Telehealth Advisory Council website available at http://www.ahca.myflorida.com/SCHS/telehealth/ (last viewed Jan. 8, 2018).

adoption of telehealth include advancing technologies, an aging population, health practitioner shortage, and greater acceptance of innovative treatment by patients.

The estimated costs and cost savings to provide health care services. Benefits reported from health care facilities and professionals offering telehealth services include improved convenience for both patients and providers, improved efficiencies, and improved patient care outcomes. Financial barriers are the most frequently reported obstacles among health care facilities and providers during both implementation and ongoing operations of telehealth programs. The American Hospital Association notes that direct return on investment for health care providers is limited; particularly when there is limited coverage and reimbursement by health plans for the services offered by telehealth. Twenty-five Florida health facilities and practitioners identify costs, reimbursement, and inability to determine a Return on Investment (ROI) as challenges in providing telehealth services.

The extent of insurance coverage for providing health care services via telehealth and how such coverage compares to coverage for in-person services. Some public and private payers limit reimbursement for health services offered through telehealth technology by the type of telehealth service offered and/or by the locations where care is provided and received. Approximately 43 percent of Florida health insurers indicate that they cover some form of telehealth services. Companies that offer Medicare Advantage plans were shown as having the largest percentage of plans offering reimbursement to health care providers for service provided through telehealth technologies. Coverage typically is limited to certain delivery types and requires special coding. A majority of health insurers indicate very limited coverage.

As of December 2016, 28 states and the District of Columbia have parity laws, which require private payer coverage and payment for telehealth services to be equitable with coverage and reimbursements for face-to-face health services. The definition of telehealth in each of these states varies, and some state definitions may include limitations on the telehealth modalities encompassed in required coverage and payment models.

Notable differences in the state regulations include whether telehealth services must be reimbursed at the same rate as in-person services; or whether the state only requires that the same services be covered but allow for variable rates of reimbursement. Florida does not currently have any statutory requirements related to private payer parity for telehealth services. Some private payers in the state have voluntarily opted to provide coverage and reimbursement for telehealth services.

According to the survey, 48 states offer some type of live video reimbursement in Medicaid to varying levels of reimbursement and coverage levels.[11] At least 21 states have some reimbursement for remote patient monitoring; 15 states reimburse for store and forward services under their Medicaid program; and 9 state programs reimburse for all three types.[12] Within each

[11] Center for Connect Health Policy, *State Telehealth Laws and Reimbursement Policies: A Comprehensive Scan of the 50 States and District of Columbia (Fall 2017)*, pg. 3, http://www.cchpca.org/sites/default/files/resources/Telehealth%20Laws%20and%20Policies%20Report%20FINAL%20Fall%202017%20PASSWORD.pdf, (last visited Jan. 25, 2018).

[12] *Id.* In their Fall 2017 survey of states, the Center for Connected Health Policy also found that 31 states provide a transmission or facility fee. *See* Center for Connected Health Policy, *50 State Scan of Telehealth Reimbursement Laws and Medicaid Policies-Factsheet* (Fall 2017) (on file with Health Policy Committee).

of these reimbursement models, there are variances in the types of services, specialties, providers, and locations that are covered. The Florida Medicaid fee-for-service rules were updated in June 2016 to expand telehealth payments to a broader array of practitioners. Similar to Medicare, Medicaid coverage in Florida is limited to live video conferencing, and pays the practitioner that provides the diagnosis only. With the vast majority of Florida Medicaid beneficiaries enrolled in managed care, Florida's Medicaid managed care plans are authorized to cover telehealth services with greater flexibility; however, there is no mandate for coverage. Based on survey responses by Florida health plans, coverage for telehealth is greatest for Medicaid managed care and Affordable Care Act Exchange Plans. Florida health care providers indicate very little reimbursement for telehealth services no matter the plan type.

Barriers to using or accessing services through telehealth. The primary issues related to telehealth often cited are financial, interoperability, and licensure. Florida providers and practitioners cited financial issues, such as inadequate reimbursement from payers, insufficient funding capital, and the inability to determine return on investment. An estimated 44 percent of the health plans surveyed noted government regulations and liability as barriers for covering telehealth services. The issue of interstate practice and reimbursement is among the legal issues health plans must consider. For example, health plans must ensure they are reimbursing health providers that are licensed appropriately in the jurisdiction where they are treating patients.[47] Florida facility and practitioner licensees who responded to the survey indicated the top three barriers to implementing telehealth involve finances: inadequate reimbursement from payers, insufficient funding capital, and the inability to determine return on investment.

Summary of the Recommendations of the Telehealth Advisory Council[13]

The report contained the following recommendations:

1. **Create definition of telehealth and replace existing telehealth and telemedicine definitions in Florida statutes and rules.** Telehealth is defined as the mode of providing health care and public health services through synchronous and asynchronous information and communication technology by a Florida licensed health care practitioner, within the scope of his or her practice, who is located at a site other than the site where a recipient (patient or licensed health care practitioner) is located.
2. **Coverage Parity.** A health insurance policy issued, amended, or renewed on or after July 1, 2018, shall provide coverage for services (excluding Medicare plans) provided via telehealth to the same extent the services are covered, if provided in-person. An insurer shall not impose any additional conditions for coverage of services provided via telehealth.[14]
3. **Payment Parity.** For the purpose of health insurance payment (excluding Medicare plans), payment rates for services provided via telehealth shall be equivalent to the rates for comparable services provided via in-person consultation or contact contained in the participation agreement between the insurer and the health care practitioner.[15]

[13] *See* Telehealth Advisory Council, *Expanding Florida's Use and Accessibility of Telehealth* (Oct. 31, 2017), available at http://www.ahca.myflorida.com/SCHS/telehealth/docs/TAC_Report.pdf (last visited January 5, 2018).

[14] According to the report, the intent of this recommendation is to ensure appropriate insurance coverage for the use of telehealth in treating patients. Any legislative language developed should not require insurers to add additional service lines or specialties, mandate a fee-for-service arrangement, inhibit value-based payment programs, or limit health care insurers and practitioners from negotiating contractual coverage terms.

[15] According to the report, the intent of this recommendation is to ensure appropriate insurance reimbursement for the use of telehealth in treating patients. Any legislative language developed should not require insurers to add additional service lines

4. **Medicaid Reimbursement.** The council recommends the AHCA modify the Medicaid telehealth fee-for-service rule to include coverage of store-and-forward and remote patient monitoring modalities in addition to the currently reimbursed live video conferencing modality.
5. **Medicaid Network Adequacy.** The council recommends the AHCA develop a model that would allow Medicaid managed care plans to utilize telehealth for meeting network adequacy.
6. **Interstate Licensure.** In order to ensure the best care for Florida patients and maximize available resources and access to care, the council recommends the following:
    - Maintain the requirement of Florida licensure for health practitioners providing patient care in Florida via telehealth. This recommendation requires no change to current regulations and does not inhibit the use of telehealth to treat patients.
    - The Legislature adopt laws allowing participation in health care practitioner licensure compacts that have licensure requirements that are equivalent to or more stringent than Florida Law.
7. **Standards of Care.** To ensure clarity for Florida licensed health care practitioners and stakeholders regarding the ability to use telehealth as a modality of care, the council recommends the DOH, healthcare regulatory boards and councils continue to educate and raise awareness among licensees that they may use telehealth modalities to serve patients.
8. **Patient-Practitioner Relationships and Continuity of Care**. The council offers the following language for inclusion in Florida statutes: A health care practitioner-patient relationship may be established through telehealth.
9. **Patient Consent.** The council recommends maintaining current consent laws in Florida.
10. **Telehealth and Prescribing.** The council offers the following language:
    Health care practitioners, authorized by law, may prescribe medications via telehealth to treat a patient as is deemed appropriate to meet the standard of care established by his or her respective health care regulatory board or council. The prescribing of controlled substances through telehealth should be limited to the treatment of psychiatric disorders and emergency medical services. This should not prohibit an authorized health care practitioner from ordering a controlled substance for an inpatient at a facility licensed under ch. 395, F.S., or a patient of a hospice licensed under ch. 400, F.S.
11. **Technology and Health Care Facilities/Practitioners.** The council notes that technology-related barriers for practitioners will decrease as technological advances and market forces drive cost reductions. Barriers remain related to interoperability of health care information systems. The council recommends:
    - The AHCA identify existing resources for health information exchange to expand interoperability between telehealth technologies and integration into electronic health record (EHR) platforms.
    - The AHCA continue promotion of existing programs and services available to increase access to technology, access to broadband networks, and improved interoperability.
    - Medical schools, schools of allied health practitioners, and health care associations provide information and educational opportunities related to the utilization to telehealth for serving patients.

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or specialties, mandate fee-for-service arrangements, inhibit value-based payment programs, limit health care insurers and practitioners from negotiating contractual coverage terms, or require insurers to pay for facsimiles or audio only communication.

Florida Board of Medicine

Florida's Board of Medicine (board) convened a Telemedicine Workgroup in 2013 to review its rules on telemedicine, which had not been amended since 2003. The 2003 rules focused on standards for the prescribing of medicine via the Internet. On March 12, 2014, the board's new Telemedicine Rule, 64B8-9.0141, became effective for Florida-licensed physicians. The new rule defined telemedicine,[16] established standards of care, prohibited the prescription of controlled substances, permitted the establishment of a doctor-patient relationship via telemedicine, and exempted emergency medical services.[17]

Two months after the initial rule's implementation, the board proposed the development of a rule amendment to address concerns that the prohibition on physicians ordering controlled substances may also preclude physicians from prescribing controlled substances via telemedicine for hospitalized patients. The board indicated such a prohibition was not intended.[18] The amended rule took effect July 22, 2014. Additional changes followed to clarify medical record requirements and the relationship between consulting or cross-coverage physicians. On December 18, 2015, the board published another proposed rule change to allow controlled substances to be prescribed through telemedicine for the limited treatment of psychiatric disorders.[19] The proposed rule amendment, Rule 64B8-9.0141-Standards for Telemedicine Practice, became effective March 7, 2016.[20]

On February 3, 2017, the Board of Medicine held a public hearing on a proposed amendment to Rule 64B8-9.0141 to prohibit the ordering of low-THC cannabis or medical cannabis through telemedicine. Additional public hearings were noticed for April and August on the amended rule; however, the rule was eventually withdrawn in August 2017 without being amended.

Florida's Medicaid Program[21]

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (AHCA) oversees the Medicaid program.[22] The Statewide Medicaid Managed Care (SMMC) program is comprised of the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) managed care program. The AHCA

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[16] The term, "telemedicine," is defined to mean the practice of medicine by a licensed Florida physician or physician assistant where patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications. Telemedicine shall not include the provision of health care services only through an audio only telephone, email messages, text messages, facsimile transmission, U.S. Mail or other parcel service, or any combination thereof.

[17] Rule 64B15-14.0081, F.A.C., also went into effect March 12, 2014, for osteopathic physicians.

[18] Florida Board of Medicine, *Latest News - Emergency Rule Related to Telemedicine*, http://flboardofmedicine.gov/latest-news/emergency-rule-related-to-telemedicine/ (last visited Jan. 14, 2018).

[19] Vol. 41/244, Fla. Admin. Weekly, Dec. 18, 2015, available at https://www.flrules.org/BigDoc/View_Section.asp?Issue=2011&Section=1 (last visited Jan. 14, 2018).

[20] Florida Board of Medicine, Latest News, Feb. 23, 2016, available at http://flboardofmedicine.gov/latest-news/board-revises-floridas-telemedicine-practice-rule/ (last viewed Jan. 7, 2018).

[21] *See* Agency for Health Care Administration, Analysis *of SB 280* (Oct. 9, 2017) (on file with the Senate Banking and Insurance Committee).

[22] Part III of ch. 409, F.S., governs the Medicaid program.

contracts with managed care plans to provide services to eligible enrollees.[23] Under the Managed Medical Assistance (MMA) component of Statewide Medicaid Managed Care, managed care plans may use telemedicine for behavioral health, dental services, and physician services.[24] The AHCA may also approve other telemedicine services provided by the managed care plans if approval is sought by those plans under the MMA component.

Florida Medicaid has adopted a rule on telemedicine, which authorizes services to be delivered via telemedicine. The rule defines telemedicine as the practice of health care delivery by a practitioner who is located at a site other than the site where a recipient is located for the purposes of evaluation, diagnosis, or treatment.[25] Further, telemedicine services must be provided by licensed practitioners operating within their scope of practice and involve the use of interactive telecommunications equipment which includes, at a minimum, audio and video equipment permitting two-way, real time, communication between the enrollee and the practitioner.[26] Additionally, the rule provides that Medicaid reimburse a practitioner rendering services in the fee-for-service delivery system who is providing the evaluation, diagnosis, or treatment recommendation located at a site other than where the recipient is located.

Equipment is also required to meet specific federal technical safeguards, which require implementation of procedures for protection of health information.[27] The safeguards include unique user identifications, automatic log- offs, encryption, authentication of users, and transmission security. Telemedicine services must also comply with all other state and federal laws regarding patient privacy.

Florida Medicaid statutes and the federal Medicaid statutes and regulations consider telemedicine to be a delivery system rather than a distinct service; as such, Florida Medicaid does not have reimbursement rates specific to the telemedicine mode of service. In the fee-for-service system, Florida Medicaid reimburses services delivered via telemedicine at the same rate and in the same manner as if the service were delivered face-to-face.

Medicaid health plans can negotiate rates with providers, so they have the flexibility to pay different rates for services delivered via telemedicine. The managed care plans are required to submit their telemedicine policies and procedures to the AHCA for approval, but are not required to do so prior to use.[28] Telephone conversations, chart review, electronic mail messages, or facsimile transmissions are not reimbursable as telemedicine.

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[23] A managed care plan that is eligible to provide services under the SMMC program must have a contract with the AHCA to provide services under the Medicaid program and must also be a health insurer; an exclusive provider organization or a HMO authorized under chs. 624, 627, or 641, F.S., respectively; a provider service network authorized under s. 409.912(2), F.S., or an accountable care organization authorized under federal law. Section 409.962, F.S.

[24] Agency for Health Care Administration, *2012-2015 Medicaid Health Plan Model Agreement Attachment II - Exhibit II-A,* p. 63-64 http://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/Attachment_II_Exhibit_II-A_MMA_Model_2014-01-31.pdf , (last visited Jan. 11, 2018).

[25] *See* Rule 59G-1.057, F.A.C.

[26] *Id.*

[27] 45 CFR s. 164.312.

[28] Agency for Health Care Administration, *Statewide Medicaid Managed Care (SMMC) Policy Transmittal (March 11, 2016), http://ahca.myflorida.com/medicaid/statewide_mc/pdf/plan_comm/PT_16-06_Telemedicine_03-11-2016.pdf,* (last visited Jan. 25, 2018).

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.[29] The AHCA regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA.[30] As part of the certification process used by the AHCA, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.[31]

Federal Telemedicine Provisions

Federal laws and regulations address telemedicine from several perspectives, including prescriptions for controlled substances, hospital emergency room guidelines, and reimbursement requirements and rates for the Medicare program.

Prescribing Via the Internet

Federal law specifically prohibits the prescribing of controlled substances via the Internet without an in-person evaluation. Federal regulation 21 CFR s. 829 provides:

> No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed or dispensed by means of the Internet without a valid prescription.

A valid prescription is further defined under the same regulation as one issued by a practitioner who has conducted an in-person evaluation. The in-person evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.[32] However, the Ryan Haight Online Pharmacy Consumer Protection Act,[33] signed into law in October 2008, created an exception for the in-person medical evaluation for telemedicine practitioners. The practitioner is still subject to the requirement that all controlled substances be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

The Drug Enforcement Administration (DEA) of the federal Department of Justice issued its own definition of telemedicine in April 2009, as required under the Haight Act.[34] The federal regulatory definition of telemedicine under the DEA includes, but is not limited to, the following elements:

- The patient and practitioner are located in separate locations;
- Patient and practitioner communicate via a telecommunications system;
- The practitioner must meet other registration requirements for the dispensing of controlled substances via the Internet; and

[29] Section 20.121(3)(a), F.S.
[30] Section 641.21(1), F.S.
[31] Section 641.495, F.S.
[32] 21 CFR s. 829(e)(2).
[33] Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).
[34] Id., at sec. 3(j).

- Certain practitioners (Department of Veterans Affairs' employees, for example) or practitioners in certain situations (public health emergencies) may be exempted from registration requirements.[35]

Medicare Coverage

Specific services that are covered under Part B of Medicare[36] which are delivered at designated rural sites as a telehealth service are covered under Medicare. Federal CMS regulations require both a distant site (location of physician delivering the service via telecommunications) and an originating site (location of the patient).

To qualify for Medicare reimbursement, the Medicare beneficiary must be located at an originating site that meets one of three qualifications. These three qualifications are:

- A rural health professional shortage area (HPSA) that is either outside a metropolitan statistical area (MSA) or in a rural census tract[37];
- A county outside of an MSA; or
- Participation in a federal telemedicine demonstration project approved by the Secretary of Health and Human Services as of December 31, 2000.[38]

Additionally, federal requirements provide that an originating site must be one of the following location types as further defined in federal law and regulation:

- The office of a physician or practitioner;
- A hospital;
- A critical access hospital (CAH);
- A rural health clinic;
- A federally qualified health center;
- A hospital-based or CAH-based renal dialysis center (including satellite offices);
- A skilled nursing facility; or
- A community mental health center.[39]

Under Medicare, distant site practitioners are limited, subject also to state law, to:

- Physicians;
- Nurse practitioners;
- Physician assistants;
- Nurse-midwives;
- Clinical nurse specialists;

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[35] 21 CFR s. 802(54).

[36] Part B of Medicare is the medical insurance portion and covers services such as physician office visits and consultations, mental health services (inpatient and outpatient), and partial hospitalization.

[37] The United States Census Bureau does not define rural, but defines urban leaving all other areas not urban to be considered rural. "Urbanized areas" are those of 50,000 or more people. "Urban clusters" are those of at least 2,500 and less than 50,000 people. *See* Health Resources and Services Administration, *Defining Rural Population, https://www.hrsa.gov/rural-health/about-us/definition/index.html*, (last visited Jan. 25, 2018).

[38] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telehealth Services- Rural Health Fact Sheet* (Dec. 2014), http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/TelehealthSrvcsfctsht.pdf (last visited Jan. 7, 2018).

[39] *See* 42 U.S.C. sec. 1395(m)(m)(4)(C)(ii).

- Certified registered nurse anesthetists;
- Clinical psychologists and clinical social workers; and
- Registered dietitians and nutrition professionals.

Medicare added new services under telehealth in 2015:
- Annual wellness visits;
- Psychoanalysis;
- Psychotherapy; and
- Prolonged evaluation and management services.[40]

For 2018, the CMS conducted additional rulemaking to add more telehealth services related to health risk assessments, psychotherapy, and care planning for chronic care management. The proposed rule also sought comment on ways CMS could further expand access to telehealth services within its existing statutory authority.[41] Federal legislation to expand the scope of telehealth to include telestroke services for Medicare beneficiaries has also been under discussion and passed through the House Committee on Energy and Commerce favorably.[42]

Protection of Personal Health Information

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information (PHI). Initial privacy rules were initially issued in 2000 by the federal Department of Health and Human Services and later modified in 2002. These rules address the use and disclosure of an individual's health information and create standards for privacy rights. Additional privacy and security measures were adopted in 2009 with the Health Information Technology for Economic Clinical Health (HITECH) Act.

Only certain entities are subject to HIPAA's provisions. These "covered entities" include:
- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of the entities listed above.

While not a covered entity as an individual, the patient still maintains his or her privacy and confidentiality rights regardless of the method in which a medical service is delivered. The HITECH Act specifically identified telemedicine as an area for review and consideration, and funding was provided to, in part, strengthen infrastructure and tools to promote telemedicine.[43]

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[40] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters* (Dec. 24, 2014), http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/MM9034.pdf (last visited Jan. 7, 2018).
[41] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Fact Sheet: Final Policy, Payment, and Quality Provisions in the Medicare Physician Fee Schedule for Calendar Year 2018 (November 2, 2017), https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-11-02.html* (last visited Jan. 25, 2018).
[42] *See "Furthering Access to Stroke Telemedicine Act of 2017" or the "FAST Act of 2017," H.R. 1148,* 115th Cong. (2017-2018).
[43] Public Law 111-5, s. 3002(b)(2)(C)(iii) and s. 3011(a)(4).

Under the provisions of HIPAA and the HITECH Act, a health care provider or other covered entity participating in telemedicine is required to meet the same technical and physical HIPAA and HITECH requirements as would be required for a physical office visit. These requirements include ensuring that the equipment and technology are HIPAA compliant.

Department of Veterans Affairs Telehealth Initiative

A draft federal rule proposed in October 2017 would permit a health care provider who met certain requirements set by the Department of Veterans Affairs to provide telehealth services within the scope of his or her practice, and the privileges as granted by the Department of Veterans Affairs, irrespective of state or location within the state where the health care provider or the beneficiary was physically located. The health care provider would be required to:

- Be a licensed, registered, and certified health care provider under 38 U.S.C. 7402(b);
- Be appointed to a specified occupation in the federal Veterans Health Administration;[44]
- Maintain the credentials (license, registration, and certification) required for his or her medical specialty; and
- Not be a Veterans Administration-contracted employee.[45]

Under the draft rule, the health care provider can only practice within the scope of his or her license and would be subject to the limitations of the federal Controlled Substances Act.[46] This federal regulation would also preempt any conflicting state laws relating to the practice of health care when the providers are practicing within the scope of their license.[47]

III. Effect of Proposed Changes:

Section 1 creates s. 456.4501, F.S., which addresses the provision of health care services through telehealth. The section provides definitions of the terms "information and telecommunications technologies," "store and forward," "synchronous," and "telecommunications system," which are terms used in defining the technological means by which telehealth services may be provided.

This section also defines the term, "telehealth," as the mode of providing health care services and public health care services by a Florida licensed practitioner, within the scope of his or her practice, through synchronous and asynchronous information and telecommunication technologies where the practitioner is located at a site other than the site where the recipient, whether a patient or another licensed practitioner, is located.

The section defines "telehealth provider" as a person providing health care services and related services through telehealth, and who is licensed under ch. 457, F.S. (acupuncture); ch. 458, F.S. (medical practice); ch. 459, F.S. (osteopathic medicine); ch. 460, F.S. (chiropractic medicine); ch. 461, F.S. (podiatric medicine); ch. 462, F.S. (naturopathy); ch. 463, F.S. (optometry);

[44] Health care providers listed under this section must meet the individual qualifications for each provider listed and the named providers include physicians, dentists, nurses, directors of a hospital, domiciliary, center, or outpatient clinic, podiatrist, optometrist, pharmacist, psychologist, social worker, marriage and family therapist, licensed mental health counselor, chiropractor, peer specialist, and other designated health care positions as the Secretary shall prescribe.
[45] Authority of Health Care Providers to Practice Telehealth, 82 Fed. Reg. 45756, 45762 (proposed Oct. 2, 2017) (to be codified at 38 CFR 17.417)
[46] *See* 21 U.S.C. 801, et seq.
[47] *Supra,* note 45 at 45762.

ch. 464, F.S. (nursing); ch. 465, F.S. (pharmacy); ch. 466, F.S. (dentistry); ch. 467, F.S. (midwifery); part I (speech-language pathology and audiology), part III (occupational therapy), part IV (radiological personnel), part V (respiratory therapy), part X (dietetics and nutrition practice), part XIII (athletics trainers), or part XIV (orthotics, prosthetics, and pedorthics) of ch. 468, F.S.; ch, 478, F.S. (electrolysis); ch. 480, F.S. (massage practice); parts III (clinical lab personnel) and IV (medical physicists) of ch. 483, F.S.; ch. 484, F.S. (dispensing of optical devices and hearing aids); ch. 486, F.S. (physical therapy); ch. 490, F.S. (psychological services); or ch. 491, F.S. (clinical, counseling, and psychotherapy services); or who is certified under s. 393.17, F.S., (behavior analyst) or part III of ch 401, F.S. (medical transportation services).

The section establishes practice standards for the provision of telehealth services. The standard of care for a telehealth provider is the same as that for an in-person health care provider. However, a telehealth provider is not required to research patient's medical history or conduct a physical examination if a patient evaluation conducted by telehealth is sufficient to diagnose and treat the patient. The bill specifies that the telehealth provider and the patient may be in separate locations and telehealth providers who are not physicians, and who are acting within their relevant scope of practice, are not practicing medicine without a license.

The section specifically provides that telehealth providers who are licensed to prescribe controlled substances listed in Schedule I through V may prescribe those controlled substances through telehealth except to treat chronic nonmalignant pain as defined in s. 458.3265(1)(a), F.S., and s. 459.0137(1)(a), F.S. Telehealth may not be used to issue a physician certification for marijuana pursuant to s. 381.986, F.S. This subsection does not apply when prescribing a controlled substance for an inpatient at a facility licensed under ch. 395, F.S., or a patient of a hospice licensed under ch. 400, F.S.

The Department of Health, in coordination with the relevant boards, must develop and disseminate educational materials for telehealth licensees delineated in s. 456.4501(1)(f), F.S., on using telehealth modalities to treat patients by January 1, 2019.

The section provides that a patient's medical records must be updated by a telehealth provider according to the same standards that apply to an in-person health care provider. Finally, the section provides that while a patient need not specifically consent to be treated via telehealth, the patient must still provide consent for treatment as provided under current law. The patient would retain the right to withhold consent for any particular procedure or treatment to be provided through telehealth.

Section 2 provides that the bill takes effect July 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:

According to the Telehealth Advisory Council's report,[48] health practitioners indicated the need for a definition of the term, "telehealth" that would clarify the use of technological modalities as an acceptable way to treat patients within their scope of practice. Further, health plans noted the need for clarity in the allowable modes of telehealth for coverage and reimbursement purposes.

These changes may encourage the use of telehealth options, which may result in reduced health care costs; increased patient access to providers, especially in medically underserved areas; improved quality and continuity of care; and faster and more convenient treatment resulting in reduction of lost work time and travel costs for patients. Preventing the unnecessary use of intensive services, such as emergency department visits, improves health outcomes and can reduce overall health care costs.

C. Government Sector Impact:

Department of Health

The Department of Health anticipates additional workload relating to the implementation of the bill. The costs associated with this increased workload and the costs associated with the development and dissemination of educational materials for licensees on using telehealth modalities to treat patients are indeterminate, but Department of Health's current resources and budget authority are adequate to absorb these costs.[49]

Agency for Health Care Administration

To maintain uniform naming conventions and practice standards throughout the state's policies, the AHCA will need to amend the Medicaid state plan, which will require federal approval.

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[48] *See* Telehealth Advisory Council, *Expanding Florida's Use and Accessibility of Telehealth* (Oct. 31, 2017), available at http://www.ahca.myflorida.com/SCHS/telehealth/docs/TAC_Report.pdf (last visited January 5, 2018).
[49] Department of Health, *Analysis of SB 280* (Oct. 12, 2017) (on file with Senate Banking and Insurance Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 456.4501 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on January 16, 2018:
The CS eliminates telehealth provisions relating to the State Group Insurance program, Medicaid, and the Insurance Code and provides a technical change.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Bean

597-02153-18 2018280c1

A bill to be entitled

An act relating to telehealth; creating s. 456.4501, F.S.; defining terms; establishing the standard of care for telehealth providers; authorizing telehealth providers to use telehealth to perform patient evaluations; providing that telehealth providers, under certain circumstances, are not required to research a patient's history or conduct physical examinations before providing services through telehealth; providing that a nonphysician telehealth provider using telehealth and acting within her or her relevant scope of practice is not deemed to be practicing medicine without a license; authorizing certain telehealth providers to use telehealth to prescribe specified controlled substances; providing for construction; requiring the Department of Health to develop and disseminate certain educational materials to specified licensees by a specified date; providing recordkeeping requirements for telehealth providers; providing requirements for patient consent for telehealth treatment; providing an effective date.

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

Section 1. Section 456.4501, Florida Statutes, is created to read:

456.4501 Use of telehealth to provide services.—

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

(a) "Information and telecommunications technologies" means

597-02153-18 2018280c1

those secure electronic applications used by health care practitioners and health care providers to provide health care services, evaluate health care information or data, provide remote patient monitoring, or promote healthy behavior through interactions that include, but are not limited to, live video interactions, text messages, or store and forward transmissions.

(b) "Store and forward" means the type of telehealth encounter which uses still images of patient data for rendering a medical opinion or patient diagnosis. The term includes the asynchronous transmission of clinical data from one site to another site.

(c) "Synchronous" means live or two-way interactions using a telecommunications system between a provider and a person who is a patient, caregiver, or provider.

(d) "Telecommunications system" means the transfer of health care data through advanced information technology using compressed digital interactive video, audio, or other data transmission; clinical data transmission using computer image capture; and other technology that facilitates access to health care services or medical specialty expertise.

(e) "Telehealth" means the mode of providing health care services and public health services by a Florida licensed practitioner, within the scope of his or her practice, through synchronous and asynchronous information and telecommunications technologies where the practitioner is located at a site other than the site where the recipient, whether a patient or another licensed practitioner, is located.

(f) "Telehealth provider" means a person who provides health care services and related services through telehealth and

who is licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part III, part IV, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; parts III and IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; or who is certified under s. 393.17 or part III of chapter 401.

(2) PRACTICE STANDARDS.—

(a) The standard of care for a telehealth provider providing medical care to a patient is the same as the standard of care generally accepted for a health care professional providing in-person health care services to a patient. A telehealth provider may use telehealth to perform a patient evaluation. If a telehealth provider conducts a patient evaluation sufficient to diagnose and treat the patient, the telehealth provider is not required to research the patient's medical history or conduct a physical examination of the patient before using telehealth to provide services to the patient.

(b) A telehealth provider and a patient may be in separate locations when telehealth is used to provide health care services to the patient.

(c) A nonphysician telehealth provider using telehealth and acting within his or her relevant scope of practice is not deemed to be practicing medicine without a license under any provision of law listed in paragraph (1)(f).

(d) A telehealth provider who is authorized to prescribe a controlled substance named or described in Schedules I through V of s. 893.03 may use telehealth to prescribe a controlled substance, except that telehealth may not be used to prescribe a

controlled substance to treat chronic nonmalignant pain as defined in ss. 458.3265(1)(a) and 459.0137(1)(a) or to issue a physician certification for marijuana pursuant to s. 381.986. This paragraph does not prohibit a physician from using telehealth to order a controlled substance for an inpatient admitted to a facility licensed under chapter 395 or a patient of a hospice licensed under chapter 400.

(e) By January 1, 2019, the department, in coordination with the applicable boards, shall develop and disseminate educational materials for the licensees listed in paragraph (1)(f) on the use of telehealth modalities to treat patients.

(3) RECORDS.—A telehealth provider shall document in the patient's medical record the health care services rendered using telehealth according to the same standard used for in-person health care services pursuant to ss. 395.3025(4) and 456.057.

(4) CONSENT.—Patients are not required to provide specific authorization for treatment through telehealth, but must authorize treatment that meets the requirements of the applicable practice acts and s. 766.103, and must be allowed to withhold consent for any specific procedure or treatment through telehealth.

Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 280
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Telehealth

Name LAYNE SMITH

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Email smith.layne@mayo.edu

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

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

Representing Mayo Clinic

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 280
Bill Number (if applicable)

Topic Telehealth

Amendment Barcode (if applicable)

Name Joe Anne Hart

Job Title Chief Legislative Officer

Address 118 E. Jefferson St
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Email jahart@floridadental.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Dental 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

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2/22/18
Meeting Date

280
Bill Number (if applicable)

Topic Telehealth

Amendment Barcode (if applicable)

Name Brittney Hunt

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City *State* *Zip*

Phone (850) 521-1200

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 280
Bill Number (if applicable)

Topic Telehealth

Amendment Barcode (if applicable)

Name Brewster Bevis

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-2018
Meeting Date

SB 280
Bill Number (if applicable)

Topic TELEHEALTH

Amendment Barcode (if applicable)

Name JACK HEBERT

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chiropractic Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 280
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Telehealth

Name Leah Courtney

Job Title Communications Coordinator

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_____
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida TaxWatch

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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)

2:00 pm 412K
B. Appropriations

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

CS/SB 280
Bill Number (if applicable)

Topic Telehealth

Amendment Barcode (if applicable)

Name Dorene Barker

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City *State* *Zip*

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP 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/SB 310
INTRODUCER:	Appropriations Committee; Criminal Justice Committee; and Senators Steube and Baxley
SUBJECT:	Threats to Kill or Do Great Bodily Injury
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Fav/CS**
2.	Forbes	Hansen	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 310 replaces the current statutory requirement that prohibits any person who writes or composes and sends a letter, inscribed communication, or electronic communication with a threat to kill or do bodily injury to a person or any member of the person's family, with language that prohibits a person from making a threat to kill or do great bodily injury in writing or other record, including an electronic record, and posting or transmitting the threat in a manner that would allow another person to view it.

Additionally, the offense is decreased from a second degree felony to a third degree felony. The bill also changes the offense from a Level 6 to a Level 4 in the Criminal Punishment Code Offense Severity Ranking Chart, which decreases the offense's sentencing points from 36 points to 22 points.

The bill also exempts providers of an interactive computer service, communications service, commercial mobile service, or information service from liability under s. 836.10, F.S.

The bill is expected to result in an unquantifiable increase in prison beds.

The bill takes effect October 1, 2018.

II. Present Situation:

Section 836.10, F.S., currently prohibits a person from:

- Writing or composing and sending to any person:
  - A letter,
  - Inscribed communication, or
  - Electronic communication,
- Containing a threat to kill or do bodily injury to:
  - The person to whom the letter or communication was sent, or
  - Any member of the person's family.[1]

The act of "sending" under the statute requires two events – sending the communication to a particular person *and* receipt of the communication by the person being threatened.[2]

When the threat is not necessarily made against a particular individual who receives the threat, but the threat is more random in nature, the application of the statute breaks down, particularly as related to social media.[3]

Social Media

Studies indicate that social media sites are widely used to communicate with other people and to find information. For example, reports published by the Pew Research Center show that:

- 86 percent of Americans use the Internet;[4]
- Of the surveyed 1,520 adults in one study, 79 percent use Facebook, 32 percent use Instagram, 31 percent use Pinterest, 29 percent use LinkedIn, and 24 percent use Twitter;[5] and
- In a survey of 1,060 teens ages 13-17 and their parent or guardian, when asked about the use of specific sites, 89 percent of all teens reported the use of at least one of the sites[6] and 71 percent used two or more of the sites.[7]

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

[2] *J.A.W. v. State*, 210 So.3d 142, 143 (Fla. 2d DCA 2016) citing *State v. Wise*, 664 So.2d 1028, 1030 (Fla. 2d DCA 1995).

[3] "[M]any threats made on social media will fall outside the narrow language of section 836.10, which was originally written with pen-and-paper letters in mind. ... The narrow language of section 836.10 will not encompass many threats made via social media because...social media is often used to post communications publicly, for the whole world to see, instead of sending those communications directly to any specific person. (citation omitted) This is problematic because, even though social media posts may not travel directly, they are often shared with the understanding or expectation that they will be widely distributed, even outside the original poster's own network of friends or followers." *J.A.W. v. State*, 210 So.3d 142, 145-146 (Fla. 2d DCA 2016).

[4] Pew Research Center, *Social Media Update 2016* (November 2016), available at http://www.pewinternet.org/2016/11/11/social-media-update-2016/ (last visited January 23, 2018).

[5] *Id*.

[6] Pew Research Center, *Mobile Access Shifts Social Media Use and Other Online Activities*, (April 2015), available at http://www.pewinternet.org/2015/04/09/mobile-access-shifts-social-media-use-and-other-online-activities/ (last visited January 24, 2018).

[7] Pew Research Center, *Teens, Social Media and Technology Overview 2015* (April 2015), available at http://www.pewinternet.org/2015/04/09/teens-social-media-technology-2015/ (last visited January 23, 2018).

Examples of Random Threats Using E-Mail and Social Media

In late 2015, there was a rash of e-mailed hoax threats against schools across the country that began in New York City and Los Angeles.[8] The New York and Los Angeles threats were nearly identically worded. The e-mails threatened the use of bombs, nerve gas, and rifles, and were routed through a server in Frankfurt, Germany, apparently by the same person.[9] A few days later, similar threats were directed at schools in Florida.[10]

Social media and other electronic forms of communication were used in at least 35 percent of the violent threats to schools, as reported in one recent study covering half of the 2013-14 school year in 43 states.[11]

Florida Social Media Threats

Threats conveyed over social media to do random acts of violence at schools often disrupt student education regardless of the validity of the threat.

For example, in October 2017, three students made threats at two Panhandle high schools.[12] While no violence occurred on the high school campuses, school officials are concerned about the missed school hours, testing, and assignments resulting from the panic that can ensue from threats of violence communicated through social media.[13]

A police officer in Tarpon Springs was singled out and threated with being killed in apparent retaliation for an officer-involved shooting in May 2017. According to a press release by the police chief, the threats, based on misinformation, were targeting an officer who had nothing to do with the officer-involved shooting.[14]

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[8] The New York Times, December 15, 2015, *Los Angeles and New York Differ in Their Responses to a Terrorism Threat*, available at https://www.nytimes.com/2015/12/16/us/los-angeles-schools-bomb-threat.html (last visited January 23, 2018).
[9] *Id*.
[10] NBC News 6, December 17, 2015, *Miami-Dade, Broward Schools Receive Threats: Officials*, available at http://www.nbcmiami.com/news/local/Miami-Dade-School-System-Receives-Threat-Officials-362740851.html (last visited January 23, 2018). *See also*, WJXT News 4 Jacksonville, December 9, 2015, *Frustration over 5 school bomb threats in 2 days, False calls frustrate law enforcement, but must be taken seriously, police say*, available at http://www.news4jax.com/news/bomb-scare-forces-evacuation-of-southside-business (last visited January 23, 2018).
[11] National School Safety and Security Services, *Schools face new wave of violent threats sent by social media and other electronic means study says*, February 2014 (reporting on 315 documented school bomb threats, shooting threats, hoaxes, and acts of violence between August 2013 and January 2014), available at http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/ (last visited January 23, 2018).
[12] "I think people take it more seriously now than ever, there's no doubt in my mind about that and it's justly so," said Jason Weeks, Santa Rosa County School District director of high schools. *'Just a joke': Students' social media threats are disrupting schools* (October 2017), available at http://www.pnj.com/story/news/crime/2017/10/15/how-students-social-media-threats-disrupting-schools-involving-police/753349001/ (last visited January 23, 2018).
[13] *Id*.
[14] Tarpon Springs Police Department "Information-Be On the Lookout" Bulletin and May 9, 2017 Press Release (on file with the Senate Committee on Criminal Justice).

Case Law Applying Section 836.10, F.S.

In a 2016 court decision, a juvenile's disposition for a violation of s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter[15] was reversed.[16] The juvenile made a series of public posts on Twitter over the span of several days threatening to "shoot up" his school.[17] The tweets were discovered by an out-of-state watchdog group who reported the threats to local police. Local police later contacted the juvenile's school officials informing them of the threats.[18]

The Second District Court of Appeals found that because the juvenile publicly posted the tweets, rather than directly sending them to any student or school official, the receipt of the threats by school officials through local police was too far removed to support a conviction under s. 836.10, F.S.[19]

The court specifically discussed the difficulty of applying the current statute to modern forms of communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the threatening communication to be sent directly to a specific person who receives the threat.[20]

III. Effect of Proposed Changes:

The bill deletes the current statutory requirement that prohibits any person who writes or composes and sends a letter, inscribed communication, or electronic communication to with a threat kill or do bodily injury to a person or any member of the person's family.

Further, the bill prohibits a person from making a threat in writing or other record, including an electronic record, to kill or do great bodily injury to another person, and posting or transmitting the threat in any manner that would allow another person to view the threat.

Section 836.10, F.S., is made applicable under circumstances where a person transmits a threat to kill or do great bodily injury to another in a more public forum than the current law contemplates.

The current second degree felony[21] is changed by the bill to a third degree felony.[22] The bill also changes the offense from a Level 6 to a Level 4 in the Criminal Punishment Code Offense

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[15] "Twitter allows users to send 'updates' (or 'tweets': text based posts, up to 140 characters long) to [the] Twitter website via short message service (e.g. on a cell phone), instant messaging, from their computer at home or work, or through a third-party application." GNOTED, *What Is Twitter and How Does It Work- Beginner's Guide* (February 2009) available at http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/ (last visited January 23, 2018).
[16] *J.A.W. v. State*, 210 So.3d 142 (Fla. 2d DCA 2016).
[17] The following tweets were posted: "can't WAIT to shoot up my school," "it's time," "My mom and dad think I'm serious about shooting up my school I'm dying"; "school getting shot up on a Tuesday," "night f[***]king sucked can't wait to shoot up my school soon"; and "I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way." *J.A.W. v. State*, 210 So.3d 142, 143 (Fla. 2d DCA 2016).
[18] *J.A.W. v. State*, 210 So.3d 142, 143 (Fla. 2d DCA 2016).
[19] *J.A.W. v. State*, 210 So.3d 142 (Fla. 2d DCA 2016).
[20] *Id*.
[21] A second degree felony is punishable by up to 15 years imprisonment and a $15,000 fine.
[22] 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.

Severity Ranking Chart, which decreases the offense's sentencing points from 36 points to 22 points.[23]

The bill exempts the following providers from liability under s. 836.10, F.S.:

- Interactive computer service;
- Communications services;[24]
- Commercial mobile service; or
- Information service, including but not limited to an Internet service provider or a hosting service provider, if it provides the transmission, storage or catching of electronic communications or messages of others or provides another related telecommunications, commercial mobile radio service or information service for use by another person who violates s. 836.10, F.S.

The bill specifies that the exemption is consistent with and in addition to any liability exemption under 47 U.S.C. s. 230.[25]

The bill is effective October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[23] Section 921.0024, F.S.

[24] Section 202.11, F.S., defines communications services as the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include: information services, installation or maintenance of wiring or equipment on a customer's premises, the sale or rental of tangible personal property, the sale of advertising, including, but not limited to, directory advertising, bad check charges, late payment charges, billing and collection services, internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

[25] 47 U.S.C. s. 230 specifies that a provider of an interactive computer service is not treated as the publisher or speaker of any information provided by another information content provider.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On January 8, 2018, the Criminal Justice Impact Conference (CJIC) reviewed the bill. The CJIC adopted a "positive indeterminate" estimate of the fiscal impact of the bill on prison beds, meaning that there may be an unquantifiable increase in prison beds from the bill.[26]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 836.10 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 27, 2018:
The committee substitute exempts providers of an interactive computer service, communications service, commercial mobile service, or information service from liability under s. 836.10, F.S.

CS by Criminal Justice on January 29, 2018:
The committee substitute:

- Changes the elements of the offense by:
  - Requiring that the threat be to kill or do *great* bodily harm to a person, not just bodily harm; and
  - Requiring that the threat be transmitted in a way that would allow another person to view it.

[26] E-mail from the Office of Economics and Demographics Research staff, January 23, 2018 (on file with Senate Committee on Criminal Justice).

- Changes the statutory degree of the offense. The offense is decreased from a second degree felony to a third degree felony.
- Changes the offense from a Level 6 to a Level 4 in the Criminal Punishment Code Offense Severity Ranking Chart, which decreases the offense's sentencing points from 36 points to 22 points.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 25 - 37

and insert:

punishment; exemption from liability.—

(1) A ~~Any~~ person who makes a threat in a writing or other record, including an electronic record, ~~writes or composes and also sends or procures the sending of any letter, inscribed communication, or electronic communication, whether such letter or communication be signed or anonymous, to any person,~~

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~~containing a threat~~ to kill or to do great bodily injury to another ~~the~~ person and posts or transmits the threat in any manner that would allow another person to view the threat ~~to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of the family of the person to whom such letter or communication is sent~~ commits a felony of the third ~~second~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) This section does not impose liability on a provider of an interactive computer service, communications services as defined in s. 202.11, a commercial mobile service, or an information service, including, but not limited to, an Internet service provider or a hosting service provider, if it provides the transmission, storage, or caching of electronic communications or messages of others or provides another related telecommunications, commercial mobile radio service, or information service for use by another person who violates this section. This exemption from liability is consistent with and in addition to any liability exemption provided under 47 U.S.C. s. 230.

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

And the title is amended as follows:

Delete line 9

and insert:

prohibited; revising a criminal penalty; exempting certain providers of services from liability; amending s.

By the Committee on Criminal Justice; and Senators Steube and Baxley

591-02575-18 2018310c1

A bill to be entitled

An act relating to threats to kill or do great bodily injury; amending s. 836.10, F.S.; prohibiting a person from making a threat to kill or do great bodily injury in a writing or other record and transmitting that threat in any manner that would allow another person to view the threat; deleting requirements that a threat be sent to a specific recipient to be prohibited; revising a criminal penalty; amending s. 921.0022, F.S.; revising the ranking of the offense of making written threats to kill or do great bodily injury on the offense severity ranking chart of the Criminal Punishment Code; reenacting ss. 794.056(1) and 938.085, F.S., relating to the Rape Crisis Program Trust Fund and additional cost to fund rape crisis centers, respectively, to incorporate the amendments made to s. 836.10, F.S., in references thereto; providing an effective date.

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

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

836.10 Written threats to kill or do great bodily injury; punishment.—A ~~Any~~ person who makes a threat in a writing or other record, including an electronic record, ~~writes or composes and also sends or procures the sending of any letter, inscribed communication, or electronic communication, whether such letter or communication be signed or anonymous, to any person,~~

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

591-02575-18 2018310c1

~~containing a threat~~ to kill or to do great bodily injury to another ~~the~~ person and posts or transmits the threat in any manner that would allow another person to view the threat ~~to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of the family of the person to whom such letter or communication is sent~~ commits a felony of the third ~~second~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraphs (d) and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.

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

499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.

784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon

		within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.

812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great

		bodily harm or permanent breeding disability to any registered horse or cattle.
836.10	3rd	Written threats to kill or do great bodily injury.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional

		probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.

918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(f) LEVEL 6

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

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

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

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

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

817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
~~836.10~~	~~2nd~~	~~Written threats to kill or do~~

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

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

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

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.

784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s. 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1). Funds credited to the trust fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

Section 4. For the purpose of incorporating the amendment made by this act to section 836.10, Florida Statutes, in a reference thereto, section 938.085, Florida Statutes, is reenacted to read:

938.085 Additional cost to fund rape crisis centers.—In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1), the court shall impose a surcharge of

$151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of $150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain $1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 5. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/22/18
Meeting Date

CS/SB 310
Bill Number (if applicable)

Topic Threats to kill Lord of Great Bodily Injury
Amendment Barcode (if applicable)

Name Carl Hill Galloway III

Job Title Advocate / Parent

Address 1950 King Arthur Circle
Street
Maitland FL. 32751
City *State* *Zip*

Phone 407 376 9339

Email chgalloway7@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Chgalloway Family

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

310
Bill Number (if applicable)

Topic Threats to do Bodily Harm

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 S. Monroe
Street

Phone

Tall
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

310
Bill Number (if applicable)

Topic Threats to Kill or Do Great Bodily Injury

Amendment Barcode (if applicable)

Name Chief Shane Bennett

Job Title Chief of Police, Lawtey PD

Address & PO Box 14038
Street

Phone 850-219-3631

Tallahassee FL 32317
City *State* *Zip*

Email kbriscoe@fpca.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 310
Bill Number (if applicable)

Topic Threats to Kill or do Great Bodily Injury *Amendment Barcode (if applicable)*

Name Dennis Strange

Job Title Captain

Address 2500 West Colonial Dr *Street* Phone

Orl *City* FL *State* 32804 *Zip* Email dennis.strange@ocfl.net

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

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

Representing Orange County Sheriff's Office / F.S.A.

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/2018
Meeting Date

310
Bill Number (if applicable)

Topic Threats to Kill or Do Great Bodily Injury

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Benevolent 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)

8.22.18	310
Meeting Date	*Bill Number (if applicable)*

Topic THREATS TO DO HARM — *Amendment Barcode (if applicable)*

Name RON DRAA

Job Title EXTERNAL AFFAIRS DIRECTOR

Address 2331 PHILLIPS RD — *Street*

Phone 850.410.7020

TALL — *City* | FL — *State* | 32308 — *Zip*

Email RONALD.DRAA@FDLE.STATE.FL.US

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 324 (841860)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senator Young
SUBJECT:	Impact Fees
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.	Babin	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Babin	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 324 requires that the collection of an impact fee be no earlier than the issuance of the building permit for the property that is subject to the fee and provides that the statutory provisions related to impact fees do not apply to water and sewer connection fees.

The bill also codifies the dual rational nexus test. The bill requires impact fees to have a rational nexus with the need for additional capital facilities and the expenditures of the funds collected. The local government must specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents. The bill prohibits the use of impact fee revenues to pay existing debt unless certain conditions are met.

Lastly, the bill prohibits local governments from requiring developers to pay for land acquisition or construction of public facilities as a condition for approving a development order unless the local government has an ordinance imposing similar requirements on all developers.

The Revenue Estimating Conference (REC) has not completed an analysis of the bill; however, the REC has determined that the portions of the bill that prohibit the collection of impact fees prior to the issuance of a building permit will reduce local revenues by an indeterminate amount. Staff estimates that the remaining bill will reduce local revenues by an indeterminate amount.

II. Present Situation:

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.[4] Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.[5] Article VIII, Section 2 of the State Constitution and s. 166.021, F.S., grant municipalities broad home rule powers.

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.[6] Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[7]

Impact Fees

Impact fees are enacted by local ordinance. These fees are tailored to pay the cost of additional infrastructure necessitated by new development. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

[1] FLA. CONST. art VIII, s. 1(f).

[2] FLA. CONST. art VIII, s. 1(g).

[3] FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

[4] Section 125.01, F.S.

[5] Section 125.01(1), F.S.

[6] The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution or a general law or special law regarding the power at issue. Article VII, s. 1 of the State Constitution prohibits counties and municipalities from levying a tax without express statutory authorization. However, local governments may levy special assessments and a variety of fees absent any general law prohibition, provided such home rule funding source meets the relevant legal sufficiency tests.

[7] For a catalogue of such revenue sources, see the most recent editions of the Florida Legislature's *Local Government Financial Information Handbook* and the *Florida Tax Handbook*.

In 2015, 38 counties reported impact fee revenues of approximately $504 million, and 193 cities reported impact fee revenues of approximately $225.3 million.[8] In 2016, 28 school districts reported impact fee revenues of approximately $265.3 million.[9]

Statutory Authority for Impact Fees

In 2006, the Legislature enacted s. 163.31801, F.S., which provides requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. An impact fee ordinance adopted by local government must:

- Require that the calculation of the impact fee be based on the most recent and localized data.
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund.
- Limit administrative charges for the collection of impact fees to actual costs.
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.[10]

The Dual Rational Nexus Test

Impact fees have their roots in the common law. A number of court decisions have addressed challenges to the legality of impact fees.[11] In *Hollywood, Inc. v. Broward County*,[12] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets reasonable needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the acquisition of capital assets that will benefit the residents of the new development.[13] These two requirements are called the dual rational nexus test. In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional capital facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[14]

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[15] The county in that case had imposed a school impact fee on a deed-

[8] Office of Economic Demographic Research, The Florida Legislature, *Impact Fees*, *available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm. County Revenues were updated July 25, 2017, and City Revenues were updated September 28, 2017.
[9] *Id.* School District Revenues were updated October 5, 2017.
[10] Section 163.31801, F.S. Other sections of law also address the ability of local governments or special districts to levy impact fees. *See* ss. 163.3202(3), 191.009(4), and 380.06(15) and (16), F.S.
[11] *See, e.g., Contractors & Builders Ass'n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So.2d 140 (Fla. 4th DCA 1983).
[12] *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).
[13] *Id.* at 611.
[14] *Id.* at 611-12.
[15] *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).

restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the Second District Court of Appeal upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[16]

As developed under case law, an impact fee must have the following characteristics to be legal:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportionate share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.[17]

Time of Collection for Impact Fees

The Florida Statutes do not specify when a local government must collect impact fees. As a result, the applicable local government makes this decision, and the time of collection varies. For example, in Orange County, residential impact fees are due when the building permit is issued, although the county allows the fee to be deferred in certain circumstances.[18] In contrast, in Volusia County, impact fees are due before the issuance of a certificate of occupancy or business tax receipt.[19]

Sector Plans

Local governments are authorized to adopt sector plans into their comprehensive plans.[20] Sector planning is a process whereby local governments engage in long-term planning for a large area of land and address regional issues through adoption of detailed specific area plans within the planning area.[21] Sector plans are approved in two stages: first, the local government approves an amendment to its comprehensive plan, and second, the local government adopts development orders approving one or more detailed specific area plans.[22]

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[16] *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).
[17] The Florida Senate, Issue Brief 2010-310, 4 (Sept. 2009), *available at* http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf (last visited Jan. 17, 2018).
[18] Orange County, Residential Impact Fees, http://www.orangecountyfl.net/PermitsLicenses/Permits/ResidentialImpactFees.aspx#.WgnLs0kUmUl (last visited Jan. 17, 2018).
[19] Volusia County, Frequently Asked Questions on Impact Fees, https://www.volusia.org/services/growth-and-resource-management/impact-fees/faqs-impact-fees.stml (last visited Jan. 17, 2018).
[20] Section 163.3245(1), F.S.
[21] Section 163.3164(42), F.S.
[22] Section 163.3245(3), F.S.

III. Effect of Proposed Changes:

The bill provides that an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum, specify that the impact fee be collected no earlier than the issuance of the building permit for the property that is subject to the fee.

The bill also codifies the dual rational nexus test. Specifically, the bill requires that an impact fee be reasonably connected to, or have a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

Additionally, the local government must specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents. Finally, the bill prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

The bill provides that water and sewer connection fees are excluded from the statutory provisions related to impact fees contained in s. 163.31801, F.S.

The bill provides that in adopting a detailed specific area plan or related development order a local government may not require a developer to contribute or pay for land acquisition or construction or expansion of public facilities unless the local government has enacted an ordinance that requires developers of other developments not within the sector planning area to contribute a proportionate share of the funds, land or public facilities necessary to accommodate any impacts having a rational nexus to the proposed development. Obligations to fund or construct new facilities or add to the present system of public facilities must have an essential nexus with, and be roughly proportionate to, the proposed development.

The bill provides that, within 30 days of receipt of an application for approval of a detailed specific area plan or related development order, a local government must review the application for completeness and issue a letter either indicating that all required information has been submitted or specifying, with particularity, any areas that are deficient. If the application is found to be deficient, the applicant must address the deficiencies within 30 days after receiving notice of the deficiencies by submitting the required additional information. The local government must approve, approve with conditions, or deny the application for a detailed specific area plan within 90 days after receipt of the initial or supplemental submission, whichever is later, unless the deadline is waived in writing by the applicant. An approval or denial of the application for approval of a detailed specific area plan or related development order must include written findings supporting the local government's decision.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenues in the aggregate.

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill restricts the time at which a county or municipality may collect its impact fees and prohibits counties and municipalities from requiring certain payments as a condition of approving a detailed specific area plan or related development order as part of sector planning.

The mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 was $2.05 million or less.[23,24,25] If the bill is determined to reduce the authority that counties and municipalities have to raise revenues in the aggregate and exceeds the threshold for insignificant fiscal impact, the bill may qualify as a mandate and require final passage by a two-thirds vote of the membership of each house 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 (REC) has not completed an analysis of this bill; however, the REC has determined that the portions of the bill that prohibit collection of impact fees prior to issuance of a building permit will reduce local revenues by an indeterminate amount. Staff estimates that the remaining portions of the bill will reduce local revenues by an indeterminate amount.

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[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, 2018).

[25] Based on the Demographic Estimating Conference's population estimate adopted on December 5, 2017. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Jan. 18, 2018).

B. Private Sector Impact:

Developers will not have to pay impact fees prior to the issuance of the building permit for a property, and developers will not have to contribute or pay for land acquisition or construction of public facilities related to detailed specific area plans or related development orders unless the local government has an ordinance that imposes similar payments on developers of developments not within the sector planning area requiring that they contribute a proportionate share of the funds, land, or facilities necessary to accommodate any impacts having a rational nexus to the proposed development.

C. Government Sector Impact:

Counties, municipalities, and special districts will not be able to collect impact fees prior to the issuance of the building permit for a property, and local governments will not be able to require contributions of or payments for land or construction of public facilities as a condition for approving a detailed specific area plan or related development order unless the local government has an ordinance that imposes similar payments on developers of developments not within the sector planning area requiring that they contribute a proportionate share of the funds, land, or facilities necessary to accommodate any impacts having a rational nexus to the proposed development.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.31801 and 163.3245.

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 January 29, 2018:
The committee substitute:

- Provides that impact fee requirements do not apply to water or sewer connection fees.
- Prohibits local governments from requiring developers to contribute or pay for land acquisition or construction of public facilities as a condition for approving a detailed specific area plan or related development order unless the local government has an ordinance that imposes similar payments on developers of developments not within the sector planning area requiring that they contribute a proportionate share of the

funds, land, or facilities necessary to accommodate any impacts having a rational nexus to the proposed development.

CS by Community Affairs on December 5, 2017:

- Provides that collection of impact fees may not occur before the issuance of the building permit, rather than the issuance of the certificate of occupancy, for the property that is subject to the fee.
- Requires that the impact fee be reasonably connected to, or have a rational nexus with:
  - The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
  - The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.
- Requires the local government to specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents.
- Prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

B. Amendments:

None.

484394

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Young) recommended the following:

Senate Amendment

Delete lines 53 - 66
and insert:
(e) Collection of the impact fees may not be required to occur earlier than the issuance of the building permit for the property that is subject to the fee.
(f) The impact fees must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new

484394

residential or commercial construction.

(g) The impact fees must be reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

(h) The local government must specifically earmark funds collected pursuant to the impact fees for use in acquiring, constructing, or improving capital facilities to benefit the new users.

532634

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 87 - 248.

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

And the title is amended as follows:

Delete lines 6 - 11

and insert:

providing an effective

841860

576-02569-18

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to impact fees; amending s. 163.31801, F.S.; revising the minimum requirements for impact fees; prohibiting the application of impact fee provisions to water and sewer connection fees; amending s. 163.3245, F.S.; prohibiting local governments from requiring certain conditions in development orders, except under certain conditions; specifying the process for the local government review and approval of detailed specific area plans or related development orders; providing an effective date.

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

Section 1. Section 163.31801, Florida Statutes, is amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges ~~definitions; ordinances levying impact fees~~.—

(1) This section may be cited as the "Florida Impact Fee Act."

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within

841860

576-02569-18

its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district adopts an impact fee by resolution, the governing authority complies with this section.

(3) At a minimum, impact fees ~~An impact fee~~ adopted by ordinance of a county or municipality or by resolution of a special district must~~, at minimum~~ satisfy the following conditions:

(a) ~~Require that~~ The calculation of the impact fees must ~~fee~~ be based on the most recent and localized data.

(b) The local government must provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) ~~Limit~~ Administrative charges for the collection of impact fees must be limited to actual costs.

(d) ~~Require that~~ Notice must be provided no less than 90 days before the effective date of an ordinance or resolution imposing ~~a~~ new or increased impact fees ~~fee~~. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate ~~an~~ impact fees ~~fee~~.

(e) Collection of the impact fees may not occur earlier than the issuance of the building permit for the property that is subject to the fee.

(f) The impact fee must be reasonably connected to, or have

a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

(g) The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

(h) The local government must specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents.

(i) The collection or expenditure of the impact fee revenues may not be used, in whole or part, to pay existing debt or be used for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

(4) Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section.

(5) In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or this section. The court may not use a deferential standard.

(6) This section does not apply to water and sewer

connection fees.

Section 2. Paragraph (b) of subsection (3) and subsection (4) of section 163.3245, Florida Statutes, are amended to read:

163.3245 Sector plans.—

(3) Sector planning encompasses two levels: adoption pursuant to s. 163.3184 of a long-term master plan for the entire planning area as part of the comprehensive plan, and adoption by local development order of two or more detailed specific area plans that implement the long-term master plan and within which s. 380.06 is waived.

(b)1. In addition to the other requirements of this chapter, except for those that are inconsistent with or superseded by the planning standards of this paragraph, the detailed specific area plans must ~~shall~~ be consistent with the long-term master plan and ~~must~~ include conditions and commitments that provide for:

a.~~1.~~ Development or conservation of an area of at least 1,000 acres consistent with the long-term master plan. The local government may approve detailed specific area plans of less than 1,000 acres based on local circumstances if it is determined that the detailed specific area plan furthers the purposes of this part and part I of chapter 380.

b.~~2.~~ Detailed identification and analysis of the maximum and minimum densities and intensities of use and the distribution, extent, and location of future land uses.

c.~~3.~~ Detailed identification of water resource development and water supply development projects and related infrastructure and water conservation measures to address water needs of development in the detailed specific area plan.

d.~~4.~~ Detailed identification of the transportation facilities to serve the future land uses in the detailed specific area plan.

e.~~5.~~ Detailed identification of other regionally significant public facilities, including public facilities outside the jurisdiction of the host local government, impacts of future land uses on those facilities, and required improvements consistent with the long-term master plan.

f.~~6.~~ Public facilities necessary to serve development in the detailed specific area plan, including developer contributions in a 5-year capital improvement schedule of the affected local government.

g.~~7.~~ Detailed analysis and identification of specific measures to ensure the protection and, as appropriate, restoration and management of lands within the boundary of the detailed specific area plan identified for permanent preservation through recordation of conservation easements consistent with s. 704.06, which easements shall be effective before or concurrent with the effective date of the detailed specific area plan and other important resources both within and outside the host jurisdiction. Any such conservation easement may be based on digital orthophotography prepared by a surveyor and mapper licensed under chapter 472 and may include a right of adjustment authorizing the grantor to modify portions of the area protected by a conservation easement and substitute other lands in their place if the lands to be substituted contain no less gross acreage than the lands to be removed; have equivalent values in the proportion and quality of wetlands, uplands, and wildlife habitat; and are contiguous to other lands protected by

the conservation easement. Substitution is accomplished by recording an amendment to the conservation easement as accepted by and with the consent of the grantee, and which consent may not be unreasonably withheld.

h.~~8.~~ Detailed principles and guidelines addressing the urban form and the interrelationships of future land uses; achieving a more clean, healthy environment; limiting urban sprawl; providing a range of housing types; protecting wildlife and natural areas; advancing the efficient use of land and other resources; creating quality communities of a design that promotes travel by multiple transportation modes; and enhancing the prospects for the creation of jobs.

i.~~9.~~ Identification of specific procedures to facilitate intergovernmental coordination to address extrajurisdictional impacts from the detailed specific area plan.

2. A detailed specific area plan adopted by local development order pursuant to this section may be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan and shall specify the projected population within the specific planning area during the chosen planning period. A detailed specific area plan adopted pursuant to this section is not required to demonstrate need based upon projected population growth or on any other basis. All lands identified in the long-term master plan for permanent preservation shall be subject to a recorded conservation easement consistent with s. 704.06 before or concurrent with the effective date of the final detailed specific area plan to be approved within the planning area. Any such conservation easement may be based on digital

orthophotography prepared by a surveyor and mapper licensed under chapter 472 and may include a right of adjustment authorizing the grantor to modify portions of the area protected by a conservation easement and substitute other lands in their place if the lands to be substituted contain no less gross acreage than the lands to be removed; have equivalent values in the proportion and quality of wetlands, uplands, and wildlife habitat; and are contiguous to other lands protected by the conservation easement. Substitution is accomplished by recording an amendment to the conservation easement as accepted by and with the consent of the grantee, and which consent may not be unreasonably withheld.

3. In adopting a detailed specific area plan or related development order, a local government may not include or impose as a development order condition a requirement that a developer contribute or pay for land acquisition or construction or expansion of public facilities, or portions thereof, unless the local government has enacted a local ordinance that requires developers of other developments not within a sector planning area to contribute a proportionate share of the funds, land, or public facilities necessary to accommodate any impacts having a rational nexus to the proposed development. When allowed under this section, the obligation to fund or construct new facilities or add to the present system of public facilities must have an essential nexus and be roughly proportionate to the proposed development.

4. Within 30 days of receipt of an application for approval of a detailed specific area plan or related development order, a local government must review the application for completeness

and issue a letter either indicating that all required information has been submitted or specifying, with particularity, any areas that are deficient. If the application is found to be deficient, the applicant must address the deficiencies within 30 days after receiving notice of the deficiencies by submitting the required additional information. The local government must approve, approve with conditions, or deny the application for the detailed specific area plan within 90 days after receipt of the initial or supplemental submission, whichever is later, unless the deadline is waived in writing by the applicant. An approval or denial of the application for approval of a detailed specific area plan or related development order must include written findings supporting the local government decision.

(4) Upon the long-term master plan becoming legally effective:

(a) Any long-range transportation plan developed by a metropolitan planning organization pursuant to s. 339.175(7) must be consistent, to the maximum extent feasible, with the long-term master plan, including, but not limited to, the projected population and the approved uses and densities and intensities of use and their distribution within the planning area. The transportation facilities identified in adopted plans pursuant to subparagraph (3)(a)3. and sub-subparagraph (3)(b)1.d. ~~subparagraphs (3)(a)3. and (b)4.~~ must be developed in coordination with the adopted M.P.O. long-range transportation plan.

(b) The water needs, sources and water resource development, and water supply development projects identified in

adopted plans pursuant to subparagraph (3)(a)2. and sub-subparagraph (3)(b)1.d. must ~~subparagraphs (3)(a)2. and (b)3. shall~~ be incorporated into the applicable district and regional water supply plans adopted in accordance with ss. 373.036 and 373.709. Accordingly, and notwithstanding the permit durations stated in s. 373.236, an applicant may request and the applicable district may issue consumptive use permits for durations commensurate with the long-term master plan or detailed specific area plan, considering the ability of the master plan area to contribute to regional water supply availability and the need to maximize reasonable-beneficial use of the water resource. The permitting criteria in s. 373.223 shall be applied based upon the projected population and the approved densities and intensities of use and their distribution in the long-term master plan; however, the allocation of the water may be phased over the permit duration to correspond to actual projected needs. This paragraph does not supersede the public interest test set forth in s. 373.223.

Section 3. This act shall take effect July 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 324
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senator Young
SUBJECT:	Impact Fees
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.	Babin	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Babin	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 324 requires that the collection of an impact fee be no earlier than the issuance of the building permit for the property that is subject to the fee and provides that the statutory provisions related to impact fees do not apply to water and sewer connection fees.

The bill also codifies the dual rational nexus test. The bill requires impact fees to have a rational nexus with the need for additional capital facilities and the expenditures of the funds collected. The local government must specifically earmark funds collected by the impact fees for use in acquiring, constructing, or improving capital facilities to benefit the new users. The bill prohibits the use of impact fee revenues to pay existing debt unless certain conditions are met.

The Revenue Estimating Conference (REC) determined that the bill will reduce local revenues by an indeterminate amount.

II. Present Situation:

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-

[1] FLA. CONST. art VIII, s. 1(f).

government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.[4] Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.[5] Article VIII, Section 2 of the State Constitution and s. 166.021, F.S., grant municipalities broad home rule powers.

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.[6] Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[7]

Impact Fees

Impact fees are enacted by local ordinance. These fees are tailored to pay the cost of additional infrastructure necessitated by new development. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

In 2015, 38 counties reported impact fee revenues of approximately $504 million, and 193 cities reported impact fee revenues of approximately $225.3 million.[8] In 2016, 28 school districts reported impact fee revenues of approximately $265.3 million.[9]

[2] FLA. CONST. art VIII, s. 1(g).
[3] FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.
[4] Section 125.01, F.S.
[5] Section 125.01(1), F.S.
[6] The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution or a general law or special law regarding the power at issue. Article VII, s. 1 of the State Constitution prohibits counties and municipalities from levying a tax without express statutory authorization. However, local governments may levy special assessments and a variety of fees absent any general law prohibition, provided such home rule funding source meets the relevant legal sufficiency tests.
[7] For a catalogue of such revenue sources, see the most recent editions of the Florida Legislature's *Local Government Financial Information Handbook* and the *Florida Tax Handbook*.
[8] Office of Economic Demographic Research, The Florida Legislature, *Impact Fees, available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm. County Revenues were updated July 25, 2017, and City Revenues were updated September 28, 2017.
[9] *Id.* School District Revenues were updated October 5, 2017.

Statutory Authority for Impact Fees

In 2006, the Legislature enacted s. 163.31801, F.S., which provides requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. An impact fee ordinance adopted by local government must:

- Require that the calculation of the impact fee be based on the most recent and localized data.
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund.
- Limit administrative charges for the collection of impact fees to actual costs.
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.[10]

The Dual Rational Nexus Test

Impact fees have their roots in the common law. A number of court decisions have addressed challenges to the legality of impact fees.[11] In *Hollywood, Inc. v. Broward County*,[12] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets reasonable needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the acquisition of capital assets that will benefit the residents of the new development.[13] These two requirements are called the dual rational nexus test. In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional capital facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[14]

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[15] The county in that case had imposed a school impact fee on a deed-restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the Second District Court of Appeal upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[16]

As developed under case law, an impact fee must have the following characteristics to be legal:

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[10] Section 163.31801, F.S. Other sections of law also address the ability of local governments or special districts to levy impact fees. *See* ss. 163.3202(3), 191.009(4), and 380.06(15) and (16), F.S.
[11] *See, e.g., Contractors & Builders Ass'n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So.2d 140 (Fla. 4th DCA 1983).
[12] *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).
[13] *Id.* at 611.
[14] *Id.* at 611-12.
[15] *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).
[16] *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportionate share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.[17]

Time of Collection for Impact Fees

The Florida Statutes do not specify when a local government must collect impact fees. As a result, the applicable local government makes this decision, and the time of collection varies. For example, in Orange County, residential impact fees are due when the building permit is issued, although the county allows the fee to be deferred in certain circumstances.[18] In contrast, in Volusia County, impact fees are due before the issuance of a certificate of occupancy or business tax receipt.[19]

III. Effect of Proposed Changes:

The bill provides that an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum, specify that the impact fee be collected no earlier than the issuance of the building permit for the property that is subject to the fee.

The bill also codifies the dual rational nexus test. Specifically, the bill requires that an impact fee be reasonably connected to, or have a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

Additionally, the local government must specifically earmark funds collected pursuant to the impact fees for use in acquiring, constructing, or improving capital facilities to benefit the new users. Finally, the bill prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

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[17] The Florida Senate, Issue Brief 2010-310, 4 (Sept. 2009), *available at* http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf (last visited Jan. 17, 2018).

[18] Orange County, Residential Impact Fees, http://www.orangecountyfl.net/PermitsLicenses/Permits/ResidentialImpactFees.aspx#.WgnLs0kUmUl (last visited Jan. 17, 2018).

[19] Volusia County, Frequently Asked Questions on Impact Fees, https://www.volusia.org/services/growth-and-resource-management/impact-fees/faqs-impact-fees.stml (last visited Jan. 17, 2018).

The bill provides that water and sewer connection fees are excluded from the statutory provisions related to impact fees contained in s. 163.31801, F.S.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenues in the aggregate.

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill restricts the time at which a county or municipality may collect its impact fees.

The mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 was $2.05 million or less.[20,21,22] If the bill is determined to reduce the authority that counties and municipalities have to raise revenues in the aggregate and exceeds the threshold for insignificant fiscal impact, the bill may qualify as a mandate and require final passage by a two-thirds vote of the membership of each house 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 has determined that the bill will reduce local revenues by an indeterminate amount.

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[20] FLA. CONST. art. VII, s. 18(d).

[21] 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, 2018).

[22] Based on the Demographic Estimating Conference's population estimate adopted on December 5, 2017. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Jan. 18, 2018).

B. Private Sector Impact:

Developers will not have to pay impact fees prior to the issuance of the building permit for a property.

C. Government Sector Impact:

Counties, municipalities, and special districts will not be able to collect impact fees prior to the issuance of the building permit for a property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 163.31801 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 27, 2018:
The committee substitute:
- Provides that impact fee requirements do not apply to water or sewer connection fees.
- Provides that funds collected through impact fees must be earmarked for not only acquisition of capital facilities, but also for construction or improvement of capital facilities.

CS by Community Affairs on December 5, 2017:
- Provides that collection of impact fees may not occur before the issuance of the building permit, rather than the issuance of the certificate of occupancy, for the property that is subject to the fee.
- Requires that the impact fee be reasonably connected to, or have a rational nexus with:
  - The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
  - The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.
- Requires the local government to specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents.
- Prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus

with, the increased impact generated by the new residential or commercial construction.

B. Amendments:

None.

By the Committee on Community Affairs; and Senator Young

578-01794-18 2018324c1

A bill to be entitled

An act relating to impact fees; amending s. 163.31801, F.S.; revising the minimum requirements for impact fees; providing an effective date.

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

Section 1. Section 163.31801, Florida Statutes, is amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges ~~definitions; ordinances levying impact fees~~.—

(1) This section may be cited as the "Florida Impact Fee Act."

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district adopts an impact fee by resolution, the governing authority complies with this section.

(3) At a minimum, impact fees ~~An impact fee~~ adopted by ordinance of a county or municipality or by resolution of a special district must~~, at minimum~~ satisfy the following conditions:

Florida Senate - 2018 **CS for SB 324**

578-01794-18 2018324c1

(a) ~~Require that~~ The calculation of the impact fees must ~~fee~~ be based on the most recent and localized data.

(b) The local government must provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) ~~Limit~~ Administrative charges for the collection of impact fees must be limited to actual costs.

(d) ~~Require that~~ Notice must be provided no less than 90 days before the effective date of an ordinance or resolution imposing ~~a~~ new or increased impact fees ~~fee~~. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate ~~an~~ impact fees ~~fee~~.

(e) Collection of the impact fees may not occur earlier than the issuance of the building permit for the property that is subject to the fee.

(f) The impact fee must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

(g) The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

(h) The local government must specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents.

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

(i) The collection or expenditure of the impact fee revenues may not be used, in whole or part, to pay existing debt or be used for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

(4) Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section.

(5) In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or this section. The court may not use a deferential standard.

Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12 Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

January 31, 2018

Senator Rob Bradley, Chair
Appropriations Committee
201 The Capitol
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Bradley,

My Senate Bill 324 relating to Impact Fees has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,

Dana Young
State Senator – 18th District

cc: Mike Hansen, Staff Director – Appropriations Committee

REPLY TO:
❒ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
❒ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 324
Bill Number (if applicable)

Topic Impact Fees

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 328
INTRODUCER:	Senator Baxley
SUBJECT:	Veteran Identification
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	**Favorable**
2.	Wells/Hrdlicka	Hrdlicka	ATD	**Recommend: Favorable**
3.	Wells/Hrdlicka	Hansen	AP	**Pre-meeting**

I. Summary:

SB 328 directs the Department of Highway Safety and Motor Vehicles (DHSMV) to create a state veteran identification card to be used by veterans as proof of veteran status for obtaining discounts or fee waivers. The DHSMV shall issue the card to a veteran who has been honorably discharged and who provides to the DHSMV:

- A copy of his or her DD Form 214;
- A copy of his or her valid driver license, identification card, or another form of photographic identification acceptable to the DHSMV; and
- Payment of a $10 fee.

The bill provides specifications for information that will appear on the card, and provides that the card may be used as proof of veteran status in numerous sections of the Florida Statutes that waive application fees for registration or licensure or provide for expedited review of concealed weapons applications.

The bill is expected to result in insignificant increases in revenues deposited into the Highway Safety Operating Trust Fund (HSOTF) and for local tax collectors. The DHSMV is expected to incur costs of approximately $173,715 to implement the bill.

The bill takes effect January 1, 2019.

II. Present Situation:

Veteran Identification Cards

In general, most veteran identification cards are used to obtain promotional discounts and other services, and provide a way for a veteran to prove military service without having to present

other forms of proof that might also contain personal or confidential information.[1] In 2015, Congress enacted the "Veterans Identification Card Act 2015,"[2] which directs the Secretary of the U.S. Department of Veterans Affairs (VA) to issue a veteran identification card to each veteran who requests one and presents a copy of his or her Department of Defense (DoD) DD Form 214[3] (Certificate of Release or Discharge from Active Duty) or other official document from the official military personnel file of the veteran that describes his or her service. The card will display the photograph and name of the veteran, and contain an identification number that is not a social security number. The card is not proof of any benefits to which the veteran is entitled but does serve as proof that such veteran:

- Served in the Armed Forces; and
- Has a DD Form 214 or other official document in the official military personnel file of the veteran that describes the service of the veteran.[4]

The VA opened the application process for the cards on November 29, 2017; "[v]eterans who apply for a card should receive it within 60 days and can check delivery status of their cards at vets.gov."[5] The VA plans to provide a digital version of the identification card as well.[6] At this time, the VA has indicated that it will not charge a veteran a fee for issuance of the identification card.[7]

Currently, certain veterans may be eligible for other identification cards that may prove veteran status, including a:

- Veteran Health Identification Card (VHIC): The VHIC is issued to veterans enrolled in the VA health care system, and is used for identification and check-in at VA appointments and access to U.S. military bases.[8]
- DD Form 2 (Retired), Uniformed Services ID: This card is issued by the DoD to retired members of the U.S. Uniformed Services[9] entitled to retired pay, members on the Temporary

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[1] *See generally*, U.S. Department of Veterans Affairs, *Veteran ID Cards: What your options are now and in the future* (Mar. 24, 2016), *available at* https://www.blogs.va.gov/VAntage/26568/veteran-id-cards-options/ (last visited Jan. 11, 2018).
[2] H.R.91, *Veterans Identification Card Act 2015* (Pub. L. No. 114-31, July 20, 2015), *available at* https://www.congress.gov/bill/114th-congress/house-bill/91 (last visited Jan. 11, 2018).
[3] The DoD issues each veteran a DD-214 upon separation from active duty service. This form identifies the veteran's condition of discharge, and contains information commonly needed to verify military service for benefits, retirement, employment, and membership in veteran organizations. Department of Defense Instruction 1336.01, *Certificate of Release or Discharge from Active Duty* (Dec. 29, 2014), *available at* http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133601p.pdf (last visited Jan. 11, 2018).
[4] 38 U.S.C. s. 5706.
[5] U.S. Department of Veterans Affairs, *VA announces rollout and application process for new Veterans ID Card* (Nov. 29, 2017), available at https://www.blogs.va.gov/VAntage/43442/va-announces-rollout-application-process-new-veterans-id-card/ (last visited Jan. 11, 2017).
[6] *Id*.
[7] See U.S. Department of Veterans Affairs, *Inquiry Routing & Information System (IRIS): Will VA charge a fee to issue the Veterans Identification Card (VIC) to Veterans?* (updated Nov. 29, 2017), *available at* https://iris.custhelp.com/app/answers/detail/a_id/3065/~/will-va-charge-a-fee-to-issue-the-veterans-identification-card-%28vic%29-to (last visited Jan. 11, 2018).
[8] U.S. Department of Veterans Affairs, *Health Benefits*: *Veterans Health Identification Card*, *available at* http://www.va.gov/healthbenefits/vhic/index.asp (last visited Jan. 11, 2018).
[9] The uniformed services include the Army, Marines, Navy, Air Force, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration. See 10 U.S.C. s. 101(a)(5).

Disability Retired List, and members on the Permanent Disability Retired List. This card is used to access military service benefits or privileges.[10]

- DD Form 2 (Reserve Retired), Uniformed Services ID: This card is issued by the DoD to retired members of the Reserves and the National Guard who are under the age of 60. This card is used to access military service benefits or privileges.[11]
- DD Form 2765, Uniformed Services ID and Privilege Card: This card is issued by the DoD to Medal of Honor recipients, 100-percent disabled veterans, former members in receipt of retired pay, and other limited benefits-eligible categories described in DoD policy. This card is used to access military service benefits or privileges.[12]
- Paper identification card or a letter serving as proof of honorable military service that is issued free through the joint VA/DoD eBenefits web portal.[13]
- State driver license or identification card with a Veteran designation or State-issued Veteran Identification Card.

State Driver License or Identification Card Veteran Designations

Currently, 48 states as well as Puerto Rico and the District of Columbia provide the option for veterans to add a veteran designation to a state driver license or identification card.[14]

Florida provides the option for a veteran designation to be placed on a veteran's driver license or identification card upon request from the veteran, payment of a fee, and the presentation of a copy of the veteran's DD Form 214 or other acceptable form specified by the Florida Department of Veterans' Affairs (FDVA).[15] The designation is added onto a driver license or identification card for a $1 fee when the license or card is being issued or renewed, or a $2 fee solely to replace a license or card in order to add on the designation.[16] Revenue generated from the $1 and $2 fees is deposited into the Highway Safety Operating Trust Fund. Additionally, tax collectors in most counties charge a $6.25 service fee for issuing or renewing a driver license or identification card.[17]

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[10] The design of the Uniformed Services ID cards include a picture, branch affiliation, paygrade/rank, expiration date, DoD identification number, date of birth, benefits number, blood type, Geneva Convention category, and date of issue. See, DoD Common Access Card, *Uniformed Services ID Card*, *available at* http://www.cac.mil/uniformed-services-id-card/ (last visited Jan. 11, 2018).

[11] Id.

[12] Id.

[13] The webportal is available at eBenefits.va.gov. U.S. Department of Veterans Affairs, *Veteran ID Cards: What your options are now and in the future* (Mar. 24, 2016), *available at* https://www.blogs.va.gov/VAntage/26568/veteran-id-cards-options/ (last visited Jan. 11, 2018).

[14] MilitaryBenefits, *Veterans ID on Driver's License or ID Card by State,* https://militarybenefits.info/veterans-id-on-drivers-license-id-card-by-state/ (last visited Jan. 11, 2018). Virginia and Delaware offer state veteran ID cards.

[15] See ss. 322.051(8)(b) and 322.14(1)(d), F.S.

[16] *Id*. The current veteran designation is a "V" printed on the license or card; however, the designation will be changed to read "Veteran" upon implementation of new designs for the license and card by the DHSMV. The DHSMV expected the implementation of the new design to be completed by December 2017. *See* s. 4, ch. 2015-85 L.O.F. *See* also DHSMV, 2018 Agency Legislative Bill Analysis: SB 100 (Oct. 23, 2017). Also, note that SB 100 (2017), if passed by the Legislature during the 2018 Session, will eliminate all fees that a veteran will pay to have the word "Veteran" displayed on a driver license or identification card.

[17] The DHSMV performs the tax collection services for Volusia, Broward, and Miami-Dade counties, because those counties do not have a tax collector who is a constitutional officer under Art. VIII, s. 1(d) of the State Constitution, and the tax collectors of Glades, Franklin, and Gilchrist counties are exempt from providing services on behalf of the DHSMV due to their statuses as fiscally constrained counties. *See* s. 322.135(1)(c) and (7), F.S.

As of October 2017, there are 343,118 veterans that have Florida identification cards or driver licenses with a "Veteran" designation.[18]

State-Issued Veteran Identification Cards

Virginia and Delaware both offer veteran identification cards issued by the state's Division of Motor Vehicles.

To be eligible for a Virginia-issued veteran identification card, the veteran must:
- Present documentation indicating that he or she served in the U.S. Armed Forces, received an honorable discharge, and holds an unexpired Virginia driver license or identification card;
- Present documentation that displays the veteran's branch of service, discharge date, and discharge status; and
- Pay a $10 application fee.[19]

Delaware-issued veteran identification cards are available free of charge to any Delaware veteran that served in the U.S. military, was honorably discharged, has a valid Delaware driver license or identification card, and provides accepted proof of military service.[20]

Florida does not issue a veteran identification card for all veterans but does issue cards for veterans with specified 100 percent total and permanent service-connected disabilities. Section 295.17, F.S., authorizes the FDVA to issue an identification card to any veteran who is a permanent resident of Florida and has been determined by the VA to have a 100 percent service-connected permanent and total disability rating for compensation, or has a service-connected total and permanent disability rating of 100 percent and is receiving disability retirement pay from any branch of the U.S. Armed Forces.

Licensing and Registration Fee Waivers

Florida has the third largest veteran population in the nation, with over 1.5 million veterans in the state.[21] Florida offers numerous benefits available to veterans, including fee waivers for veterans, spouses of veterans, and business entities with majority ownership held by a veteran or spouse of a veteran.

Currently, Florida waives initial license and application fees for a veteran who, within 24 months of being discharged from a branch of the U.S. Armed Forces, applies for the following licenses and provides a copy of his or her DD Form 214 or another acceptable form of identification as specified by the FDVA:
- Private investigative or security agency branch office manager or firearms instructor;[22]
- Private investigator, private investigator intern, or private investigative agency manager;[23]

[18] DHSMV, *2018 Agency Legislative Bill Analysis: SB 328* (Nov. 23, 2017).
[19] Virginia Department of Veterans Services, *Veterans ID Card*, available at https://www.dvs.virginia.gov/benefits/veterans-id-card/ (last visited Jan. 12, 2018).
[20] State of Delaware, Division of Motor Vehicles, *Veteran Identification (ID) Cards*, available at https://www.dmv.de.gov/services/driver_services/drivers_license/dr_lic_vet_idcard.shtml (last visited Jan. 12, 2018).
[21] FDVA, *Fast Facts*, available at http://floridavets.org/our-veterans/profilefast-facts/ (last visited Jan. 12, 2018).
[22] Sections 493.6105(1)(c) and 493.6107(6), F.S.
[23] Sections 493.6105(1)(c) and 493.6202(4), F.S.

- Security officer, security officer instructor, or security agency manager;[24] and
- Recovery agent, recovery agent intern, recovery agent manager, or recovery agent instructor.[25]

Initial license or registration fees are waived for a veteran, spouses of a veteran, and a business entity with a veteran majority owner who submits an application within 60 months after the date of the veteran's discharge from the U.S. Armed Forces for the following classes of licenses:

- Land surveyor and mapper;[26]
- Health studio;[27]
- Commercial telephone seller or entities providing substance abuse marketing services;[28]
- Telemarketing salesperson;[29]
- Mover and moving broker;[30]
- Liquefied petroleum gas related license;[31]
- Pawnbroker;[32]
- Motor vehicle repair shop;[33] and
- Sellers of travel.[34]

To be eligible for the fee waiver discussed above, the veteran must have been honorably discharged, and the applicant must provide a copy of the veteran's DD Form 214 or another acceptable form of identification as specified by the FDVA, and a valid marriage license or proof of ownership interest, where applicable.

A veteran of the U.S. Armed Forces who retired within 24 months before application for licensure is exempt from the application filing fee to be licensed as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary upon proof of qualifying veteran status.[35]

Finally, a veteran is eligible to receive expedited processing of an application for a license to carry concealed weapons or firearms. A veteran must submit a copy of the DD Form 214 or another acceptable form of identification as specified by the FDVA.[36]

[24] Sections 493.6105(1)(c) and 493.6302(4), F.S. Security officers are not subject to application fees.
[25] Sections 493.6105(1)(c) and 493.6402(4), F.S.
[26] Section 472.015(3), F.S.
[27] Section 501.015(2), F.S.
[28] Section 501.605(5), F.S.
[29] Section 501.607(2)(b), F.S.
[30] Section 507.03(3)(b), F.S.
[31] Section 527.02(3)(b), F.S.
[32] Section 539.001(3)(c), F.S.
[33] Section 559.904(3)(b), F.S.
[34] Section 559.928(2)(c), F.S.
[35] Section 626.171(6), F.S. Qualified individuals must provide a copy of a military identification card, service record, or personnel file, or veteran record, discharge paper, or separation document that shows that such member was honorably discharged.
[36] Section 790.06(5)(f)2., F.S.

III. Effect of Proposed Changes:

The bill directs the DHSMV to create a veteran identification card to be used as proof of veteran status for obtaining discounts or waivers offered to veterans (**Section 1**, creating s. 322.0511, F.S.). The card may not be used for the determination of any federal benefits and is not a 100 percent disabled veteran state identification card issued under s. 295.17, F.S., or state identification card with a veteran designation issued under s. 322.051, F.S.

The card must bear the colors and design approved by the DHSMV, including:
- A full-face photograph of the veteran;
- The words "Proof of veteran status" at the bottom of the card; and
- The veteran's full name, branch of service, and date of discharge.

The DHSMV shall issue the card by mail to a veteran of any branch of the U.S. Armed Forces who has been honorably discharged and who provides the DHSMV with:
- A copy of his or her DD Form 214;
- A copy of his or her valid driver license or identification card or other form of photographic identification acceptable to the DHSMV; and
- Payment of a $10 fee.[37]

The bill requires the card be terminated upon the death of the veteran. Additionally, this law authorizing issuance of the card will be repealed August 31, 2023.

The bill authorizes the veteran identification card to be used as proof of veteran status in numerous sections of the Florida Statutes. Specifically, the bill authorizes the card to be used as proof of veteran status to receive fee waivers when applying for the following licenses or registrations:
- Land surveyor and mapper (**Section 2**, amending s. 472.015, F.S.);
- Private investigative or security agency branch office manager, firearms instructor, private investigator, private investigator intern, private investigative agency manager, security officer instructor, security agency manager, recovery agent, recovery agent intern, recovery agent manager, or recovery agent instructor (**Section 3**, amending s. 493.6105, F.S.);
- Private investigative or security agency branch office manager or a firearms instructor (**Section 4**, amending s. 493.6107, F.S.);
- Private investigator, private investigator intern, or private investigative agency manager (**Section 5**, amending s. 493.6202, F.S.);
- Security officer, security officer instructor, or a security manager (**Section 6**, amending s. 493.6302, F.S.);
- Recovery agent, recovery agent intern, recovery agent manager, or recovery agent instructor (**Section 7**, amending s. 493.6402, F.S.);
- Health studio (**Section 8**, amending s. 501.015, F.S.);
- Commercial telephone seller or entity providing substance abuse marketing services (**Section 9**, amending s. 501.605, F.S.);
- Telemarketing salesperson (**Section 10**, amending s. 501.607, F.S.);

[37] The fee will be deposited into the Highway Safety Operating Trust Fund (HSOTF).

- Mover and moving broker (**Section 11**, amending s. 507.03, F.S.);
- Liquefied petroleum gas related license (**Section 12**, amending s. 527.02, F.S.);
- Pawnbroker (**Section 13**, amending s. 539.001, F.S.);
- Motor vehicle repair shop (**Section 14**, amending s. 559.904, F.S.);
- Seller of travel (**Section 15**, amending s. 559.928, F.S.); and
- Insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary (**Section 16**, amending s. 626.171, F.S.).

Lastly, **section 17**, amending s. 790.06, F.S., provides that the veteran identification card may be used as proof of veteran status for expedited processing of an application to carry concealed weapons or firearms.

The bill takes effect January 1, 2019.

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 total cost of the state veteran identification card will be $16.25. The bill provides for a $10 fee for the card, and local tax collector offices are authorized to charge a service fee of $6.25 when providing services under ch. 322, F.S.[38] The Revenue Estimating Conference estimates that the bill will result in insignificant increases in revenues deposited into the Highway Safety Operating Trust Fund and for local governments (tax collector offices performing driver license services).[39]

B. Private Sector Impact:

A veteran will be required to pay a $10 fee if he or she chooses to apply for a state veteran identification card created by this bill. If the veteran applies for the card at a local tax collector office, they will be charged an additional $6.25 service fee.

[38] *See* s. 322.135, F.S.
[39] Office of Economic and Demographic Research, Revenue Estimating Conference, *Highway Safety Fees: HB 107 and SB 328* (Oct. 27, 2018), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page70-74.pdf (last visited Jan. 12, 2018).

C. Government Sector Impact:

The DHSMV estimates programming and contracted resources costs will be $173,715.[40]

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 100 (2017), if passed by the Legislature during the 2018 Session, will eliminate all fees that a veteran will pay to have the word "Veteran" displayed on a driver license or identification card issued pursuant to ss. 322.14 or 322.051, F.S.

VIII. Statutes Affected:

This bill creates section 322.0511 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 472.015, 493.6105, 493.6107, 493.6202, 493.6302, 493.6402, 501.015, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, 559.928, 626.171, and 790.06.

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.

[40] DHSMV, *2018 Agency Legislative Bill Analysis: SB 328* (Sept. 19, 2017).

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 482 - 484
and insert:
Section 17. Subsection (2) and paragraph (f) of subsection (5) of section 790.06, Florida Statutes, are amended to read:
790.06 License to carry concealed weapon or firearm.—
(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:
(a) Is a resident of the United States and a citizen of the

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

(b) Is 21 years of age or older;

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

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

(e) Has not been:

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

2. Committed for the abuse of a controlled substance under chapter 397 or under the provisions of former chapter 396 or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state in which the commitment occurred is deemed not to be committed for the abuse of a controlled substance under this subparagraph;

(f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties

are impaired if the applicant has been convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

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

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

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

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

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

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

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

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

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

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

(i) Has not been adjudicated an incapacitated person under s. 744.331, or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state in which the adjudication occurred is deemed not to have been adjudicated an incapacitated person under this paragraph;

(j) Has not been committed to a mental institution under chapter 394, or similar laws of any other state. An applicant


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who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state in which the commitment occurred is deemed not to have been committed in a mental institution under this paragraph;

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

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

(m) Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; ~~and~~

(n) Has undergone a mental health evaluation conducted by a clinical psychologist or a psychiatrist, as those terms are defined in s. 394.455, and has been determined to be competent and of sound mind; and

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

================ 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 veteran identification and gun

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safety; amending s. 790.06, F.S.; requiring the Department of Agriculture and Consumer Services to issue a license if, in addition to other specified criteria, the applicant has undergone a mental health evaluation conducted by certain licensed professionals and has been determined to be competent; creating s.

660814

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Baxley) recommended the following:

Senate Amendment (with title amendment)

Between lines 496 and 497

insert:

Section 18. For the 2018-2019 fiscal year, $173,715 in nonrecurring funds from the Highway Safety Operating Trust Fund is appropriated to the Department of Highway Safety and Motor Vehicles to implement this act.

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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 27

and insert:

appropriation; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Stewart) recommended the following:

Senate Amendment (with title amendment)

Between lines 496 and 497
insert:

Section 18. Section 790.30, Florida Statutes, is created to read:

790.30 Assault weapons.—

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

(a) "Assault weapon" means:

1. A selective-fire firearm capable of fully automatic,

semiautomatic, or burst fire at the option of the user or any of the following specified semiautomatic firearms:

a. Algimec AGM1.

b. All AK series, including, but not limited to, the following: AK, AK-47, AK-74, AKM, AKS, ARM, MAK90, MISR, NHM90, NHM91, Rock River Arms LAR-47, SA 85, SA 93, Vector Arms AK-47, VEPR, WASR-10, and WUM.

c. All AR series, including, but not limited to, the following: AR-10, AR-15, Armalite AR-180, Armalite M-15, AR-70, Bushmaster XM15, Colt AR-15, DoubleStar AR rifles, DPMS tactical rifles, Olympic Arms, Rock River Arms LAR-15, and Smith & Wesson M&P15 rifles.

d. Barrett 82A1 and REC7.

e. Beretta AR-70 and Beretta Storm.

f. Bushmaster automatic rifle.

g. Calico Liberty series rifles.

h. Chartered Industries of Singapore SR-88.

i. Colt Sporter.

j. Daewoo K-1, K-2, Max-1, and Max-2.

k. FAMAS MAS .223.

l. Federal XC-900 and SC-450.

m. FN FAL (or FN LAR) and FN FNC.

n. FN FS2000, FN PS90, and FN SCAR.

o. Galil and UZI Sporter, Galil sniper rifle (Galatz), Galil Sporter, UZI, or Vector Arms UZI.

p. Goncz High-Tech carbine.

q. Hi-Point carbine.

r. HK-91, HK-93, HK-94, HK-PSG-1, and SP-89.

s. Kel-Tec RFB, Sub-2000, and SU series.

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t. M1 carbine.
u. M2HB and TNW M230.
v. Ruger Mini-14 with folding stock.
w. SAR-8, SAR-4800, and SR9.
x. SIG 57 AMT and 500 Series.
y. Sig Sauer MCX rifle.
z. SKS capable of accepting a detachable magazine.
aa. SLG 95.
bb. SLR 95 and 96.
cc. Spectre automatic carbine.
dd. Springfield Armory BM59, G-3, and SAR-48.
ee. Sterling MK-6 and MK-7.
ff. Steyr AUG.
gg. Thompson series, including Thompson T5.
hh. Weaver Arms Nighthawk.

2. All of the following handguns, copies, duplicates, or altered facsimiles with the capability of any such weapon thereof:

a. AK-47 pistol and Mini AK-47 pistol.
b. AR-15 pistol.
c. Australian Automatic Arms SAP pistol.
d. Bushmaster automatic pistol.
e. Calico Liberty series pistols.
f. Chiappa Firearms Mfour-22.
g. Colefire Magnum.
h. DSA SA58 PKP FAL.
i. Encom MK-IV, MP-9, and MP-45.
j. Feather AT-9 and Mini-AT.
k. German Sport 522 PK.

l. Goncz High-Tech Long pistol.

m. Holmes MP-83.

n. Intratec AB-10, TEC-9, TEC-22 Scorpion, and TEC-DC9.

o. I.O. Inc., PPS-43C.

p. Iver Johnson Enforcer.

q. Kel-Tec PLR-16 pistol.

r. MAC-10, MAC-11, Masterpiece Arms MPA pistol series, and Velocity Arms VMA series.

s. Scarab Skorpion.

t. Sig Sauer P556 pistol.

u. Spectre automatic pistol.

v. Thompson TA5 series pistols.

w. UZI pistol and Micro-UZI pistol.

x. Wilkinson “Linda” pistol.

3. All of the following shotguns, copies, duplicates, or altered facsimiles with the capability of any such weapon thereof:

a. Armscor 30 BG.

b. Franchi LAW-12 and SPAS-12.

c. Kel-Tec KSG.

d. Remington TAC-2 and TACB3 FS.

e. Saiga.

f. Streetsweeper.

g. Striker 12.

h. USAS-12.

4. A part or combination of parts that converts a firearm into an assault weapon, or any combination of parts from which an assault weapon may be assembled if those parts are in the possession or under the control of the same person.

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5. A semiautomatic firearm not listed in this paragraph which meets the criteria of one of the following sub-subparagraphs:

a. A semiautomatic rifle that has an ability to accept a detachable magazine and that has one or more of the following:

(I) A folding or telescoping stock.

(II) A pistol grip that protrudes conspicuously beneath the action of the weapon or any feature functioning as a protruding grip that can be held by the nontrigger hand, or a thumbhole stock.

(III) A bayonet mount.

(IV) A flash suppressor or threaded barrel designed to accommodate a flash suppressor.

(V) A grenade launcher.

(VI) A shroud that is attached to the barrel, or that partially or completely encircles the barrel and allows the bearer to hold the firearm with the nontrigger hand without being burned, but excluding a slide that encloses the barrel.

b. A semiautomatic pistol that has an ability to accept a detachable magazine and that has one or more of the following:

(I) The capacity to accept an ammunition magazine that attaches to the pistol at any location outside the pistol grip.

(II) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer.

(III) A slide that encloses the barrel and that allows the shooter to hold the firearm with the nontrigger hand without being burned.

(IV) A manufactured weight of 50 ounces or more when the pistol is unloaded.

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(V) A semiautomatic version of an automatic firearm.

(VI) Any feature capable of functioning as a protruding grip that can be held by the nontrigger hand.

(VII) A folding, telescoping, or thumbhole stock.

c. A semiautomatic shotgun that has one or more of the following:

(I) A folding or telescoping stock.

(II) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(III) A thumbhole stock.

(IV) A fixed-magazine capacity in excess of 5 rounds.

(V) An ability to accept a detachable magazine.

d. A semiautomatic pistol or a semiautomatic, centerfire, or rimfire rifle with a fixed magazine that has the capacity to accept more than 10 rounds of ammunition.

e. A part or combination of parts designed or intended to convert a firearm into an assault weapon, or any combination of parts from which an assault weapon may be assembled if those parts are in the possession or under the control of the same person.

(b) "Detachable magazine" means an ammunition feeding device that can be removed from a firearm without disassembly of the firearm action.

(c) "Fixed magazine" means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

(d) "Large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 7 rounds, or any

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conversion kit, part, or combination of parts from which such a device can be assembled if those parts are in the possession or under the control of the same person, but does not include any of the following:

1. A feeding device that has been permanently altered so that it cannot accommodate more than 7 rounds;

2. A .22 caliber tube ammunition feeding device; or

3. A tubular magazine that is contained in a lever-action firearm.

(e) "Licensed gun dealer" means a person who has a federal firearms license.

(2) SALE OR TRANSFER.—

(a) A person may not import into this state or, within this state, distribute, transport, sell, keep for sale, offer or expose for sale, or give an assault weapon or large-capacity magazine. Except as provided in paragraph (b), any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 2 years.

(b) A person may not transfer, sell, or give an assault weapon or large-capacity magazine to a person under 18 years of age. Any person who violates this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 6 years.

(c) Paragraph (a) does not apply to:

1. The sale of assault weapons or large-capacity magazines to the Department of Law Enforcement, to a law enforcement agency, as defined in s. 934.02, to the Department of

Corrections, or to the military, air, or naval forces of this state or the United States for use in the discharge of their official duties.

2. A person who is the executor or administrator of an estate that includes an assault weapon or large-capacity magazine for which a certificate of possession has been issued under subsection (4) which is disposed of as authorized by the probate court, if the disposition is otherwise authorized under this section.

3. The transfer by bequest or intestate succession of an assault weapon or large-capacity magazine for which a certificate of possession has been issued under subsection (4).

(3) POSSESSION.—

(a) Except as provided in subsection (5) or otherwise provided in this section or authorized by any other law, a person may not, within this state, possess an assault weapon or large-capacity magazine. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 1 year.

(b) Paragraph (a) does not apply to the possession of an assault weapon or large-capacity magazine by a member or employee of the Department of Law Enforcement, a law enforcement agency, as defined in s. 934.02, the Department of Corrections, or the military, air, or naval forces of this state or of the United States for use in the discharge of his or her official duties; nor does this section prohibit the possession or use of an assault weapon or large-capacity magazine by a sworn member of one of these agencies when on duty and the use is within the

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scope of his or her duties.

(c) Paragraph (a) does not apply to the possession of an assault weapon or large-capacity magazine by any person before July 1, 2019, if all of the following are applicable:

1. The person is eligible to apply for a certificate of possession for the assault weapon or large-capacity magazine by July 1, 2019;

2. The person lawfully possessed the assault weapon or large-capacity magazine before October 1, 2018; and

3. The person is otherwise in compliance with this section and the applicable requirements of this chapter for possession of a firearm.

(d) Paragraph (a) does not apply to a person who is the executor or administrator of an estate that includes an assault weapon or large-capacity magazine for which a certificate of possession has been issued under subsection (4), if the assault weapon or large-capacity magazine is possessed at a place set forth in subparagraph (4)(c)1. or as authorized by the probate court.

(4) CERTIFICATE OF POSSESSION.—

(a) Any person who lawfully possesses an assault weapon or large-capacity magazine before October 1, 2018, shall apply by October 1, 2019, or, if such person is a member of the military or naval forces of this state or of the United States and cannot apply by October 1, 2019, because he or she is or was on official duty outside this state, shall apply within 90 days after returning to this state, to the Department of Law Enforcement for a certificate of possession with respect to such assault weapon or large-capacity magazine. The certificate must

contain a description of the assault weapon or large-capacity magazine which identifies the assault weapon or large-capacity magazine uniquely, including all identification marks; the full name, address, date of birth, and thumbprint of the owner; and any other information as the department may deem appropriate. The department shall adopt rules no later than January 1, 2019, to establish procedures with respect to the application for, and issuance of, certificates of possession under this section.

(b)1. An assault weapon or large-capacity magazine lawfully possessed in accordance with this section may not be sold or transferred on or after January 1, 2019, to any person within this state other than to a licensed gun dealer, as provided in subsection (5); or by a bequest or intestate succession.

2. A person who obtains title to an assault weapon or large-capacity magazine for which a certificate of possession has been issued under this subsection shall, within 90 days after obtaining title, apply to the Department of Law Enforcement for a certificate of possession, render the assault weapon or large-capacity magazine permanently inoperable, sell the assault weapon or large-capacity magazine to a licensed gun dealer, or remove the assault weapon or large-capacity magazine from this state.

3. A person who moves into this state and who is in lawful possession of an assault weapon or large-capacity magazine, shall, within 90 days, either render the assault weapon or large-capacity magazine permanently inoperable, sell the assault weapon or large-capacity magazine to a licensed gun dealer, or remove the assault weapon or large-capacity magazine from this state, unless the person is a member of the military, air, or

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naval forces of this state or of the United States, is in lawful possession of an assault weapon or large-capacity magazine, and has been transferred into this state after October 1, 2019.

(c) A person who has been issued a certificate of possession for an assault weapon or large-capacity magazine under this subsection may possess it only if the person is:

1. At the residence, the place of business, or any other property owned by that person, or on a property owned by another person with the owner's express permission;

2. On the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets;

3. On a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range;

4. On the premises of a licensed shooting club;

5. Attending an exhibition, display, or educational project on firearms which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state-recognized entity that fosters proficiency in, or promotes education about, firearms; or

6. Transporting the assault weapon or large-capacity magazine between any of the places mentioned in this paragraph, or from or to any licensed gun dealer for servicing or repair pursuant to paragraph (7)(b), provided the assault weapon or large-capacity magazine is transported as required by subsection (7).

(5) CERTIFICATE OF TRANSFER.—If an owner of an assault weapon or large-capacity magazine sells or transfers the weapon

or magazine to a licensed gun dealer, he or she shall, at the time of delivery of the weapon, execute a certificate of transfer and cause the certificate to be mailed or delivered to the Department of Law Enforcement. The certificate must contain:

(a) The date of sale or transfer.

(b) The name and address of the seller or transferor and the licensed gun dealer and their social security numbers or driver license numbers.

(c) The licensed gun dealer's federal firearms license number.

(d) A description of the weapon, including the caliber of the weapon and its make, model, and serial number.

(e) Any other information the Department of Law Enforcement prescribes.

The licensed gun dealer shall present his or her driver license or social security card and federal firearms license to the seller or transferor for inspection at the time of purchase or transfer. The Department of Law Enforcement shall maintain a file of all certificates of transfer at its headquarters.

(6) RELINQUISHMENT.—An individual may arrange in advance to relinquish an assault weapon or large-capacity magazine to a law enforcement agency, as defined in s. 934.02, or the Department of Law Enforcement. The assault weapon or large-capacity magazine shall be transported in accordance with subsection (7).

(7) TRANSPORTATION.—

(a) A licensed gun dealer who lawfully purchases for resale an assault weapon or large-capacity magazine pursuant to subsection (2) may transport the assault weapon or large-

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capacity magazine between licensed gun dealers or out of this state, but no person shall carry a loaded assault weapon concealed from public view, or knowingly have in any motor vehicle owned, operated, or occupied by him or her a loaded or unloaded assault weapon, unless such weapon is kept in the trunk of such vehicle or in a case or other container that is inaccessible to the operator of or any passenger in such vehicle. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any licensed gun dealer may display the assault weapon or large-capacity magazine at any gun show or sell it to a resident outside this state.

(b) Any licensed gun dealer may transfer possession of any assault weapon or large-capacity magazine received pursuant to paragraph (a) to a gunsmith for purposes of accomplishing service or repair of the same. Transfers are permissible only to a gunsmith who is:

1. In the licensed gun dealer’s employ; or

2. Contracted by the licensed gun dealer for gunsmithing services, provided the gunsmith holds a dealer’s license issued pursuant to chapter 44 of Title 18 the United States Code, 18 U.S.C. ss. 921 et seq., and the regulations issued pursuant thereto.

(8) CIRCUMSTANCES IN WHICH MANUFACTURE OR TRANSPORTATION NOT PROHIBITED.—This section does not prohibit any person, firm, or corporation engaged in the business of manufacturing assault weapons or large-capacity magazines in this state from manufacturing or transporting assault weapons or large-capacity magazines in this state for sale within this state in accordance

with subparagraph (2)(c)1. or for sale outside this state.

(9) EXCEPTION.—This section does not apply to any firearm modified to render it permanently inoperable.

Section 19. Paragraph (a) of subsection (3) of section 775.087, Florida Statutes, is amended to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(3)(a)1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a firearm is an element of the felony, and the conviction was for:

a. Murder;

b. Sexual battery;

c. Robbery;

d. Burglary;

e. Arson;

f. Aggravated battery;

g. Kidnapping;

h. Escape;

i. Sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance;

j. Aircraft piracy;

k. Aggravated child abuse;

l. Aggravated abuse of an elderly person or disabled adult;

m. Unlawful throwing, placing, or discharging of a destructive device or bomb;

n. Carjacking;

o. Home-invasion robbery;

p. Aggravated stalking; or

q. Trafficking in cannabis, trafficking in cocaine, capital

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388 importation of cocaine, trafficking in illegal drugs, capital
389 importation of illegal drugs, trafficking in phencyclidine,
390 capital importation of phencyclidine, trafficking in
391 methaqualone, capital importation of methaqualone, trafficking
392 in amphetamine, capital importation of amphetamine, trafficking
393 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
394 (GHB), trafficking in 1,4-Butanediol, trafficking in
395 Phenethylamines, or other violation of s. 893.135(1);
396
397 and during the commission of the offense, such person possessed
398 a semiautomatic firearm and its high-capacity detachable box
399 magazine, an assault weapon or large-capacity magazine as
400 defined in s. 790.30, or a machine gun as defined in s. 790.001,
401 shall be sentenced to a minimum term of imprisonment of 15
402 years.
403 2. Any person who is convicted of a felony or an attempt to
404 commit a felony listed in subparagraph (a)1., regardless of
405 whether the use of a weapon is an element of the felony, and
406 during the course of the commission of the felony such person
407 discharged a semiautomatic firearm and its high-capacity box
408 magazine, an assault weapon or large-capacity magazine as
409 defined in s. 790.30, or a "machine gun" as defined in s.
410 790.001 shall be sentenced to a minimum term of imprisonment of
411 20 years.
412 3. Any person who is convicted of a felony or an attempt to
413 commit a felony listed in subparagraph (a)1., regardless of
414 whether the use of a weapon is an element of the felony, and
415 during the course of the commission of the felony such person
416 discharged a semiautomatic firearm and its high-capacity box

magazine, an assault weapon or large-capacity magazine as defined in s. 790.30, or a "machine gun" as defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

Section 20. For the purpose of incorporating the amendment made by this act to section 775.087, Florida Statutes, in a reference thereto, section 27.366, Florida Statutes, is reenacted to read:

27.366 Legislative intent and policy in cases meeting criteria of s. 775.087(2) and (3).—It is the intent of the Legislature that convicted criminal offenders who meet the criteria in s. 775.087(2) and (3) be sentenced to the minimum mandatory prison terms provided therein. It is the intent of the Legislature to establish zero tolerance of criminals who use, threaten to use, or avail themselves of firearms in order to commit crimes and thereby demonstrate their lack of value for human life. It is also the intent of the Legislature that prosecutors should appropriately exercise their discretion in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime. For every case in which the offender meets the criteria in this act and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.

Section 21. For the purpose of incorporating the amendment made by this act to section 775.087, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, is reenacted to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender’s legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of

felony probation or community control where:

I. The violation does not include a new felony conviction; and

II. The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or make restitution payments.

b. Twenty-four (24) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new felony conviction.

Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of thirty (30) points shall be added. For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more

prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional eighteen (18) sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional twenty-five (25) sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing

court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), or (4), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender’s prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03, the subtotal sentence points are multiplied by 1.5. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Adult-on-minor sex offense: If the offender was 18 years of age or older and the victim was younger than 18 years of age at the time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed a sexual battery under chapter 794 or a lewd act under s. 800.04 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s. 800.04; or s. 847.0135(5), the subtotal sentence points are multiplied by 2.0. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Section 22. For the purpose of incorporating the amendment made by this act to section 775.087, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 947.146, Florida Statutes, is reenacted to read:

947.146 Control Release Authority.—

(3) Within 120 days prior to the date the state correctional system is projected pursuant to s. 216.136 to exceed 99 percent of total capacity, the authority shall determine eligibility for and establish a control release date for an appropriate number of parole ineligible inmates committed to the department and incarcerated within the state who have been determined by the authority to be eligible for discretionary early release pursuant to this section. In establishing control release dates, it is the intent of the Legislature that the authority prioritize consideration of eligible inmates closest to their tentative release date. The authority shall rely upon commitment data on the offender information system maintained by the department to initially identify inmates who are to be reviewed for control release consideration. The authority may use a method of objective risk assessment in determining if an eligible inmate should be released. Such assessment shall be a part of the department's management information system. However, the authority shall have sole responsibility for determining control release eligibility, establishing a control release date, and effectuating the release of a sufficient number of inmates to maintain the inmate population between 99 percent and 100 percent of total capacity. Inmates who are ineligible for control release are inmates who are parole eligible or inmates who:

(b) Are serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

In making control release eligibility determinations under this

subsection, the authority may rely on any document leading to or generated during the course of the criminal proceedings, including, but not limited to, any presentence or postsentence investigation or any information contained in arrest reports relating to circumstances of the offense.

========== 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 veteran identification and gun safety; creating s. 790.30, F.S.; defining terms; prohibiting the sale or transfer of an assault weapon or large-capacity magazine; providing exceptions; providing criminal penalties; prohibiting possession of an assault weapon or large-capacity magazine; providing exceptions; providing criminal penalties; requiring certificates of possession for assault weapons or large-capacity magazines lawfully possessed before a specified date; requiring the Department of Law Enforcement to adopt rules by a certain date; limiting transfers of assault weapons or large-capacity magazines represented by such certificates; providing conditions for continued possession of such weapons or large-capacity magazines; requiring certificates of transfer for transfers of assault weapons or large-capacity magazines; providing for relinquishment of assault weapons or large-capacity magazines; providing requirements for transportation

of assault weapons or large-capacity magazines; providing criminal penalties; specifying circumstances in which the manufacture or transportation of assault weapons or large-capacity magazines is not prohibited; exempting permanently inoperable firearms from provisions; amending s. 775.087, F.S.; providing enhanced criminal penalties for certain offenses when committed with an assault weapon or large-capacity magazine; reenacting ss. 27.366, 921.0024(1)(b), and 947.146(3)(b), F.S., relating to legislative intent and policy in certain cases, the Criminal Punishment Code worksheet key, and the Control Release Authority, respectively, to incorporate the amendment made to s. 775.087, F.S., in references thereto; creating s.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Stewart) recommended the following:

Senate Amendment (with title amendment)

Between lines 496 and 497

insert:

Section 18. Section 790.34, Florida Statutes, is created to read:

790.34 Prohibited device for firearm.—

(1) DEFINITION.—As used in this section, the term "bump-fire stock" means a gun conversion kit, a tool, an accessory, or a device used to alter the rate of fire of a firearm to mimic

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automatic weapon fire or which is used to increase the rate of fire of a semiautomatic firearm to a faster rate than is possible for a person to fire such semiautomatic firearm unassisted by a kit, a tool, an accessory, or a device.

(2) SALE OR TRANSFER.—A person may not import into this state or, within this state, transfer, distribute, transport, sell, keep for sale, offer or expose for sale, or give a bump-fire stock to another person. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) POSSESSION.—A person may not, within this state, possess a bump-fire stock. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) RELINQUISHMENT AND DESTRUCTION.—A person who owns or is in possession of a bump-fire stock may arrange in advance to relinquish the device to a law enforcement agency, as defined in s. 934.02, or the Department of Law Enforcement or, if the bump-fire stock is not relinquished, the person must destroy and render inoperable the device. The law enforcement agency or the department must destroy any relinquished or acquired bump-fire stock within a reasonable time.

(5) APPLICABILITY.—This section does not apply to a law enforcement agency or the Department of Law Enforcement after taking possession of a bump-fire stock through relinquishment or other lawful means or while preparing to destroy the device.

================ 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 veteran identification and gun safety; creating s. 790.34, F.S.; defining the term "bump-fire stock"; prohibiting the importation, transfer, distribution, transport, sale, giving, or possession of a bump-fire stock in this state; creating penalties; authorizing a person to relinquish a bump-fire stock to a law enforcement agency or the Department of Law Enforcement; requiring a person who does not relinquish a bump-fire stock to destroy the device and render it inoperable; requiring the law enforcement agency or the department to destroy the bump-fire stock; providing applicability; creating s.

125810

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Gibson) recommended the following:

Senate Amendment (with title amendment)

Between lines 496 and 497

insert:

Section 18. (1) Section 790.401, Florida Statutes, is designed to temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms by allowing family, household members, and law enforcement to obtain a court order when there is demonstrated evidence that the person poses a significant danger, including danger as a

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result of a dangerous mental health crisis or violent behavior.

(2) The purpose and intent of section 790.401, Florida Statutes, is to reduce gun deaths and injuries, while respecting constitutional rights, by providing a court procedure for family, household members, and law enforcement to obtain an order temporarily restricting a person's access to firearms. Court orders are intended to be limited to situations in which the person poses a significant danger of harming himself or herself or others by possessing a firearm, and include standards and safeguards to protect the rights of respondents and due process of law.

Section 19. Section 790.401, Florida Statutes, may be cited as "The Risk Protection Order Act."

Section 20. Section 790.401, Florida Statutes, is created to read:

790.401 Risk protection orders.—

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

(a) "Family or household member" has the same meaning as provided in s. 741.28. The term includes a person who:

1. Has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren.

2. Is acting or has acted as the respondent's legal guardian.

(b) "Petitioner" means the individual who petitions for an order under this section.

(c) "Respondent" means the individual who is identified as the respondent in a petition filed under this section.

(d) "Risk protection order" means an ex parte temporary

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order or a final order granted under this section.

(2) PETITION FOR A RISK PROTECTION ORDER.—There is created an action known as a petition for a risk protection order.

(a) A petition for a risk protection order may be filed by a family or household member of the respondent or a law enforcement officer or agency.

(b) An action under this section must be filed in the county where the petitioner resides or the county where the respondent resides.

(c) A petition must:

1. Allege that the respondent poses a significant danger of causing personal injury to self or others by having a firearm in his or her custody or control or by potentially purchasing, possessing, or receiving a firearm, and be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent.

2. Identify the numbers, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, or control.

3. Identify whether there is a known existing protection order governing the respondent under s. 741.30, s. 784.046, or s. 784.0485 or under any other applicable statute.

4. Identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition under the laws of this state.

(d) The clerk of court shall verify the terms of any existing order governing the parties. The court may not delay granting relief because of the existence of a pending action

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between the parties or the necessity of verifying the terms of an existing order. A petition for a risk protection order may be granted whether or not there is a pending action between the parties.

(e) If the petitioner is a law enforcement officer or agency, the petitioner shall make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a risk protection order or has already done so, and include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice, or attest to the steps that will be taken to provide such notice.

(f) If the petition states that disclosure of the petitioner's address would risk harm to the petitioner or any member of the petitioner's family or household, the petitioner's address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner must designate an alternative address at which the respondent may serve notice of any motions. If the petitioner is a law enforcement officer or agency, the address of record must be that of the law enforcement agency.

(g) Within 90 days of receipt of the master copy from the Office of the State Courts Administrator, all clerks of court shall make available the standardized forms, instructions, and informational brochures required by subsection (14).

(h) Fees for filing or service of process may not be charged by a court or any public agency to petitioners seeking

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relief under this section. Petitioners shall be provided the necessary number of certified copies, forms, and instructional brochures free of charge.

(i) A person is not required to post a bond to obtain relief in any proceeding under this section.

(j) The circuit courts of this state have jurisdiction over proceedings under this section.

(3) RISK PROTECTION ORDER HEARINGS AND ISSUANCE.—

(a) Upon receipt of the petition, the court shall order a hearing to be held not later than 14 days after the date of the order and issue a notice of hearing to the respondent for the same.

1. The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from potential harm. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing.

2. The court clerk shall cause a copy of the notice of hearing and petition to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent.

3. Personal service of the notice of hearing and petition shall be made upon the respondent by a law enforcement officer not less than 5 business days before the hearing. Service under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by

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publication or mail as provided in subsection (6). The court may not require more than two attempts at obtaining personal service and shall permit service by publication or mail after two attempts at obtaining personal service unless the petitioner requests additional time to attempt personal service. If the court issues an order permitting service by publication or mail, the court shall set the hearing date not later than 24 days after the date the order is issued.

4. The court may, as provided in subsection (4), issue an ex parte risk protection order pending the hearing ordered under this subsection. Such ex parte order must be served concurrently with the notice of hearing and petition.

(b) Upon hearing the matter, if the court finds by a preponderance of the evidence that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm, the court shall issue a risk protection order for a period that it deems appropriate, up to and including, but not exceeding, 12 months.

(c) In determining whether grounds for a risk protection order exist, the court may consider any relevant evidence, including, but not limited to, any of the following:

1. A recent act or threat of violence by the respondent against self or others, whether or not such violence or threat of violence involves a firearm.

2. An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against self or others.

3. A recurring mental health issue of the respondent.

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4. A violation by the respondent of a protection order or a no contact order issued under s. 741.30, s. 784.046, or s. 784.0485.

5. A previous or existing risk protection order issued against the respondent.

6. A violation of a previous or existing risk protection order issued against the respondent.

7. A conviction of the respondent for a crime that constitutes domestic violence as defined in s. 741.28.

8. The respondent's ownership, access to, or intent to possess firearms.

9. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.

10. The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person.

11. An arrest, a plea of guilty or no contest, or a conviction of the respondent for a violent misdemeanor or felony offense.

12. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.

13. Evidence of recent acquisition of firearms by the respondent.

(d) The court may:

1. Examine under oath the petitioner, the respondent, and any witnesses they may produce, or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent, and any witnesses they may produce.

2. Ensure that a reasonable search has been conducted for

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criminal history records related to the respondent.

(e) In a hearing under this section, the rules of evidence apply to the same extent as in a domestic violence injunction proceeding under s. 741.30.

(f) During the hearing, the court shall consider whether a mental health evaluation or chemical dependency evaluation is appropriate, and may order such evaluation if appropriate.

(g) A risk protection order must include all of the following:

1. A statement of the grounds supporting the issuance of the order.

2. The date and time the order was issued.

3. The date and time the order expires.

4. Whether a mental health evaluation or chemical dependency evaluation of the respondent is required.

5. The address of the court in which any responsive pleading should be filed.

6. Instructions for relinquishment of firearms under subsection (8).

7. The following statement:

"To the subject of this protection order: This order will last until the date and time noted above. If you have not done so already, you must surrender immediately to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida Statutes. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a

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firearm while this order is in effect. You have the right to request one hearing to terminate this order, starting after the date of the issuance of this order and another hearing after ever renewal of the order, if any. You may seek the advice of an attorney as to any matter connected with this order."

(h) When the court issues a risk protection order, the court shall inform the respondent that he or she is entitled to request termination of the order in the manner prescribed by subsection (7). The court shall provide the respondent with a form to request a termination hearing.

(i) If the court denies the petitioner's request for a risk protection order, the court shall state the particular reasons for the court's denial.

(4) EX PARTE RISK PROTECTION ORDERS.—

(a) A petitioner may request that an ex parte risk protection order be issued before a hearing for a risk protection order, without notice to the respondent, by including in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm.

(b) In considering whether to issue an ex parte risk protection order under this section, the court shall consider all relevant evidence, including the evidence described in paragraph (3)(c).

(c) If a court finds there is reasonable cause to believe that the respondent poses a significant danger of causing

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personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, the court shall issue an ex parte risk protection order.

(d) The court shall hold an ex parte risk protection order hearing in person or by telephone on the day the petition is filed or on the business day immediately following the day the petition is filed.

(e) In accordance with paragraph (3)(a), the court shall schedule a hearing within 14 days of the issuance of an ex parte risk protection order to determine if a risk protection order should be issued under this section.

(f) An ex parte risk protection order must include all of the following:

1. A statement of the grounds asserted for the order.

2. The date and time the order was issued.

3. The date and time the order expires.

4. The address of the court in which any responsive pleading should be filed.

5. The date and time of the scheduled hearing.

6. A description of the requirements for surrender of firearms under subsection (8).

7. The following statement:

"To the subject of this protection order: This order is valid until the date and time noted above. You are required to surrender all firearms in your custody, control, or possession. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a firearm while this

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order is in effect. You must surrender immediately to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida Statutes. A hearing will be held on the date and at the time noted above to determine if a risk protection order should be issued. Failure to appear at that hearing may result in a court ruling on an order against you that is valid for 1 year. You may seek the advice of an attorney as to any matter connected with this order."

(g) An ex parte risk protection order issued expires upon the hearing on the risk protection order.

(h) An ex parte risk protection order shall be served by a law enforcement officer in the same manner as provided for in subsection (3) for service of the notice of hearing and petition and shall be served concurrently with the notice of hearing and petition.

(i) If the court denies the petitioner's request for an ex parte risk protection order, the court shall state the particular reasons for the court's denial.

(5) SERVICE OF RISK PROTECTION ORDERS.—

(a) A risk protection order issued under subsection (3) must be personally served upon the respondent, except as otherwise provided in this section.

(b) The law enforcement agency with jurisdiction in the area in which the respondent resides shall serve the respondent personally, unless the petitioner elects to have the respondent served by a private party.


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(c) If service by a law enforcement agency is to be used, the clerk of the court shall cause a copy of the order issued under this section to be forwarded on or before the next business day to the law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(d) If the law enforcement agency cannot complete service upon the respondent within 10 days, the law enforcement agency shall notify the petitioner. The petitioner shall provide information sufficient to permit such notification.

(e) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(f) If the court previously entered an order allowing service of the notice of hearing and petition, or an ex parte risk protection order, by publication or mail under subsection (6), or if the court finds there are now grounds to allow such alternate service, the court may permit service by publication or mail of the risk protection order issued under this section as provided in subsection (6). The court order must state whether the court permitted service by publication or service by mail.

(g) Returns of service under this section must be made in accordance with the applicable court rules.

(6) SERVICE BY PUBLICATION OR MAIL.—

(a) The court may order service by publication or service

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by mail under the circumstances permitted for such service in s. 741.30, s. 784.046, or s. 784.0485, except any summons must be essentially in the following form:

In the . . . . . Court of the State of Florida for the County of . . . . . .
. . . . . ., Petitioner
vs. No. . . . . .
. . . . . ., Respondent
The State of Florida to . . . . . (respondent):
You are hereby summoned to appear on the . . . . day of . . . . ., (year) . . . ., at . . . . a.m./p.m., and respond to the petition. If you fail to respond, a risk protection order may be issued against you pursuant to the Risk Protection Order Act, s. 790.401, Florida Statutes, for 1 year after the date you are required to appear. (An ex parte risk protection order has been issued against you, restraining you from having in your custody or control, purchasing, possessing, or receiving any firearms. You must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida Statutes, within 48 hours. A copy of the notice of hearing, petition, and ex parte risk protection order has been filed with the clerk of this court.) (A copy of the notice of hearing and petition has been filed with the clerk of this court.)
. . . . .
Petitioner

(b) If the court orders service by publication or mail for notice of a risk protection order hearing, it shall also reissue the ex parte risk protection order, if issued, to expire on the date of the risk protection order hearing.

(c) Following completion of service by publication or by mail for notice of a risk protection order hearing, if the respondent fails to appear at the hearing, the court may issue a risk protection order as provided in subsection (3).

(7) TERMINATION AND RENEWAL OF ORDERS.—

(a) The respondent may submit one written request for a hearing to terminate a risk protection order issued under this section, starting after the date of the issuance of the order and another hearing after ever renewal of the order, if any.

1. Upon receipt of the request for a hearing to terminate a risk protection order, the court shall set a date for a hearing. Notice of the request must be served on the petitioner in accordance with chapter 48. The hearing shall occur no sooner than 14 days and no later than 30 days after the date of service of the request upon the petitioner.

2. The respondent shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm. The court may consider any relevant evidence, including evidence of the considerations listed in paragraph (3)(c).

3. If the court finds after the hearing that the respondent has met his or her burden, the court shall terminate the order.

(b) The court must notify the petitioner of the impending

expiration of a risk protection order. Notice must be received by the petitioner 105 calendar days before the date the order expires.

(c) A family or household member of a respondent or a law enforcement officer or agency may by motion request a renewal of a risk protection order at any time within 105 calendar days before the expiration of the order.

1. Upon receipt of the motion to renew, the court shall order that a hearing be held not later than 14 days after the date the order is issued.

a. The court may schedule a hearing by telephone in the manner prescribed by subparagraph (3)(a)1.

b. The respondent shall be personally served in the same manner prescribed by subparagraphs(3)(a)2. and 3.

2. In determining whether to renew a risk protection order issued under this section, the court shall consider all relevant evidence presented by the petitioner and follow the same procedure as provided in subsection (3).

3. If the court finds by a preponderance of the evidence that the requirements for issuance of a risk protection order as provided in subsection (3) continue to be met, the court shall renew the order. However, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner’s motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal.

4. The renewal of a risk protection order has a duration of 1 year, subject to termination as provided in paragraph (a) or

further renewal by order of the court.

(8) SURRENDER OF FIREARMS.—

(a) Upon issuance of any risk protection order under this section, including an ex parte risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms in the respondent's custody, control, or possession and any license to carry a concealed weapon or firearm issued under s. 790.06.

(b) The law enforcement officer serving any risk protection order under this section, including an ex parte risk protection order, shall request that the respondent immediately surrender all firearms in his or her custody, control, or possession and any license to carry a concealed weapon or firearm issued under s. 790.06, and conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. Alternatively, if personal service by a law enforcement officer is not possible, or not required because the respondent was present at the risk protection order hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 48 hours of being served with the order by alternate service or within 48 hours of the hearing at which the respondent was present.

(c) At the time of surrender, a law enforcement officer taking possession of a firearm or license to carry a concealed weapon or firearm shall issue a receipt identifying all firearms that have been surrendered and provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the

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law enforcement officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.

(d) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms as required by an order issued under this section, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in his or her possession, custody, or control. If probable cause exists, the court shall issue a warrant describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to such search.

(e) If a person other than the respondent claims title to any firearms surrendered pursuant to this section, and he or she is determined by the law enforcement agency to be the lawful owner of the firearm, the firearm shall be returned to him or her, provided that:

1. The firearm is removed from the respondent’s custody, control, or possession and the lawful owner agrees to store the firearm in a manner such that the respondent does not have access to or control of the firearm.

2. The firearm is not otherwise unlawfully possessed by the owner.

(f) Upon the issuance of a risk protection order, the court shall order a new hearing date and require the respondent to appear not later than 3 business days from the issuance of the order. The court shall require a showing that the person subject

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to the order has surrendered any firearms in his or her custody, control, or possession. The court may dismiss the hearing upon a satisfactory showing that the respondent is in compliance with the order.

(g) All law enforcement agencies must develop policies and procedures by June 1, 2019, regarding the acceptance, storage, and return of firearms required to be surrendered under this section.

(9) RETURN AND DISPOSAL OF FIREARMS.—

(a) If a risk protection order is terminated or expires without renewal, a law enforcement agency holding any firearm that has been surrendered pursuant to this section shall return any surrendered firearm requested by a respondent only after confirming, through a background check, that the respondent is currently eligible to own or possess firearms under federal and state law and after confirming with the court that the risk protection order has terminated or has expired without renewal.

(b) A law enforcement agency must, if requested, provide prior notice of the return of a firearm to a respondent to family or household members of the respondent.

(c) Any firearm surrendered by a respondent pursuant to subsection (8) that remains unclaimed by the lawful owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

(10) REPORTING OF ORDERS.—

(a) The clerk of the court shall enter any risk protection order or ex parte risk protection order issued under this section into the uniform case reporting system on the same day

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such order is issued.

(b) The clerk of the court shall forward a copy of an order issued under this section the same day such order is issued to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the National Instant Criminal Background Check System, any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only expunge orders from the systems that have expired or terminated. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(c) The issuing court shall, within 3 business days after issuance of a risk protection order or ex parte risk protection order, forward a copy of the respondent's driver license or identification card, or comparable information, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department shall immediately revoke the license.

(d) If a risk protection order is terminated before its

expiration date, the clerk of the court shall forward the same day a copy of the termination order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the termination order. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to paragraph (b).

(11) PENALTIES.—

(a) Any person who files a petition under this section knowing the information in such petition to be materially false, or with the intent to harass the respondent commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b)1.a Except as provided in sub-subparagraph b., a person who has in his or her custody or control a firearm or purchases, possesses, or receives a firearm with knowledge that he or she is prohibited from doing so by an order issued under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

b. If a person has two or more previous convictions for violating an order issued under this section, the person 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 is convicted of an offense under this paragraph is prohibited from having a firearm in his or her custody or control or purchasing, possessing, or receiving, or attempting to purchase or receive a firearm for a period of 5 years after the date the existing order under this section expires.

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(12) LAW ENFORCEMENT RETAINS OTHER AUTHORITY.—This section does not affect the ability of a law enforcement officer to remove a firearm or license to carry a concealed weapon or firearm from any person or conduct any search and seizure for firearms pursuant to other lawful authority.

(13) LIABILITY.—Except as provided in subsection (11), this section does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining a risk protection order or ex parte risk protection order, including, but not limited to, reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition under this section.

(14) INSTRUCTIONAL AND INFORMATIONAL MATERIAL.—

(a) The Office of the State Courts Administrator shall develop and prepare instructions and informational brochures, standard petitions and risk protection order forms, and a court staff handbook on the risk protection order process. The standard petition and order forms must be used after June 1, 2019, for all petitions filed and orders issued under this section. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be based on best practices and available electronically online to the public.

1. The instructions must be designed to assist petitioners in completing the petition, and must include a sample of a standard petition and order for protection forms.

2. The instructions and standard petition must include a means for the petitioner to identify, with only layman's

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knowledge, the firearms the respondent may own, possesses, receive, or have in his or her custody or control. The instructions must provide pictures of types of firearms that the petitioner may choose from to identify the relevant firearms, or an equivalent means to allow petitioners to identify firearms without requiring specific or technical knowledge regarding the firearms.

3. The informational brochure must describe the use of and the process for obtaining, modifying, and terminating a risk protection order under this section, and provide relevant forms.

4. The risk protection order form must include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written application."

5. The court staff handbook must allow for the addition of a community resource list by the court clerk.

(b) All court clerks may create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court may make the community resource list available as part of or in addition to the informational brochures described in paragraph (a).

(c) The Office of the State Courts Administrator shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks. Distribution of all documents shall, at a minimum, be in an electronic format or formats accessible to all courts and court

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clerks in the state.

(d) The Office of the State Courts Administrator shall determine the significant non-English-speaking or limited English-speaking populations in the state. The office shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English-speaking populations or limited English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by December 1, 2018.

(e) The Office of the State Courts Administrator shall update the instructions, brochures, standard petition and risk protection order forms, and court staff handbook as necessary, including when changes in the law make an update necessary.

========== 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 veteran identification and gun safety; providing intent; providing a short title; creating s. 790.401, F.S.; defining terms; creating an action known as a petition for a risk protection order to prevent persons who are at high risk of harming themselves or others from accessing firearms; providing requirements for petitions for such orders; providing duties for courts and clerks of court; prohibiting fees for filing of such petitions;

providing for jurisdiction for such petitions; requiring hearings on petitions within a specified period; providing for service; providing grounds that may be considered in determining whether to grant such a petition; providing requirements for proceedings; providing requirements for such orders; providing for ex parte orders in certain circumstances; providing for service of orders; providing for termination or renewal of an order; providing for the surrender and storage of firearms after issuance of such an order; requiring law enforcement agencies to develop certain policies and procedures by a certain date; providing for return of firearms upon termination of an order; requiring the reporting of such an order to specified agencies; requiring the termination of a license to carry a concealed weapon or firearm that is held by a person subject to such an order; prohibiting a person from knowingly filing a petition for such an order which contains materially false or misleading statements; providing criminal penalties; prohibiting violations of such an order; providing criminal penalties; prohibiting persons convicted of violating such an order from possessing a firearm for a specified period; providing construction; providing that provisions do not create liability for certain acts or omissions; requiring development and distribution of certain instructional and informational material; creating s.

By Senator Baxley

12-00262B-18 2018328__

A bill to be entitled

An act relating to veteran identification; creating s. 322.0511, F.S.; requiring the Department of Highway Safety and Motor Vehicles to create a veteran identification card for certain purposes; providing for the design of the card; providing veteran eligibility requirements; providing for fee disposition; prohibiting use of the card for certain purposes; providing for termination of the card; providing for future repeal; amending ss. 472.015, 493.6105, 493.6107, 493.6202, 493.6302, 493.6402, 501.015, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, 559.928, and 626.171, F.S.; authorizing use of the card as proof of veteran status for obtaining waivers of license or registration fees relating to land surveying and mapping, private investigation services, private security services, repossession services, health studios, commercial telephone sellers or entities providing substance abuse marketing services, salespersons, movers and moving brokers, the sale of liquefied petroleum gas, pawnbrokers, motor vehicle repair shops, sellers of travel, and insurance representatives; amending s. 790.06, F.S.; authorizing use of the card as proof of veteran status for expedited processing of an application for a license to carry a concealed weapon or firearm; providing an effective date.

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

12-00262B-18 2018328__

Section 1. Section 322.0511, Florida Statutes, is created to read:

322.0511 Veteran identification cards.—

(1) The department, in cooperation with the Department of Veterans' Affairs, shall create a veteran identification card to be used as proof of veteran status for the purpose of obtaining discounts or waivers offered to veterans for the exchange of goods and services and for other purposes authorized by law, except as provided in subsection (3). The veteran identification card must bear the colors and design approved by the department, including, but not limited to, a full-face photograph of the veteran and his or her full name, branch of service, and date of discharge. The words "Proof of veteran status" must appear at the bottom of the card.

(2) The department shall issue a veteran identification card by mail to a veteran of any branch of the United States Armed Forces who has been honorably discharged and who provides to the department all of the following:

(a) A copy of the veteran's DD Form 214, as issued by the United States Department of Defense.

(b) A copy of the veteran's valid, unexpired driver license or identification card issued under this chapter or another form of photographic identification acceptable to the department.

(c) Payment of a $10 fee, which shall be deposited into the Highway Safety Operating Trust Fund.

(3) A veteran identification card issued pursuant to this section is not considered an identification card for the purposes of s. 295.17 or s. 322.051 and may not be used for the

determination of any federal benefit.

(4) A veteran identification card issued pursuant to this section shall be terminated upon the death of the veteran.

(5) This section is repealed August 31, 2023.

Section 2. Paragraph (b) of subsection (3) of section 472.015, Florida Statutes, is amended to read:

472.015 Licensure.—

(3)

(b) The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 3. Paragraph (c) of subsection (1) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(1) Each individual, partner, or principal officer in a corporation, shall file with the department a complete application accompanied by an application fee not to exceed $60, except that the applicant for a Class "D" or Class "G" license is not required to submit an application fee. The application fee is not refundable.

(c) The initial application fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class "C," Class "CC," Class "DI," Class "E," Class "EE," Class "K," Class "M," Class "MA," Class "MB," Class "MR," or Class "RI" license within 24 months after being discharged from a branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans'

Affairs with his or her application in order to obtain a waiver.

Section 4. Subsection (6) of section 493.6107, Florida Statutes, is amended to read:

493.6107 Fees.—

(6) The initial license fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class "M" or Class "K" license within 24 months after being discharged from any branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs with his or her application in order to obtain a waiver.

Section 5. Subsection (4) of section 493.6202, Florida Statutes, is amended to read:

493.6202 Fees.—

(4) The initial license fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class "C," Class "CC," or Class "MA" license within 24 months after being discharged from any branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs with his or her application in order to obtain a waiver.

Section 6. Subsection (4) of section 493.6302, Florida Statutes, is amended to read:

493.6302 Fees.—

(4) The initial license fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class "D," Class "DI," or Class "MB" license within 24 months after being discharged from any branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs with his or her application in order to obtain a waiver.

Section 7. Subsection (4) of section 493.6402, Florida Statutes, is amended to read:

493.6402 Fees.—

(4) The initial license fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class "E," Class "EE," Class "MR," or Class "RI" license within 24 months after being discharged from any branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs with his or her application in order to obtain a waiver.

Section 8. Subsection (2) of section 501.015, Florida Statutes, is amended to read:

501.015 Health studios; registration requirements and fees.—Each health studio shall:

(2) Remit an annual registration fee of $300 to the

department at the time of registration for each of the health studio's business locations. The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver:~~,~~

(a) A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

(b) The spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

(c) A business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if

applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 9. Paragraph (b) of subsection (5) of section 501.605, Florida Statutes, is amended to read:

501.605 Licensure of commercial telephone sellers and entities providing substance abuse marketing services.—

(5) An application filed pursuant to this part must be verified and accompanied by:

(b) A fee for licensing in the amount of $1,500. The fee shall be deposited into the General Inspection Trust Fund. The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department

of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 10. Paragraph (b) of subsection (2) of section 501.607, Florida Statutes, is amended to read:

501.607 Licensure of salespersons.—

(2) An application filed pursuant to this section must be verified and be accompanied by:

(b) A fee for licensing in the amount of $50 per salesperson. The fee shall be deposited into the General Inspection Trust Fund. The fee for licensing may be paid after the application is filed, but must be paid within 14 days after the applicant begins work as a salesperson. The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch

of the United States Armed Forces. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 11. Paragraph (b) of subsection (3) of section 507.03, Florida Statutes, is amended to read:

507.03 Registration.—

(3)

(b) The department shall waive the initial registration fee

for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to

the veteran at the time of discharge.

Section 12. Paragraph (b) of subsection (3) of section 527.02, Florida Statutes, is amended to read:

527.02 License; penalty; fees.—

(3)

(b) The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214,

as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 13. Paragraph (c) of subsection (3) of section 539.001, Florida Statutes, is amended to read:

539.001 The Florida Pawnbroking Act.—

(3) LICENSE REQUIRED.—

(c) Each license is valid for a period of 1 year unless it is earlier relinquished, suspended, or revoked. Each license shall be renewed annually, and each licensee shall, initially and annually thereafter, pay to the agency a license fee of $300 for each license held. The agency shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the agency receives an application, in a format prescribed by the agency, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver:~~,~~

1. A veteran must provide to the agency a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse of a veteran must provide to the agency a

copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the agency proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 14. Paragraph (b) of subsection (3) of section 559.904, Florida Statutes, is amended to read:

559.904 Motor vehicle repair shop registration; application; exemption.—

(3)

(b) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To

qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 15. Paragraph (c) of subsection (2) of section 559.928, Florida Statutes, is amended to read:

559.928 Registration.—

(2)

(c) The department shall waive the initial registration fee

for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, his or her veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, the veteran's veteran identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to

the veteran at the time of discharge.

Section 16. Subsection (6) of section 626.171, Florida Statutes, is amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.—

(6) Members of the United States Armed Forces and their spouses, and veterans of the United States Armed Forces who have retired within 24 months before application for licensure, are exempt from the application filing fee prescribed in s. 624.501. Qualified individuals must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran identification card, veteran record, discharge paper, or separation document, or a separation document that indicates such members of the United States Armed Forces are currently in good standing or were honorably discharged.

Section 17. Paragraph (f) of subsection (5) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.—

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

(f) For expedited processing of an application:

1. A servicemember shall submit a copy of the Common Access Card, United States Uniformed Services Identification Card, or current deployment orders.

2. A veteran shall submit a copy of the DD Form 214, issued by the United States Department of Defense, the veteran

identification card issued pursuant to s. 322.0511, or another acceptable form of identification as specified by the Department of Veterans' Affairs.

Section 18. This act shall take effect January 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

SB 328
Bill Number (if applicable)

125810
Amendment Barcode (if applicable)

Topic Vet Id / EXP CWP

Name Stephanie Owens

Job Title Legislative Advocate

Address _____ Phone 7276391243
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters 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)

2/22/18
Meeting Date

328
Bill Number (if applicable)

125810
Amendment Barcode (if applicable)

Topic Veterans Veteran I.D.

Name Angie Gallo

Job Title Legislation Chair

Address 1747 Orlando Central Pkwy
Street

Orl FL 32809
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2·22·18
Meeting Date

328
Bill Number (if applicable)

118946
Amendment Barcode (if applicable)

Topic Vet Id/ EXP CWP

Name Stephanie Owens

Job Title Legislative Advocate

Address _____
Street

Phone 7276391243

_____
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters 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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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/22/18
Meeting Date

SB 328
Bill Number (if applicable)

118946
Amendment Barcode (if applicable)

Topic Veteran

Name Government Affairs Manager

Job Title

Address
Street

Phone 850 681 0980

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

328
Bill Number (if applicable)

118946
Amendment Barcode (if applicable)

Topic Veteran ID

Name Angie Gallo

Job Title Legislation Chair

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

328
Bill Number (if applicable)

894042
Amendment Barcode (if applicable)

Topic ~~Veterans~~ Veteran ID.

Name Angie Gallo

Job Title Legislation Chair

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 328
Bill Number (if applicable)

896042
Amendment Barcode (if applicable)

Topic Veteran

Name Jon Harris Maurer

Job Title Government Affairs Manager

Address _____
Street

Phone 850 681 0980

_____
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

328
Bill Number (if applicable)

896042
Amendment Barcode (if applicable)

Topic Vet Id / EXP CWP

Name Stephanie Owens

Job Title Legislative Advocate

Address _____
Street

Phone 727 639 1243

_____
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LEAGUE of Women Voters FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

324
Bill Number (if applicable)

Topic Veteran ID

Amendment Barcode (if applicable)

Name Bill Helmick

Job Title

Address 303 Johns Dr
Street

Tallahassee FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Legion & VFW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 328
Bill Number (if applicable)

12581 0
Amendment Barcode (if applicable)

Topic Veterans

Name Jon Harris Maurer

Job Title Government Affairs Manager

Address 201 E. Park Ave., Ste. 200
Street

Phone 850 681 0980

Tallahassee, FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 408
INTRODUCER:	Senator Flores
SUBJECT:	Licensure of Cardiovascular Programs
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.	Kidd	Williams	AHS	**Recommend: Favorable**
3.	Kidd	Hansen	AP	**Favorable**

I. Summary:

SB 408 reduces the number of adult inpatient and outpatient diagnostic cardiac catheterizations, from 300 to 100, that a hospital located more than 100 road miles from the nearest hospital offering Level II adult cardiovascular services (ACS) must provide in a 12-month period in order to become licensed as a Level I ACS program. A Level I program performs adult percutaneous cardiac interventions without onsite cardiac surgery.[1]

Currently, only the Lower Keys Medical Center would qualify for this exemption.[2]

Additionally, the bill amends the requirements for the licensure of all Level I programs to include both inpatients and outpatients when determining the volume of patients that have been discharged or transferred with a principal diagnosis of ischemic heart disease.

The bill has no impact on state revenues or expenditures.

The bill takes effect on July 1, 2018.

II. Present Situation:

Hospitals are regulated by the Agency for Health Care Administration (AHCA) under ch. 395, F.S., and the general licensure provisions of part II of ch. 408, F.S. Hospitals are subject to the certificate of need (CON) provisions in part I of ch. 408, F.S. A CON is a written statement

[1] Percutaneous coronary intervention, also known as coronary angioplasty, is a nonsurgical technique for treating obstructive coronary artery disease, including unstable angina, acute myocardial infarction, and multivessel coronary artery disease. See Medscape: Percutaneous cardiac intervention, *available at* http://emedicine.medscape.com/article/161446-overview, (last visited Dec. 1, 2017).

[2] AHCA, *Senate Bill 408 Analysis* (Nov. 8, 2017) (on file with the Senate Committee on Health Policy).

issued by the AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service.[3]

Adult cardiovascular services (ACS) were previously regulated through the CON program.[4] However, in 2004, the Legislature established a licensure process for adult interventional cardiology services (the predecessor terminology for ACS), dependent upon rulemaking, in lieu of the CON procedure.[5]

Among other things, that law required the rules to establish two hospital program licensure levels: a Level I program and a Level II program.[6]

A hospital with Level I ACS designation on its license provides diagnostic and therapeutic cardiac catheterization procedures on a routine and emergency basis. A Level I hospital does not have the capability to perform open heart surgery, and by rule can provide the same routine and emergency cardiac catheterization services as a Level II (with open heart surgery capability) hospital except for the higher risk trans septal punctures and lead extractions of implanted devices. A Level I hospital qualifies for the designation by confirming compliance with national guidelines established by the American College of Cardiology and the American Heart Association, and having a transfer agreement with a Level II hospital in which a patient needing the higher level of care can be transferred within 60 minutes.[7]

Currently, in order to be designated as a Level I hospital, the hospital must perform at least 300 diagnostic cardiac catheterization sessions during the most recent 12-month period, or transfer or discharge at least 300 inpatients with the principal diagnosis of ischemic heart disease. For these metrics, the diagnostic cardiac catheterization sessions may include inpatients and outpatients in the total count, but the patients with ischemic heart disease must be inpatients. The criteria cannot be met by combining the two volume options - either the sessions volume is met or the inpatient principal diagnosis volume is met. Once a hospital obtains the designation it does not need to verify volume thresholds to maintain the designation.[8] Subsection 408.0361(3), F.S., allows a hospital more than 100 road miles from the closest Level II hospital to qualify for Level I designation if all criteria is met except for the emergency transfer of patients within 60 minutes.

III. Effect of Proposed Changes:

This bill amends s. 408.0361, F.S., to exempt a hospital that is more than 100 road miles from the nearest hospital offering Level II ACS from patient or procedure volume requirements in order to be licensed as a Level I ACS provider. The hospital must still demonstrate, for the most recent 12-month period as reported to the AHCA, that:

[3] Section 408.032(3), F.S.
[4] *See* s. 408.036(3)(m) and (n), F.S., allowing for an exemption from the full review process for certain adult open-heart services and PCI services.
[5] Chapter 2004-383, s. 7, Laws of Fla.
[6] Level I and Level II ACS programs may also perform adult diagnostic cardiac catheterization in accordance with Rule 59A-3.2085(13), F.A.C. Adult diagnostic cardiac catheterization involves the insertion of a catheter into one or more heart chambers for the purpose of diagnosing cardiovascular diseases.
[7] Supra note 2
[8] Supra note 2

- It has provided a minimum of 100 adult inpatient and outpatient cardiac catheterizations rather than 300; or
- It has discharged or transferred at least 300 patients with the principal diagnosis of ischemic heart disease.

Currently, only the Lower Keys Medical Center would qualify for this exemption.[9]

Additionally, the bill amends the requirements for the licensure of all Level I programs to include both inpatients and outpatients when determining the volume of patients that have been discharged or transferred with a principal diagnosis of ischemic heart disease. This will allow patients who have been transferred prior to admission to the hospital as an inpatient to be included in the counts.

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:

SB 408 may have a positive fiscal impact on a hospital that is able to be licensed as a Level I program under the changes made in the bill.

C. Government Sector Impact:

The bill does not impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

[9] Supra note 2

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 408.0361of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Flores

39-00427-18 2018408__

A bill to be entitled

An act relating to licensure of cardiovascular programs; amending s. 408.0361, F.S.; establishing additional criteria that must be included by the Agency for Health Care Administration in rules relating to adult cardiovascular services at hospitals seeking licensure for a Level I program; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 408.0361, Florida Statutes, is amended to read:

408.0361 Cardiovascular services and burn unit licensure.—

(3) In establishing rules for adult cardiovascular services, the agency shall include provisions that allow for:

(b) For a hospital seeking a Level I program, demonstration that, for the most recent 12-month period as reported to the agency, it has provided a minimum of 300 adult inpatient and outpatient diagnostic cardiac catheterizations or, for the most recent 12-month period, has discharged or transferred at least 300 patients ~~inpatients~~ with the principal diagnosis of ischemic heart disease and that it has a formalized, written transfer agreement with a hospital that has a Level II program, including written transport protocols to ensure safe and efficient transfer of a patient within 60 minutes. However, a hospital located more than 100 road miles from the closest Level II adult cardiovascular services program:

1. May demonstrate that, for the most recent 12-month

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period as reported to the agency, it has provided a minimum of 100 adult inpatient and outpatient diagnostic cardiac catheterizations, or for the most recent 12-month period has discharged or transferred at least 300 patients with the principal diagnosis of ischemic heart disease.

2. Does not need to meet the 60-minute transfer time protocol if the hospital demonstrates that it has a formalized, written transfer agreement with a hospital that has a Level II program. The agreement must include written transport protocols to ensure the safe and efficient transfer of a patient, taking into consideration the patient's clinical and physical characteristics, road and weather conditions, and viability of ground and air ambulance service to transfer the patient.

Section 2. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: January 22, 2018

I respectfully request that **Senate Bill #408**, relating to Licensure Cardiovascular Program, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 39

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/2018
Meeting Date

408
Bill Number (if applicable)

Topic Licensure of Cardiovascular Programs

Amendment Barcode (if applicable)

Name Ellen N. Anderson

Job Title Director of Govt. Relations

Address 106 E. College Ave Suite 1650
Street

Phone 850.228.7959

Tallahassee FL 32301
City *State* *Zip*

Email ellen_anderson@chs.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Community Health Systems

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 438 (583222)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Lee and Campbell
SUBJECT:	Continuing Care Contracts
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AGG	**Recommend: Fav/CS**
3.	Sanders	Hansen	AP	**Pre-meeting**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 438 revises provisions within the Insurance Code governing continuing care retirement communities (CCRC) or providers, which are regulated by the Office of Insurance Regulation (OIR). Generally, the CCRCs provide lifelong housing, household assistance, and nursing care in exchange for a significant entrance fee and monthly fees. The CCRCs appeal to older Americans because they offer an independent lifestyle for as long as possible but also provide the reassurance that, as residents age or become sick or frail, they will receive the care they need.

The bill provides the following changes throughout ch. 651, F.S., relating to CCRCs:

Solvency/Financial Accountability:

- The bill creates an impairment framework to allow the OIR to work with the provider much earlier when negative financial trends are identified in order to mitigate or resolve any potential issues that would put residents' interests in jeopardy.
- The bill specifies that a provider is deemed to be experiencing a regulatory action level event and must submit a corrective action to the OIR if the provider's performance fails to meet certain requirements.
- The OIR must examine the provider and issue a corrective order specifying any corrective actions that the OIR deems necessary.

- Effective July 1, 2019, a provider is considered impaired if it does not meet the minimum liquid reserves requirements or debt service coverage ratios, as applicable.

Protections and Transparency for Residents:
- The bill requires the provider to make additional information, notices, and reports available to the residents or residents' council.
- The bill also provides an expanded process for resident complaints against providers, including the establishment of a complaint tracking system and a requirement that the OIR provide a written report to the complainant upon the disposition of a complaint.
- The bill provides the OIR with additional authority to approve or disapprove management. The bill would also allow the OIR to revoke, suspend, or take other administrative action in the event a CCRC does not remove a manager in a timely manner by the CCRC.

Regulatory Oversight:
- The bill clarifies the duty of a provider to respond to written correspondence from the OIR.
- The bill provides that the OIR has standing to petition a circuit court for mandatory injunctive relief to compel access to and require a provider to produce requested records.
- The bill provides that, if a facility or provider relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate that the financial condition of the provider or facility complies with ch. 651, F.S., the OIR is authorized to examine these entities.
- The bill clarifies and streamlines existing regulatory requirements. For example, the bill consolidates the application process for the acquisition of a facility and the issuance of certificate of authority (COA) into a single application.

The bill appropriates $74,141 from the Insurance Regulatory Trust Fund and one position with associated salary rate of 45,043. The OIR estimates it will need to modify current technology systems, which can be absorbed within existing resources.[1]

The bill provides an effective date of July 1, 2018.

II. Present Situation:

Continuing Care Retirement Communities (CCRC)

A provider or a CCRC offer shelter and nursing care or personal services upon the payment of an entrance fee.[2] The CCRCs offer a transitional approach to the aging process, accommodating residents' changing level of care. A CCRC can include independent living apartments or houses, as well as an assisted living facility or a nursing home. The CCRCs may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.[3] In addition to the entrance fee, a CCRC also generally

[1] Conversation with Richard Fox, Budget Director, Office of Insurance Regulation (February 5, 2018).
[2] Section 651.011(2), F.S.
[3] Sections 651.057 and 651.118, F.S.

charges residents monthly fees to cover costs related to health care and other aspects of community living. [4]

Regulatory oversight responsibility of CCRCs in Florida is shared primarily between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR).[5] The OIR regulates CCRC providers[6] as specialty insurers. The AHCA regulates aspects of CCRCs related to the provision of health care, such as nursing facilities, assisted living facilities, home health agencies, quality of care, and medical facilities.[7]

There are currently 70 licensed continuing care retirement communities in Florida.[8] About 30,000 residents live in CCRCs.[9]

Oversight by the Office of Insurance Regulation

Continuing care services are governed by a contract between the facility and the resident of a CCRC. In Florida, continuing care contracts are considered an insurance product and are reviewed and approved by the OIR.[10]

Certificate of Authority (COA)

The OIR has primary responsibility to regulate and monitor the operation of CCRCs and to determine facilities' financial condition and the management capabilities of their managers and owners.[11] If a provider is accredited through a process "substantially equivalent" to the requirements of ch. 651, F.S., the OIR may waive requirements of the chapter.[12]

In order to operate a CCRC in Florida, a provider must obtain from the OIR a COA predicated upon first receiving a provisional certificate of authority.[13] The application process involves submitting various financial statements and information, expectations of the financial condition of the project, and copies of contracts.[14] Further, the applicant must provide evidence that the applicant is reputable and of responsible character.[15] A certificate of authority will be issued once a provider meets the requirements prescribed in s. 651.023, F.S.[16]

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[4] AARP, *About Continuing Care Retirement Communities*, available at http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last viewed Jan. 7, 2018).
[5] Chapter 651, F.S.
[6] Section 651.011(12), F.S., a provider means an owner or operator.
[7] Agency for Health Care Administration reports, available at *http://www.floridahealthfinder.gov/reports-guides/nursinghomesfl.aspx* (last viewed Jan. 7, 2018) and s. 651.118, F.S.
[8] Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (Aug. 2017), available at https://www.floir.com/siteDocuments/CCRCAdvisoryCouncilOIRPresentation08172017.pdf (last viewed Jan. 11, 2018).
[9] *Id.*
[10] Section 651.055(1), F.S.
[11] See ss. 651.021, 651.22, and 651.023, F.S.
[12] Section 651.028, F.S.
[13] Section 651.022, F.S.
[14] See ss. 651.021-651.023, F.S.
[15] Section 651.022(2)(c), F.S.
[16] Section 651.023(4)(a), F.S.

Continuing Care Contracts

A CCRC enters into contracts with seniors (residents) to provide housing and medical care in exchange for an entrance fee and monthly fees. Entrance fees are a significant commitment by the resident as entrance fees range from around $100,000 to over $1 million. The CCRCs offer different types of contracts that provide for varying amounts of monthly fees and levels of healthcare discounts.

All CCRC contracts provide for a refund of a declining portion of the entrance fee if the contract is cancelled for reasons other than the death of the resident, during the first four years of occupancy in the CCRC by the resident.[17] However, many contracts exceed this requirement and contain minimum refund provisions that guarantee a refund of a specified portion (typically 50 to 90 percent) of the entrance fee upon the death of the resident or termination of the contract regardless of the length of occupancy by the resident.[18]

Financial Requirements/Solvency

Each CCRC is required to file an annual report with the OIR, which includes an audited financial report and other detailed financial information, such as a listing of assets maintained in the liquid reserve required under s. 651.035, F.S., and information about fees required of residents.[19] Section 651.033, F.S., prescribes requirements relating to the establishment and maintenance of escrow accounts. Providers are required to maintain a minimum liquid reserve, as applicable, as prescribed in s. 651.035, F.S.

Rights of Residents in a Continuing Care Retirement Community

The OIR is authorized to discipline a facility for violations of residents' rights.[20] These rights include: a right to live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community; and present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.[21]

Each CCRC must establish a resident's council to provide a forum for residents' input on issues that affect the general residential quality of life, such as the facility's financial trends, and problems, as well as proposed changes in policies, programs, and services.[22] The CCRCs are required to maintain and make available certain public information and records.[23]

[17] Section 651.055, F.S.
[18] *See* Office of Insurance Regulation, *Analysis of SB 438* (Oct. 11, 2017) (on file with the Senate Committee on Banking and Insurance).
[19] Section 651.026, F.S.
[20] Section 651.083, F.S.
[21] *Id*.
[22] Section 651.081, F.S.
[23] Section 651.091, F.S.

OIR Enforcement Authority

If a provider fails to meet the requirements of ch. 651, F.S., relating to a provisional certificate of authority or a COA, the OIR must notify the provider of any deficiencies and require the provider to take corrective action within a period determined by the OIR. If the provider does not correct the deficiencies by the expiration of such time required by the OIR, the OIR may initiate delinquency proceedings as provided in s. 651.114, F.S., or seek other relief provided under ch. 651, F.S. The OIR may deny, suspend, or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider for grounds specified in s. 651.106, F.S**.**

If the OIR institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider. Such claims are subordinate, however, to any secured claim. Florida law does not specify the claim status of continuing care contracts in a bankruptcy proceeding.

Department of Financial Services

The Department of Financial Services (DFS) may become involved with a resident after a CCRC contractual agreement has been signed by both parties or during a mediation or arbitration process.[24] Typically, residents will contact the DFS's Division of Consumer Services, which receives and resolves complaints involving products and entities regulated by the OIR or the DFS.[25]

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law provides that insurance companies are not eligible to be a debtor in federal bankruptcy proceedings and are instead subject to state laws regarding receivership. In Florida, the Division of Rehabilitation and Liquidation (division) within the DFS is responsible for managing insurance companies placed into receivership. The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay claims, including those of policyholders, creditors, and employees.

III. Effect of Proposed Changes:

Section 1 amends s. 651.011, F.S., to create definitions of the following terms: actuarial opinion, actuarial study, actuary, corrective order, days cash on hand, debt service coverage ratio, impaired, manager or management company, obligated group, occupancy, and regulatory action level event. The term, "impaired," means any of the following has occurred:

- A provider has failed to maintain its minimum liquid reserve as required in s. 651.035, F.S., unless the provider has received prior written approval from the office for a withdrawal pursuant to s. 651.035(6), F.S., and is compliant with the approved payment schedule; or
- Beginning July 1, 2019:
  - For a provider with mortgage financing from a third-party lender or public bond issue, the provider's debt service coverage ratio is less than 1:1 and the provider's days cash on hand is less than 90; or

[24] *See* Rules 69O-193.062 and 69O-193.063, F.A.C.
[25] Section 624.307, F.S.

- For a provider without mortgage financing from a third-party lender or public bond issue, the provider's days cash on hand is less than 90.

Solvency/Financial Accountability

Section 12 amends s. 651.026, F.S., to provide that the annual report submitted to the Office of Insurance Regulation (OIR) must include the reporting of the management's calculation of the provider's debt service coverage ratio and days cash on hand for the current reporting period, and an opinion from an independent certified public accountant of the management's calculations. The OIR is required to publish an annual industry benchmarking report that contains specified information about the industry's performance.

Section 13 amends s. 651.0261, F.S., to codify the current discretionary monthly financial reporting rule[26] and revises the quarterly financial reporting requirements. This section provides the conditions that trigger a monthly financial reporting to the OIR. The OIR may waive the quarterly reporting requirements if a written request from a provider that is accredited or that has obtained an investment grade credit rating from a U.S. credit rating agency. Further, the section requires a provider to submit a detailed listing of assets in the minimum liquid reserve with the quarterly and monthly unaudited financial statement filings, if applicable, which will enable the OIR to determine whether the provider is impaired and to take action to assist providers who may fall below the impairment threshold.

Section 14 amends s. 651.028, F.S., relating to waivers of ch. 651, F.S., requirements. The section provides that if a provider or obligated group has obtained an investment grade credit rating from Moody's Investors Services, Standard & Poor's, or Fitch Ratings, the OIR may waive any requirements of ch. 631, F.S., if the OIR finds that such waivers are not inconsistent with the protections intended by this chapter. Currently, the OIR may waive ch. 631, F.S., requirements if a provider is accredited.

Section 15 amends s. 651.033, F.S., to clarify the terms and conditions relating to an escrow account and the duties of escrow agents. The section provides that an escrow agent must receive the OIR's prior approval before releasing escrowed funds with some exceptions. According to the OIR, these changes are based on conversations with escrow agents who expressed confusion over their statutory responsibilities because some of the requirements are beyond those customarily undertaken by escrow agents. The section also clarifies permissible investments (e.g., cash, cash equivalents, mutual funds, equities, or investment grade bonds) of escrowed funds and removes references to part II of ch. 625, F.S.

Section 16 creates s. 651.034, F.S., to establish a financial and operating framework of required actions if a regulatory action level event or impairment occurs. A regulatory action level event occurs when a provider fails to meet minimum requirements of two of the three following key indicators: occupancy rate, day's cash on hand, and debt service coverage ratios. If the provider is a member of an obligated group with an investment grade credit rating, the indicators of the obligated group may be substituted. Once a regulatory action level event is triggered, the OIR is

[26] Rule 69O-193.005, F.A.C.

required to examine the provider, review the provider's corrective action plan, and issue a corrective order specifying any corrective actions that the OIR deems necessary.

Further, this section details the information the provider must submit to the OIR if a regulatory action level event occurs, which would include the submission of a corrective action plan within 30 days after the regulatory action level event. The OIR must approve or disapprove the corrective plan within 15 days. If an impairment occurs, the OIR must take action, which could include "any remedy available under ch. 631, F.S." An impairment is sufficient grounds for the Department of Financial Services (DFS) to be appointed as receiver, as provided in ch. 631, F.S. The section provides that the OIR may exempt a provider from provisions relating to the regulatory action level event and impairment if certain conditions are met.

Section 17 amends s. 651.035, F.S., relating to the minimum liquid reserve requirements and reporting. Each facility must file annually with the OIR a calculation of the minimum liquid reserve along with the annual report. The section allows a provider to withdraw funds held in escrow without the approval of the OIR if the amount in escrow exceeds the requirements of this section and the withdrawal will not affect compliance with this section. For all other proposed withdrawals, the provider must file information documenting the necessity of the withdrawal. Within 30 days after the file is deemed complete, the OIR must notify the provider of its approval or disapproval of the withdrawal request. The section also requires a provider that does not have a mortgage loan or other financing on the facility, to deposit monthly in escrow one-twelfth of its annual property tax liability. This change modifies the current requirement that a provider hold funds equivalent to one year's property taxes in escrow as a reserve. The section authorizes the OIR to require the transfer of up to 100 percent of the funds held in the minimum liquid reserve to the custody of the Bureau of Collateral Management of the DFS if the OIR finds that the provider is impaired or insolvent in order to ensure the safety of those assets.

Section 27 amends s. 651.114, F.S., relating to delinquency proceedings and remedial rights. A provider must develop a plan for obtaining compliance or solvency within 30 days after a request from the advisory council or the office. The OIR or advisory council is required to respond within 30 days after receipt of a plan. If the financial conditions of the provider is impaired or the provider fails to submit a plan or submits a plan that is insufficient to correct the condition, the OIR may specify a plan. However, the section clarifies that the availability of remedial rights will not delay or prevent the OIR from taking regulatory measures it deems necessary.

The section requires a provider to give residents a written notice of a delinquency proceeding under ch. 631, F.S., within three business days of initiation. If a ch. 631, F.S., show cause order is issued, the provider must respond within 20 days after service, but no less than 15 days prior to the hearing. Any hearing must be held within 60 days after the order to show cause. A hearing to determine whether cause exists for DFS to be appointed a receiver must be commenced within 60 days after an order directing a provider to show cause. Further, the section provides that, notwithstanding s. 631.011, F.S., impairment of a provider, for purposes of s. 631.051, F.S., is defined according to the term, "impaired" in s. 651.011, F.S.

Regulatory Oversight

Section 3 amends s. 651.013, F.S., to expand the scope of laws applicable to continuing care retirement communities (CCRCs). Sections 624.307, 624.308, 624.310, 624.102, 624.311, 624.312, 624.318 and 624.422, F.S., are added. These provisions provide the OIR with additional authority to take enforcement authority against licensed entities, affiliates, and unlicensed entities subject to OIR's regulation. Further, these provisions specify that CCRCs must appoint the Chief Financial Officer for service of process; clarify the role of the DFS Division of Consumer Services in resolving consumer complaints; specify requirements for the retention of records by the OIR; and provide immunity from civil liability for persons providing the DFS, Financial Services Commission (FSC), or the OIR with information about the condition of an insurer and clarify the authority of the OIR in regards to examinations and investigations. Section 624.318, F.S., which applies generally to insurers, provides that it is the duty of every person being examined, and its officers, attorneys, employees, agents, and representatives, to "make freely available" to the OIR the accounts, records and documents during an examination or investigation. This section also specifies, "any individual who willfully obstructs the DFS, the OIR, or the examiner in the examinations or investigations authorized by this part is guilty of a misdemeanor." Finally, s. 624.312, F.S., provides that reproductions and certified copies of records are admissible as evidence. These requirements are consistent with the oversight of other licensees and consumer complaint handling subject to the Insurance Code.

Section 5 amends s. 651.021, F.S., which relates to the certificate of authority process, to move provisions relating to expansion of a certified facility to the newly created s. 651.0246, F.S.

Section 6 creates s. 651.0215, F.S., to allow an applicant to qualify for a certificate of authority without first obtaining a provisional certificate of authority if the following conditions are met:

- Placement of all reservation deposits and entrance fees in escrow and not pledging initial entrance fees for construction or purchase of the facility or a security for long-term financing;
- Compliance with the requirement of s. 651.022(2), F.S.;
- Submission of a feasibility study, financial forecasts or projections, an audited financial report, and quarterly unaudited financial reports;
- Evidence of compliance with lenders' conditions;
- Documentation evidencing that aggregate amount of entrance fee received by or pledged by the applicant and other specified sources equal at 100 percent of the aggregate cost of constructing, acquiring, equipping, and furnishing the facility plus 100 percent of the anticipated losses of the facility;
- Evidence that the applicant will meet minimum liquid requirements; and
- Such other reasonable data and information requested by the OIR.

Section 7 amends s. 651.022, F.S., which relates to the provisional certificate of authority process, to clarify that an applicant must disclose material changes that occur while a provisional certificate of authority application is pending before the OIR. This change is consistent with other requirements in the Insurance Code.

Section 8 amends s. 651.023, F.S., relating to the requirements for a certificate of authority application. After issuance of a provisional certificate of authority, the OIR will issue the holder a certificate of authority if the holder provides certain information. For example, an applicant

must submit a feasibility study that contains specified information, such as information evidencing commitments had been made for construction financing and long-term financing or a documented plan acceptable to the OIR. Further, audited financial reports are required. The bill clarifies the deadlines for the OIR's approval or denial of completed applications.

A certificate of authority may not be issued until documentation is submitted to the OIR evidencing the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee. In order for a unit to be considered reserved, the provider must collect a minimum deposit of the lesser of $40,000 or 10 percent of the then-current entrance fee for that unit. The provider may assess a forfeiture penalty of two percent of the entrance fee due to termination of the reservation contract after 30 days for any reason other than death or serious illness of the resident, the failure of the provider to meet obligations under the reservation contract, or other circumstances beyond the control of the resident.

Section 9 amends s. 651.024, F.S., relating to acquisitions, to clarify which filing or application for acquisition statutory provision applies to each type of transaction, including the new, consolidated provisions of s. 651.0245, F.S. The section clarifies that the assumption of the role of a general partner of a CCRC or the assumption of ownership, or possession of, or control over, 10 percent or more of a provider's assets requires an acquisition filing. However, this type of acquisition is not subject to the filing requirements pursuant to s. 651.022, s. 651.023, or s. 651.0245, F.S.

A person who seeks to acquire and become the provider for a facility will be subject to s. 651.0245, F.S., and will not be required to make filings pursuant to ss. 651.4615, 651.022, and 651.023, F.S. The section provides that a person may rebut a presumption of control by filing a disclaimer of control form with the OIR. The federal Securities and Exchange Commission (SEC) Schedule 13G form may be filed in lieu of a disclaimer of control form. This SEC filing is used to report a party's ownership of stock in a company. Insurers are permitted to use this filing, and some CCRCs have requested that the OIR accept such filings from them.

Section 10 creates s. 651.0245, F.S., to establish an application for the simultaneous acquisition of a facility and issuance of a certificate of authority. The section provides that a person must obtain the OIR's prior approval before acquiring a facility operating under an existing Certificate of Authority (COA) and engaging in the business of continuing care. Under current law, if a person applies to acquire an existing facility and become the provider, the person must submit an acquisition application, a provisional certificate of authority application, and a certificate of authority application. This section streamlines the application process by creating a single application.

Section 11 creates s. 651.0246, F.S., relating to expansions, to clarify the requirements and approval process. The section establishes requirements for an expansion of a facility equivalent to the addition of at least 20 percent of the existing units or 20 percent more continuing care at-home contracts. Such expansion applications will require the submission of a feasibility study to the OIR. The section prescribes the factors the OIR must consider in deciding whether to approve the application. It also requires 75 percent of the initial entrance fees/reservation deposits for continuing care contracts, and 50 percent of the moneys paid for initial fees for continuing care at-home contracts be placed in escrow or on deposit with the Department of

Financial Services (DFS). Up to 25 percent of these funds may be used for construction or financing. The escrow funds may be released once certain conditions are met. Only the provider, escrow agent, and the Office of Insurance Regulation (OIR) have standing under ch. 120, F.S., to seek redress regarding the OIR's decision regarding the release of escrow funds. The OIR has 90 days to review and act upon complete expansion applications. If a provider has exceeded the current statewide median for certain indicators, the provider is automatically granted authority to expand the total number of existing units by up to 35 percent upon submission of specified information and an attestation to the OIR.

Section 18 creates s. 651.043, F.S., relating to changes in management. This section establishes criteria for the OIR to use in determining whether management meets minimum qualification standards and allows for the disapproval and removal of unqualified management. This section requires management contracts be in writing and providers to file notices of a change in management within 10 days of the appointment of new management. The OIR must approve or disapprove the filing within 15 days after the filing is deemed complete. Disapproved management must be removed within 30 days after receipt of the OIR's notice. Currently, the OIR does not have authority to disapprove unaffiliated management except by taking action against the certificate of authority (COA) of the provider.

Effective July 1, 2018, management contracts must be in writing. Currently, Rule 690-193.002(13), F.A.C., specifies that a manager or management company agrees to administer the day-to-day activities of a facility pursuant to a written contract with the provider. However, the rule does not address situations where a manager or management company does not have a written contract with the provider. This change closes a loophole that has allowed management serving under an oral contract to evade regulation by the OIR.

Section 19 amends s. 651.051, F.S., to clarify the requirements relating to the maintenance of records and assets. The section provides that the records and assets of a provider must be maintained in Florida, or, if the provider's corporate office is located in another state, they must be electronically stored in a manner that will ensure the records are accessible to the OIR.

Section 23 amends s. 651.105, F.S., relating to examinations and inspections by the OIR. The section requires a provider to respond to written correspondence from the OIR. Further, the section provides that the OIR has standing to petition a circuit court for mandatory injunctive relief to compel access to and require a provider to produce requested records. Unless a provider or facility is impaired or subject to a regulatory level event, any parent, subsidiary, or affiliate is not subject to examination by the OIR as part of a routine examination. However, an exception is provided if a facility or provider relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate that the financial condition of the provider or facility is in compliance with ch. 651, F.S. The books and records of affiliates often reflect on the financial state of the provider and may be relevant to the ability of the continuing care retirement community (CCRC) to provide the care promised to residents.

Section 24 amends s. 651.106, F.S., to provide additional grounds for the OIR to refuse, suspend, or revoke a COA. The section provides that the OIR may deny an application, suspend, or revoke the provisional certificate of authority or certificate of authority if the provider is

impaired or the owners, managers, or controlling persons are not reputable or lack sufficient management expertise or experience to operate a CCRC. Other grounds are delineated.

Section 25 creates s. 651.1065, F.S., relating to soliciting or accepting new contracts by impaired or insolvent facilities or providers. This section prohibits an impaired or insolvent provider from soliciting or accepting new contracts after the proprietor, general partner, its member, officer, director, trustee, or manager knew, or reasonably should have known, that the CCRC is impaired or insolvent, even if a delinquency hearing had not been initiated. According to the OIR, this provision will help to protect potential residents who may be considering investing substantial funds into the purchase of a CCRC contract. The OIR will have discretion to allow the issuance of new contracts where safeguards are adequate unless the facility had declared bankruptcy. The provision provides that a violation of this section is a felony of the third degree, which is consistent with regulations for other insurance entities.

Section 28 creates s. 651.1141, F.S., to clarify that certain statutory violations are an immediate danger to the public health, safety, or welfare, which allows the OIR to issue an immediate final order to cease and desist. These violations are:

- Installation of a general partner of a provider or assumption of ownership or possession or control of 10 percent or more of a provider's assets in violation of s. 651.024, F.S., or s. 651.0245, F.S.;
- The removal or commitment of 10 percent or more for the required minimum liquid reserve funds in violation of s. 651.035, F.S.; or
- The assumption of control over a facility's operations in violation of s. 651.043, F.S., has occurred.

This section will allow the OIR to take more expedited action to protect the assets of the provider and the significant investments of the residents.

Section 30 amends s. 651.125, F.S., relating to criminal penalties and injunctive relief, to clarify that any person who assists in entering into, maintaining, or performing any continuing care or continuing care at-home contract subject to ch. 651, F.S., without a valid provisional certificate of authority or certificate of authority commits a felony of the third degree.

Increased Transparency and Protections for Residents

Section 4 amends s. 651.019, F.S., provisions relating to CCRC financing. A provider must notify the residents' council of any new financing or refinancing at least 30 days before the closing date of the transaction. This allows residents to object to financing transactions that concern them. Under current law, the residents' council receives notice of all financing documents filed with the OIR. Such documents must be submitted to the OIR within 30 days after the closing date to remove the perception that the OIR can prevent a provider from securing new financing, additional financing, or refinancing that may be hazardous to the residents. Currently, providers are required to file a general outline and intended use of proceeds with the OIR prior to the closing date of the financing.

Section 21 amends s. 651.071, F.S., to deem all continuing care and continuing care at-home contracts preferred claims or policyholder loss claims pursuant to s. 631.271(1)(b), F.S., in the

event the provider is liquidated or put into receivership. The intent of this provision is to protect the claims of residents in the event of a liquidation.

Section 22 amends s. 651.091, F.S., to create additional provider reporting requirements to the residents or residents' council. These reports will help residents and prospective residents to remain apprised of the status and stability of the provider and to take action to protect their interests. The section requires the provider to furnish information to the chair of the residents' council, such as, a notice of the issuance of any examination reports, a notice of the initiation of any legal or administrative proceedings by the OIR or the DFS, and the reasons for any increase in the monthly fee that exceeds the consumer price index.

Section 26 amends s. 651.111, F.S., relating to resident complaints and inspections by the OIR to provide more guidance as to inspections or investigations by the OIR regarding the status and resolution of the complaint. The section requires the OIR to acknowledge receipt of a complaint within 15 days and issue a written closure statement to the complainant upon the final disposition of the complaint.

Section 29 amends s. 651.121, F.S., relating to the Continuing Care Advisory Council, to increase the number of residents on the council from three to four and remove the requirement that one of the 10 members is an attorney.

Sections 2 and 20 provide technical, conforming changes.

Section 31 provides the bill takes effect July 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 bill provides additional consumer protections for current and potential residents of a continuing care retirement community (CCRC).

A CCRC whose performance falls below the key indicators may incur increased costs in providing additional information to the OIR. Costs of acquisition may decrease due to the consolidation of the three filings currently required into one filing.

C. Government Sector Impact:

Office of Insurance Regulation. The OIR[27] indicates that it needs one additional full time equivalent employee (FTE), a Reinsurance Financial Specialist, at a cost of $74,141, to implement the provisions of the bill.[28] In addition, the OIR estimates it will need to modify current technology systems. The OIR indicates the required technology systems modifications can be absorbed within existing resources.[29]

VI. Technical Deficiencies:

Consumer Complaints, Examinations, Investigations, and Inspections

The handling of complaints and inspections, as provided in Section 26 of the bill, may create confusion and duplication with the existing provisions found in s. 624.307, F.S., and s. 651.105, F.S. Section 651.105, F.S., relates to the Office of Insurance Regulations' (OIR's) authority to conduct examinations and inspections. Currently, s. 624.307(10), F.S., authorizes the Department of Financial Services' (DFS') Division of Consumer Services (division) to receive and respond to complaints concerning products or services regulated by the DFS or the OIR, which would include continuing care retirement communities (CCRCs). According to the DFS, these types of inquiries are usually handled through coordination between the OIR and the division because the OIR lacks personnel to handle consumer inquiries but the division lacks access to financial documents as well as the technical knowledge to interpret and understand financial reports. Consumer inquiries are logged into the division's database and follow the same timelines and requirements as other entities regulated by the OIR.[30] Consumers may initiate contact with the DFS through the DFS website or by telephone.

Section 26 of the bill amends s. 651.111, F.S., relating to complaints and inspections received by the OIR. Under current law, the OIR is required to make an inspection unless the OIR determines a complaint is without reasonable basis. The language appears to require the OIR to make an inspection if one is requested even if the OIR determines the request is without merit. The term, "inspection," is used in ss. 651.105 and 651.111, F.S.; however, the term is undefined.

[27] Office of Insurance Regulation, *Analysis of SB 438* (Oct. 11, 2017) (on file with the Senate Banking and Insurance Committee).
[28] *Id* at pp. 8-9.
[29] Conversation with Richard Fox, Budget Director, Office of Insurance Regulation (February 5, 2018).
[30] Department of Financial Services, *Analysis of SB 438* (Dec. 28, 2017) (on file with Senate Banking and Insurance Committee).

Solvency

Currently, chapters 631, F.S., relating to insurer insolvency, and 651, F.S., do not define the term "impaired." However, s. 631.051, F.S., does use the term as one of the grounds for the initiation of delinquency proceedings. In addition, The Insurance Code uses the terms "impaired" and "impairment" throughout but does not define either term. **Section 1** of the bill contains a definition of "impaired" and given that term is not defined in ch. 631, F.S., it is unclear how the receivership court would treat actions based on the amended definition of "impaired."[31]

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 651.011, 651.012, 651.013, 651.019, 651.021, 651.022, 651.023, 651.024, 651.026, 651.0261, 651.028, 651.033, 651.035, 651.051, 651.057, 651.071, 651.091, 651.105, 651.106, 651.111, 651.114, 651.1151, 651.121, and 651.125.

This bill creates the following sections of the Florida Statutes: 651.0215, 651.0245, 651.0246, 651.034. 651.043, 651.1065, and 651.1141.

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 February 8, 2018:
The committee substitute provides an appropriation of $74,141 and one full time equivalent position with associated salary rate of 45,043 to the Office of Insurance Regulation.

CS by Banking and Insurance on January 16, 2018:
The CS provides the following changes:

- Revises definitions.
- Creates consolidated application for provisional certificate of authority and certificate of authority.
- Revises and clarifies escrow account requirements.
- Revises requirements for expansions.
- Revises annual and quarterly report requirements.
- Allows the Office of Insurance Regulation (OIR) to waive requirements of ch. 651, F.S., if a provider or obligator group has obtained an investment grade credit rating and has met certain conditions.

[31] Department of Financial Services, *Analysis of SB 438* (Oct. 16, 2017) (on file with Senate Banking and Insurance Committee).

- Revises minimum liquid reserve requirements.
- Revises provisions relating to approval of changes in management.
- Revises maintenance of record provisions.
- Revises provisions relating to examinations and inspections.
- Revises grounds for discretionary refusal, suspension, or revocation of a certificate of authority.
- Provides technical, conforming changes.

B. Amendments:

None.


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576-03031-18

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

A bill to be entitled

An act relating to continuing care contracts; amending s. 651.011, F.S.; defining and redefining terms; amending s. 651.012, F.S.; conforming a cross-reference; deleting an obsolete date; amending s. 651.013, F.S.; revising applicability of specified provisions of the Florida Insurance Code to the Office of Insurance Regulation's authority to regulate providers of continuing care and continuing care at-home; amending s. 651.019, F.S.; revising notice and filing requirements for providers and facilities with respect to new and additional financing and refinancing; amending s. 651.021, F.S.; conforming provisions to changes made by the act; creating s. 651.0215, F.S.; specifying conditions that qualify an applicant for a certificate of authority without first obtaining a provisional certificate of authority; specifying requirements for the consolidated application; requiring an applicant to obtain separate certificates of authority for multiple facilities; specifying procedures and requirements for the office's review of such applications and issuance or denial of certificates of authority; providing requirements for reservation contracts, entrance fees, and reservation deposits; authorizing a provider to secure release of moneys held in escrow under specified circumstances; providing construction


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relating to the release of escrow funds; amending s. 651.022, F.S.; revising the office's authority to make certain inquiries in the review of applications for provisional certificates of authority; specifying requirements for application amendments if material changes occur; requiring applicants to submit a specified feasibility study; revising procedures and requirements for the office's review of such applications; conforming a provision to changes made by the act; making a technical change; conforming cross-references; amending s. 651.023, F.S.; revising requirements for an application for a certificate of authority; specifying requirements for application amendments if material changes occur; revising procedures and requirements for the office's review of such applications; revising minimum unit reservation and minimum deposit requirements; revising conditions under which a provider is entitled to secure release of certain moneys held in escrow; conforming provisions to changes made by the act; conforming cross-references; amending s. 651.024, F.S.; providing and revising applicability of certain provisions to a person seeking to assume the role of general partner of a provider or seeking specified ownership, possession, or control of a provider's assets; providing applicability of certain provisions to a person seeking to acquire and become the provider for a facility; providing procedures for filing a disclaimer of control; defining terms; providing

standing to the office to petition a circuit court in certain proceedings; creating s. 651.0245, F.S.; prohibiting a person, without the office's prior written approval, from acquiring a facility operating under a subsisting certificate of authority and engaging in the business of providing continuing care; providing requirements for an applicant seeking simultaneous acquisition of a facility and issuance of a certificate of authority; requiring the Financial Services Commission to adopt by rule certain application requirements; requiring the office to review applications and issue approvals or disapprovals of filings in accordance with specified provisions; defining terms; providing standing to the office to petition a specified circuit court under certain circumstances; providing procedures for filing a disclaimer of control; providing construction; authorizing the commission to adopt, amend, and repeal rules; creating s. 651.0246, F.S.; requiring a provider to obtain written approval from the office before commencing construction or marketing for specified expansions of a certificated facility; providing that a provider is automatically granted approval for certain expansions under specified circumstances; defining the term "existing units"; providing applicability; specifying requirements for applying for such approval; requiring the office to consider certain factors in reviewing such applications; providing procedures and requirements

for the office's review of applications and approval or denial of expansions; specifying requirements for escrowed moneys and for the release of the moneys; defining the term "initial entrance fee"; providing construction; amending s. 651.026, F.S.; revising requirements for annual reports that providers file with the office; revising guidelines for commission rulemaking; requiring the office to publish, within specified timeframes, a specified annual report; amending s. 651.0261, F.S.; revising requirements for quarterly statements filed by providers and facilities with the office; authorizing the office to waive certain filing requirements under certain circumstances; authorizing the office to require, under certain circumstances, providers or facilities to file monthly unaudited financial statements and certain other information; authorizing the commission to adopt certain rules; amending s. 651.028, F.S.; authorizing the office, under certain circumstances, to waive any requirement of ch. 651, F.S., for providers or obligated groups having certain accreditations or credit ratings; amending s. 651.033, F.S.; revising requirements for escrow accounts and escrow agreements; revising requirements for, and restrictions on, agents of escrow accounts; revising permissible investments for funds in an escrow account; revising requirements for the withdrawal of escrowed funds under certain circumstances; creating s. 651.034, F.S.; specifying requirements and

procedures for the office if a regulatory action level event occurs; authorizing the office to use members of the Continuing Care Advisory Council or retain consultants for specified purposes; requiring affected providers to bear fees, costs, and expenses for such consultants; requiring the office to take certain actions if an impairment occurs; authorizing the office to forego taking action for a certain timeframe under certain circumstances; providing immunity from liability to the commission, the Department of Financial Services, the office, and their employees or agents for certain actions; requiring the office to transmit any notice that may result in regulatory action by certain methods; authorizing the office to exempt a provider from specified requirements under certain circumstances and for a specified timeframe; authorizing the commission to adopt rules; providing construction; amending s. 651.035, F.S.; revising provider minimum liquid reserve requirements under specified circumstances; deleting an obsolete date; authorizing providers, under certain circumstances, to withdraw funds held in escrow without the office's approval; providing procedures and requirements to request approval for certain withdrawals; providing procedures and requirements for the office's review of such requests; authorizing the office, under certain circumstances, to order the immediate transfer of funds in the minimum liquid reserve to the custody of the department; providing that certain debt service

reserves of a provider are not subject to such transfer provision; requiring facilities to file annual calculations of their minimum liquid reserves with the office and maintain such reserves beginning at specified periods; requiring providers to fund reserve shortfalls within a specified timeframe; providing construction; creating s. 651.043, F.S.; defining the term "management"; providing requirements for a contract for management made after a certain date; specifying procedures and requirements for providers filing notices of change in management with the office; specifying procedures, requirements, and factors for the office's review of such changes and approval or disapproval of the new management; requiring management disapproved by the office to be removed within a specified timeframe; authorizing the office to take certain disciplinary actions under certain circumstances; requiring providers to immediately remove management under certain circumstances; amending s. 651.051, F.S.; revising requirements for the maintenance of a provider's records and assets; amending s. 651.057, F.S.; conforming cross-references; amending s. 651.071, F.S.; revising construction as to the priority of continuing care and continuing care at-home contracts in the event of receivership or liquidation proceedings against a provider; amending s. 651.091, F.S.; revising requirements for continuing care facilities and providers relating to the availability,

distribution, and posting of reports and records; amending s. 651.105, F.S.; providing applicability of a provision of the Insurance Code relating to examinations and investigations to the office's authority in examining certain applicants and providers; requiring providers to respond to written correspondence from the office and provide certain information; declaring that the office has standing to petition a circuit court for certain injunctive relief; specifying venue; deleting a requirement for the office to determine if certain disclosures have been made; providing that a provider's or facility's parent, subsidiary, or affiliate is not subject to routine examination by the office except under certain circumstances; authorizing the office to examine certain parents, subsidiaries, or affiliates to ascertain the financial condition of a provider under certain circumstances; prohibiting the office, when conducting an examination or inspection, from using certain actuary recommendations for a certain purpose or requesting certain documents under certain circumstances; amending s. 651.106, F.S.; authorizing the office to deny an application for a provisional certificate of authority or a certificate of authority on certain grounds; revising and adding grounds for application denial or disciplinary action by the office; creating s. 651.1065, F.S.; prohibiting certain persons of a continuing care retirement community, except with the office's written

permission, from actively soliciting, approving the solicitation or acceptance of, or accepting new continuing care contracts if they knew or should have known that the retirement community was impaired or insolvent; providing an exception; requiring the office to approve or disapprove the continued marketing of new contracts within a specified timeframe; providing a criminal penalty; amending s. 651.111, F.S.; revising procedures and requirements for the office's review of complaints requesting inspections of records and related financial affairs of a provider; amending s. 651.114, F.S.; providing that certain duties relating to a certain compliance or solvency plan must be performed by the office, or the Continuing Care Advisory Council at the request of the office, rather than solely by the council; providing construction relating to the office's authority to take certain measures; authorizing the office to seek a recommended plan from the advisory council; replacing the office with the department as the entity taking certain actions under ch. 631, F.S.; providing construction; revising circumstances under which the department and office are vested with certain powers and duties in regard to delinquency proceedings; specifying requirements for providers to notify residents and prospective residents of delinquency proceedings; specifying procedures relating to orders to show cause and hearings pursuant to ch. 631, F.S.; revising facilities with respect to

which the office may not exercise certain remedial rights; creating s. 651.1141, F.S.; authorizing the office to issue an immediate final order for a provider to cease and desist from specified violations; amending s. 651.121, F.S.; revising the composition of the Continuing Care Advisory Council; amending s. 651.125, F.S.; providing a criminal penalty for certain actions performed without a valid provisional certificate of authority; making a technical change; providing an appropriation; providing an effective date.

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

Section 1. Section 651.011, Florida Statutes, is amended to read:

651.011 Definitions.—As used in this chapter, the term:

(1) "Actuarial opinion" means an opinion issued by an actuary in accordance with Actuarial Standards of Practice No. 3 for Continuing Care Retirement Communities, Revised Edition, effective May 1, 2011, or any future amendments or replacements to this standard which may be adopted by the Actuarial Standards Board.

(2) "Actuarial study" means an analysis prepared for an individual facility, or consolidated for multiple facilities, for either a certified provider, as of a current valuation date or the most recent fiscal year, or for an applicant, as of a projected future valuation date, which includes an actuary's opinion as to whether such provider or applicant is in

satisfactory actuarial balance in accordance with Actuarial Standards of Practice No. 3 for Continuing Care Retirement Communities, Revised Edition, effective May 1, 2011, or any future amendments or replacements to this standard which may be adopted by the Actuarial Standards Board.

(3) "Actuary" means an individual who is qualified to sign an actuarial opinion in accordance with the American Academy of Actuaries' qualification standards and who is a member in good standing of the American Academy of Actuaries.

(4) ~~(1)~~ "Advertising" means the dissemination of written, visual, or electronic information by a provider, or any person affiliated with or controlled by a provider, to potential residents or their representatives for the purpose of inducing such persons to subscribe to or enter into a contract for continuing care or continuing care at-home.

(5) ~~(2)~~ "Continuing care" or "care" means, pursuant to a contract, furnishing shelter and nursing care or personal services to a resident who resides in a facility, whether such nursing care or personal services are provided in the facility or in another setting designated in the contract for continuing care, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee. The terms may also be referred to as a "life plan."

(6) ~~(3)~~ "Continuing Care Advisory Council" or "advisory council" means the council established in s. 651.121.

(7) ~~(4)~~ "Continuing care at-home" means, pursuant to a contract other than a contract described in subsection (5) ~~(2)~~, furnishing to a resident who resides outside the facility the right to future access to shelter and nursing care or personal

services, whether such services are provided in the facility or in another setting designated in the contract, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee. The term may also be referred to as a "life plan at-home."

(8) "Corrective order" means an order issued by the office which specifies corrective actions the office has determined are required.

(9) "Days cash on hand" means, for a facility or obligated group, the quotient obtained by dividing the value of paragraph (a) by the value of paragraph (b).

(a) The sum of unrestricted cash, unrestricted short-term and long-term investments, provider restricted funds, and the minimum liquid reserve as of the reporting period.

(b) Operating expenses less depreciation, amortization, and other noncash expenses and nonoperating losses, divided by 365. Operating expenses, depreciation, amortization, and other noncash expenses and nonoperating losses are each the sum of their respective values over the 12-month period immediately preceding the reporting date.

With prior written approval of the office, a demand note or other parental guarantee may be considered a short-term or long-term investment for the purposes of paragraph (a). However, the total of all demand notes issued by the parent may not, at any time, be more than the sum of unrestricted cash and unrestricted short-term and long-term investments held by the parent.

(10) "Debt service coverage ratio" means, for a facility or obligated group, the quotient obtained by dividing the value of

paragraph (a) by the value of paragraph (b).

(a) The sum of total expenses less interest expense on the facility, depreciation, amortization, and other noncash expenses and nonoperating losses, subtracted from the sum of total revenues and gross entrance fees received less earned entrance fees and refunds paid. Expenses, interest expense on the facility, depreciation, amortization, other noncash expenses and nonoperating losses, revenues, noncash revenues, nonoperating gains, gross entrance fees, earned entrance fees, and refunds are each the sum of their respective values over the 12-month period immediately preceding the reporting date.

(b) Total annual principal and interest expense due on the facility or obligated group over the 12-month period immediately preceding the reporting date. For purposes of this paragraph, principal excludes any balloon principal payment amounts, and interest expense due is the sum of the interest over the 12-month period immediately preceding the reporting date which is reflected in the provider's audit.

(11) ~~(5)~~ "Entrance fee" means an initial or deferred payment of a sum of money or property made as full or partial payment for continuing care or continuing care at-home. An accommodation fee, admission fee, member fee, or other fee of similar form and application are considered to be an entrance fee.

(12) ~~(6)~~ "Facility" means a place where continuing care is furnished and may include one or more physical plants on a primary or contiguous site or an immediately accessible site. As used in this subsection, the term "immediately accessible site" means a parcel of real property separated by a reasonable distance from the facility as measured along public

thoroughfares, and the term "primary or contiguous site" means the real property contemplated in the feasibility study required by this chapter.

~~(7) "Generally accepted accounting principles" means those accounting principles and practices adopted by the Financial Accounting Standards Board and the American Institute of Certified Public Accountants, including Statement of Position 90-8 with respect to any full year to which the statement applies.~~

(13) "Impaired" means that any of the following have occurred:

(a) A provider has failed to maintain its minimum liquid reserve as required in s. 651.035, unless the provider has received prior written approval from the office for a withdrawal pursuant to s. 651.035(6) and is compliant with the approved payment schedule; or

(b) Beginning July 1, 2019:

1. For a provider with mortgage financing from a third-party lender or public bond issue, the provider's debt service coverage ratio is less than 1.00:1 and the provider's days cash on hand is less than 90; or

2. For a provider without mortgage financing from a third-party lender or public bond issue, the provider's days cash on hand is less than 90.

(14)~~(8)~~ "Insolvency" means the condition in which a ~~the~~ provider is unable to pay its obligations as they come due in the normal course of business.

(15)~~(9)~~ "Licensed" means that a ~~the~~ provider has obtained a certificate of authority from the office ~~department~~.

(16) "Manager" or "management company" means a person who administers the day-to-day business operations of a facility for a provider, subject to the policies, directives, and oversight of the provider.

(17)~~(10)~~ "Nursing care" means those services or acts rendered to a resident by an individual licensed or certified pursuant to chapter 464.

(18) "Obligated group" means one or more entities that jointly agree to be bound by a financing structure containing security provisions and covenants applicable to the group. For purposes of this subsection, debt issued under such a financing structure must be a joint and several obligation of each member of the group.

(19) "Occupancy" means the total number of occupied independent living, assisted living, and skilled nursing units in a facility divided by the total number of units in that facility, excluding units that are unavailable to market or reserve, as of the most recent annual report.

(20)~~(11)~~ "Personal services" has the same meaning as in s. 429.02.

(21)~~(12)~~ "Provider" means the owner or operator, whether a natural person, partnership or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, which owner or operator provides continuing care or continuing care at-home for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments. The term does

not apply to an entity that has existed and continuously operated a facility located on at least 63 acres in this state providing residential lodging to members and their spouses for at least 66 years on or before July 1, 1989, and has the residential capacity of 500 persons, is directly or indirectly owned or operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its members and their spouses as residents.

(22)~~(13)~~ "Records" means all documents, correspondence, and ~~the permanent~~ financial, directory, and personnel information and data maintained by a provider pursuant to this chapter, regardless of the physical form, characteristics, or means of transmission.

(23) "Regulatory action level event" means that any two of the following have occurred:

(a) The provider's debt service coverage ratio is less than the minimum ratio specified in the provider's bond covenants or lending agreement for long-term financing, or, if the provider does not have a debt service coverage ratio required by its lending institution, the provider's debt service coverage ratio is less than 1.20:1 as of the most recent annual report filed with the office. If the provider is a member of an obligated group having cross-collateralized debt and the obligated group has obtained an investment grade credit rating from a nationally recognized credit rating agency, as applicable, from Moody's Investors Service, Standard & Poor's, or Fitch Ratings, the obligated group's debt service coverage ratio will be used as the provider's debt service coverage ratio.

(b) The provider's days cash on hand is less than the

minimum number of days cash on hand specified in the provider's bond covenants or lending agreement for long-term financing. If the provider does not have a days cash on hand required by its lending institution, the days cash on hand may not be less than 100 as of the most recent annual report filed with the office. If the provider is a member of an obligated group having cross-collateralized debt and the obligated group has obtained an investment grade credit rating from a nationally recognized credit rating agency, as applicable, from Moody's Investors Service, Standard & Poor's, or Fitch Ratings, the days cash on hand of the obligated group will be used as the provider's days cash on hand.

(c) The occupancy at the provider's facility is less than 80 percent, averaged over the 12-month period immediately preceding the reporting date.

(24)~~(14)~~ "Resident" means a purchaser of, a nominee of, or a subscriber to a continuing care or continuing care at-home contract. Such contract does not give the resident a part ownership of the facility in which the resident is to reside, unless expressly provided in the contract.

(25)~~(15)~~ "Shelter" means an independent living unit, room, apartment, cottage, villa, personal care unit, nursing bed, or other living area within a facility set aside for the exclusive use of one or more identified residents.

Section 2. Section 651.012, Florida Statutes, is amended to read:

651.012 Exempted facility; written disclosure of exemption.—Any facility exempted under ss. 632.637(1)(e) and 651.011(21) ~~651.011(12)~~ must provide written disclosure of such

exemption to each person admitted to the facility ~~after October 1, 1996~~. This disclosure must be written using language likely to be understood by the person and must briefly explain the exemption.

Section 3. Subsection (2) of section 651.013, Florida Statutes, is amended to read:

651.013 Chapter exclusive; applicability of other laws.—

(2) In addition to other applicable provisions cited in this chapter, the office has the authority granted under ss. 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312~~, 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, and 624.422 of the Florida Insurance Code to regulate providers of continuing care and continuing care at-home.

Section 4. Section 651.019, Florida Statutes, is amended to read:

651.019 New financing, additional financing, or refinancing.—

(1)(a) A provider shall provide notice to the residents' council of any new financing or refinancing at least 30 days before the closing date of the financing or refinancing transaction. The notice must include a general outline of the amount and terms of the financing or refinancing and the intended use of proceeds.

(b) If the facility does not have a residents' council, the facility must make available, in the same manner as other community notices, the information required by paragraph (a) ~~After issuance of a certificate of authority, the provider shall submit to the office a general outline, including intended use of proceeds, with respect to any new financing, additional~~

~~financing, or refinancing at least 30 days before the closing date of such financing transaction~~.

(2) Within 30 days after the closing date of such financing or refinancing transaction, ~~The provider shall furnish any information the office may reasonably request in connection with any new financing, additional financing, or refinancing, including, but not limited to, the financing agreements and any related documents, escrow or trust agreements, and statistical or financial data.~~ the provider shall ~~also~~ submit to the office copies of executed financing documents and escrow or trust agreements prepared in support of such financing or refinancing transaction, and a copy of all documents required to be submitted to the residents' council under paragraph (1)(a) ~~within 30 days after the closing date~~.

Section 5. Section 651.021, Florida Statutes, is amended to read:

651.021 Certificate of authority required.—

~~(1)~~ A ~~No~~ person may not engage in the business of providing continuing care, issuing contracts for continuing care or continuing care at-home, or constructing a facility for the purpose of providing continuing care in this state without a certificate of authority obtained from the office as provided in this chapter. This section ~~subsection~~ does not prohibit the preparation of a construction site or construction of a model residence unit for marketing purposes, or both. The office may allow the purchase of an existing building for the purpose of providing continuing care if the office determines that the purchase is not being made to circumvent the prohibitions in this section.

~~(2) Written approval must be obtained from the office before commencing construction or marketing for an expansion of a certificated facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more in the number of continuing care at-home contracts. This provision does not apply to construction for which a certificate of need from the Agency for Health Care Administration is required.~~

~~(a) For providers that offer both continuing care and continuing care at-home, the 20 percent is based on the total of both existing units and existing contracts for continuing care at-home. For purposes of this subsection, an expansion includes increases in the number of constructed units or continuing care at-home contracts or a combination of both.~~

~~(b) The application for such approval shall be on forms adopted by the commission and provided by the office. The application must include the feasibility study required by s. 651.022(3) or s. 651.023(1)(b) and such other information as required by s. 651.023. If the expansion is only for continuing care at-home contracts, an actuarial study prepared by an independent actuary in accordance with standards adopted by the American Academy of Actuaries which presents the financial impact of the expansion may be substituted for the feasibility study.~~

~~(c) In determining whether an expansion should be approved, the office shall use the criteria provided in ss. 651.022(6) and 651.023(4).~~

Section 6. Section 651.0215, Florida Statutes, is created to read:

651.0215 Consolidated application for provisional

certificate of authority and certificate of authority; required restrictions on use of entrance fees.—

(1) For an applicant to qualify for a certificate of authority without first obtaining a provisional certificate of authority, the following conditions must be met:

(a) All reservation deposits and entrance fees must be placed in escrow in accordance with s. 651.033. The applicant may not use or pledge any part of an initial entrance fee for the construction or purchase of the facility or as security for long-term financing.

(b) The reservation deposit may not exceed $5,000 upon a resident’s selection of a unit and must be refundable at any time before the resident takes occupancy of the selected unit.

(c) The resident contract must state that collection of the balance of the entrance fee is to occur after the resident is notified that his or her selected unit is available for occupancy and on or before the occupancy date.

(2) The consolidated application must be on a form prescribed by the commission and must contain all of the following information:

(a) All of the information required under s 651.022(2).

(b) A feasibility study prepared by an independent consultant which contains all of the information required by s. 651.022(3) and financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies for continuing care retirement communities adopted by the Actuarial Standards Board.

1. The feasibility study must take into account project

costs, actual marketing results to date and marketing projections, resident fees and charges, competition, resident contract provisions, and other factors that affect the feasibility of operating the facility.

2. If the feasibility study is prepared by an independent certified public accountant, it must contain an examination report, or a compilation report acceptable to the office, containing a financial forecast or projections for the first 5 years of operations which take into account an actuary's mortality and morbidity assumptions as the study relates to turnover, rates, fees, and charges. If the study is prepared by an independent consulting actuary, it must contain mortality and morbidity assumptions as it relates to turnover, rates, fees, and charges and an actuary's signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with Actuarial Standards of Practice No. 3 for Continuing Care Retirement Communities, Revised Edition, effective May 1, 2011.

(c) Documents evidencing that commitments have been secured for construction financing and long-term financing or that a documented plan acceptable to the office has been adopted by the applicant for long-term financing.

(d) Documents evidencing that all conditions of the lender have been satisfied to activate the commitment to disburse funds, other than the obtaining of the certificate of authority, the completion of construction, or the closing of the purchase of realty or buildings for the facility.

(e) Documents evidencing that the aggregate amount of entrance fees received by or pledged to the applicant, plus

anticipated proceeds from any long-term financing commitment and funds from all other sources in the actual possession of the applicant, equal at least 100 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus 100 percent of the anticipated startup losses of the facility.

(f) A complete audited financial report of the applicant, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, as of the date the applicant commenced business operations or for the fiscal year that ended immediately preceding the date of application, whichever is later, and complete unaudited quarterly financial statements attested to by the applicant after the date of the last audit.

(g) Documents evidencing that the applicant will be able to comply with s. 651.035.

(h) Such other reasonable data, financial statements, and pertinent information as the commission or office may require with respect to the applicant or the facility to determine the financial status of the facility and the management capabilities of its managers and owners.

(3) If an applicant has or proposes to have more than one facility offering continuing care or continuing care at-home, a separate certificate of authority must be obtained for each facility.

(4) Within 45 days after receipt of the information required under subsection (2), the office shall examine the information and notify the applicant in writing, specifically requesting any additional information that the office is

authorized to require. An application is deemed complete when the office receives all requested information and the applicant corrects any error or omission of which the applicant was timely notified or when the time for such notification has expired. Within 15 days after receipt of all of the requested additional information, the office shall notify the applicant in writing that all of the requested information has been received and that the application is deemed to be complete as of the date of the notice. Failure to notify the applicant in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application is deemed complete for purposes of review on the date the applicant files all of the required additional information.

(5) Within 45 days after an application is deemed complete as set forth in subsection (4) and upon completion of the remaining requirements of this section, the office shall complete its review and issue or deny a certificate of authority to the applicant. The period for review by the office may not be tolled if the office requests additional information and the applicant provides the requested information within 5 business days. If a certificate of authority is denied, the office must notify the applicant in writing, citing the specific failures to satisfy this chapter, and the applicant is entitled to an administrative hearing pursuant to chapter 120.

(6) The office shall issue a certificate of authority upon determining that the applicant meets all requirements of law and has submitted all of the information required under this section, that all escrow requirements have been satisfied, and

that the fees prescribed in s. 651.015(2) have been paid.

(7) The issuance of a certificate of authority entitles the applicant to begin construction and collect reservation deposits and entrance fees from prospective residents. The reservation contract must state the cancellation policy and the terms of the continuing care contract to be entered into. All or any part of an entrance fee or reservation deposit collected must be placed in an escrow account or on deposit with the department pursuant to s. 651.033.

(8) The provider is entitled to secure release of the moneys held in escrow within 7 days after the office receives an affidavit from the provider, along with appropriate documentation to verify, and notification is provided to the escrow agent by certified mail, that the following conditions have been satisfied:

(a) A certificate of occupancy has been issued.

(b) Payment in full has been received for at least 70 percent of the total units of a phase or of the total of the combined phases constructed. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts independently of each other.

(c) The provider has evidence of sufficient funds to meet the requirements of s. 651.035, which may include funds deposited in the initial entrance fee account.

(d) Documents evidencing the intended application of the proceeds upon release and documents evidencing that the entrance fees, when released, will be applied as represented to the

office.

Notwithstanding chapter 120, a person, other than the provider, the escrow agent, and the office, may not have a substantial interest in any decision by the office regarding the release of escrow funds in any proceeding under chapter 120 or this chapter.

(9) The office may not approve any application that includes in the plan of financing any encumbrance of the operating reserves or renewal and replacement reserves required by this chapter.

(10) The office may not issue a certificate of authority to a facility that does not have a component that is to be licensed pursuant to part II of chapter 400 or part I of chapter 429, or that does not offer personal services or nursing services through written contractual agreement. A written contractual agreement must be disclosed in the contract for continuing care or continuing care at-home and is subject to s. 651.1151.

Section 7. Subsection (2) and present subsections (6) and (8) of section 651.022, Florida Statutes, are amended, present subsections (3) through (8) of that section are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

651.022 Provisional certificate of authority; application.—

(2) The application for a provisional certificate of authority must ~~shall~~ be on a form prescribed by the commission and must ~~shall~~ contain the following information:

(a) If the applicant or provider is a corporation, a copy of the articles of incorporation and bylaws; if the applicant or

provider is a partnership or other unincorporated association, a copy of the partnership agreement, articles of association, or other membership agreement; and, if the applicant or provider is a trust, a copy of the trust agreement or instrument.

(b) The full names, residences, and business addresses of:

1. The proprietor, if the applicant or provider is an individual.

2. Every partner or member, if the applicant or provider is a partnership or other unincorporated association, however organized, having fewer than 50 partners or members, together with the business name and address of the partnership or other organization.

3. The principal partners or members, if the applicant or provider is a partnership or other unincorporated association, however organized, having 50 or more partners or members, together with the business name and business address of the partnership or other organization. If such unincorporated organization has officers and a board of directors, the full name and business address of each officer and director may be set forth in lieu of the full name and business address of its principal members.

4. The corporation and each officer and director thereof, if the applicant or provider is a corporation.

5. Every trustee and officer, if the applicant or provider is a trust.

6. The manager, whether an individual, corporation, partnership, or association.

7. Any stockholder holding at least a 10 percent interest in the operations of the facility in which the care is to be

offered.

8. Any person whose name is required to be provided in the application under this paragraph and who owns any interest in or receives any remuneration from, directly or indirectly, any professional service firm, association, trust, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, with a real or anticipated value of $10,000 or more, and the name and address of the professional service firm, association, trust, partnership, or corporation in which such interest is held. The applicant shall describe such goods, leases, or services and the probable cost to the facility or provider and shall describe why such goods, leases, or services should not be purchased from an independent entity.

9. Any person, corporation, partnership, association, or trust owning land or property leased to the facility, along with a copy of the lease agreement.

10. Any affiliated parent or subsidiary corporation or partnership.

(c)1. Evidence that the applicant is reputable and of responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, the form must ~~shall~~ require evidence that the members or shareholders ~~are reputable and of responsible character,~~ and the person in charge of providing care under a certificate of authority are ~~shall likewise be required to produce evidence of being~~ reputable and of responsible character.

2. Evidence satisfactory to the office of the ability of the applicant to comply with ~~the provisions of~~ this chapter and

with rules adopted by the commission pursuant to this chapter.

3. A statement of whether a person identified in the application for a provisional certificate of authority or the administrator or manager of the facility, if such person has been designated, or any such person living in the same location:

a. Has been convicted of a felony or has pleaded nolo contendere to a felony charge, or has been held liable or has been enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

b. Is subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, an action affecting a license under chapter 400 or chapter 429.

The statement must ~~shall~~ set forth the court or agency, the date of conviction or judgment, and the penalty imposed or damages assessed, or the date, nature, and issuer of the order. Before determining whether a provisional certificate of authority is to be issued, the office may make an inquiry to determine the accuracy of the information submitted pursuant to subparagraphs 1., 2., and 3. ~~1. and 2.~~

(d) The contracts for continuing care and continuing care at-home to be entered into between the provider and residents which meet the minimum requirements of s. 651.055 or s. 651.057 and which include a statement describing the procedures required by law relating to the release of escrowed entrance fees. Such

statement may be furnished through an addendum.

(e) Any advertisement or other written material proposed to be used in the solicitation of residents.

(f) Such other reasonable data, financial statements, and pertinent information as the commission or office may reasonably require with respect to the provider or the facility, including the most recent audited financial report ~~statements~~ of comparable facilities currently or previously owned, managed, or developed by the applicant or its principal, to assist in determining the financial viability of the project and the management capabilities of its managers and owners.

(g) The forms of the residency contracts, reservation contracts, escrow agreements, and wait list contracts, if applicable, which are proposed to be used by the provider in the furnishing of care. The office shall approve contracts and escrow agreements that comply with ss. 651.023(1)(c), 651.033, 651.055, and 651.057. Thereafter, no other form of contract or agreement may be used by the provider until it has been submitted to the office and approved.

If any material change occurs in the facts set forth in an application filed with the office pursuant to this subsection, an amendment setting forth such change must be filed with the office within 10 business days after the applicant becomes aware of such change, and a copy of the amendment must be sent by registered mail to the principal office of the facility and to the principal office of the controlling company.

(3) In addition to the information required in subsection (2), an applicant for a provisional certificate of authority

must submit a feasibility study with appropriate financial, marketing, and actuarial assumptions for the first 5 years of operations. The feasibility study must include at least the following information:

(a) A description of the proposed facility, including the location, size, anticipated completion date, and the proposed construction program.

(b) Identification and an evaluation of the primary and, if appropriate, the secondary market areas of the facility and the projected unit sales per month.

(c) Projected revenues, including anticipated entrance fees; monthly service fees; nursing care revenues, if applicable; and all other sources of revenue.

(d) Projected expenses, including staffing requirements and salaries; cost of property, plant, and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses.

(e) A projected balance sheet of the applicant.

(f) Expectations of the financial condition of the project, including the projected cash flow, and an estimate of the funds anticipated to be necessary to cover startup losses.

(g) The inflation factor, if any, assumed in the feasibility study for the proposed facility and how and where it is applied.

(h) Project costs and the total amount of debt financing required, marketing projections, resident fees and charges, the competition, resident contract provisions, and other factors that affect the feasibility of the facility.

(i) Appropriate population projections, including morbidity

and mortality assumptions.

(j) The name of the person who prepared the feasibility study and the experience of such person in preparing similar studies or otherwise consulting in the field of continuing care. The preparer of the feasibility study may be the provider or a contracted third party.

(k) Any other information that the applicant deems relevant and appropriate to enable the office to make a more informed determination.

(7)~~(6)~~ Within 45 days after the date an application is deemed complete as set forth in paragraph (6)(b) ~~(5)(b)~~, the office shall complete its review and issue a provisional certificate of authority to the applicant based upon its review and a determination that the application meets all requirements of law, that the feasibility study was based on sufficient data and reasonable assumptions, and that the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial and contractual obligations related to its operations, including the financial requirements of this chapter. The period for review by the office may not be tolled if the office requests additional information and the applicant provides the requested information within 5 business days. If the application is denied, the office shall notify the applicant in writing, citing the specific failures to meet the provisions of this chapter. Such denial entitles the applicant to a hearing pursuant to chapter 120.

(9)~~(8)~~ The office may ~~shall~~ not approve any application that ~~which~~ includes in the plan of financing any encumbrance of the operating reserves or renewal and replacement reserves

required by this chapter.

Section 8. Subsections (1) through (4), paragraph (b) of subsection (5), and subsections (6), (8), and (9) of section 651.023, Florida Statutes, are amended to read:

651.023 Certificate of authority; application.—

(1) After issuance of a provisional certificate of authority, the office shall issue to the holder of such provisional certificate a certificate of authority if the holder of the provisional certificate provides the office with the following information:

(a) Any material change in status with respect to the information required to be filed under s. 651.022(2) in the application for the provisional certificate.

(b) A feasibility study prepared by an independent consultant which contains all of the information required by s. 651.022(4) ~~s. 651.022(3)~~ and financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies or continuing care retirement communities adopted by the Actuarial Standards Board.

~~1. The study must also contain an independent evaluation and examination opinion, or a comparable opinion acceptable to the office, by the consultant who prepared the study, of the underlying assumptions used as a basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and the project as proposed is feasible.~~

1.~~2.~~ The study must take into account project costs, actual marketing results to date and marketing projections, resident fees and charges, competition, resident contract provisions, and

any other factors which affect the feasibility of operating the facility.

2.~~3.~~ If the study is prepared by an independent certified public accountant, it must contain an examination opinion, or a compilation report acceptable to the office, containing a financial forecast or projections for the first 5 ~~3~~ years of operations which take into account an actuary's mortality and morbidity assumptions as the study relates to turnover, rates, fees, and charges ~~and financial projections having a compilation opinion for the next 3 years~~. If the study is prepared by an independent consulting actuary, it must contain mortality and morbidity assumptions as the study relates to turnover, rates, fees, and charges, ~~data~~ and an actuary's signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with standards adopted by the American Academy of Actuaries.

(c) Subject to subsection (4), a provider may submit an application for a certificate of authority and any required exhibits upon submission of documents evidencing ~~proof~~ that the project has a minimum of 30 percent of the units reserved for which the provider is charging an entrance fee. ~~This does not apply to an application for a certificate of authority for the acquisition of a facility for which a certificate of authority was issued before October 1, 1983, to a provider who subsequently becomes a debtor in a case under the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for which the department has been appointed receiver pursuant to part II of chapter 631.~~

(d) Documents evidencing ~~Proof~~ that commitments have been

secured for both construction financing and long-term financing or a documented plan acceptable to the office has been adopted by the applicant for long-term financing.

(e) Documents evidencing ~~Proof~~ that all conditions of the lender have been satisfied to activate the commitment to disburse funds other than the obtaining of the certificate of authority, the completion of construction, or the closing of the purchase of realty or buildings for the facility.

(f) Documents evidencing ~~Proof~~ that the aggregate amount of entrance fees received by or pledged to the applicant, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the applicant, equal at least 100 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus 100 percent of the anticipated startup losses of the facility.

(g) A complete audited financial report ~~statements~~ of the applicant, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, as of the date the applicant commenced business operations or for the fiscal year that ended immediately preceding the date of application, whichever is later, and complete unaudited quarterly financial statements attested to by the applicant after the date of the last audit.

(h) Documents evidencing ~~Proof~~ that the applicant has complied with the escrow requirements of subsection (5) or subsection (7) and will be able to comply with s. 651.035.

(i) Such other reasonable data, financial statements, and pertinent information as the commission or office may require

with respect to the applicant or the facility, to determine the financial status of the facility and the management capabilities of its managers and owners.

If any material change occurs in the facts set forth in an application filed with the office pursuant to this subsection, an amendment setting forth such change must be filed with the office within 10 business days, and a copy of the amendment must be sent by registered mail to the principal office of the facility and to the principal office of the controlling company.

(2) Within 30 days after receipt of the information required under subsection (1), the office shall examine such information and notify the provider in writing, specifically requesting any additional information the office is permitted by law to require. Within 15 days after receipt of all of the requested additional information, the office shall notify the provider in writing that all of the requested information has been received, and the application is deemed to be complete as of the date of the notice. Failure to notify the provider in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application is deemed complete for purposes of review on the date of filing all of the required additional information ~~Within 15 days after receipt of all of the requested additional information, the office shall notify the provider in writing that all of the requested information has been received and the application is deemed to be complete as of the date of the notice. Failure to notify the applicant in writing within the 15-day period constitutes acknowledgment by the office that~~

~~it has received all requested additional information, and the application shall be deemed complete for purposes of review on the date of filing all of the required additional information~~.

(3) Within 45 days after an application is deemed complete as set forth in subsection (2), and upon completion of the remaining requirements of this section, the office shall complete its review and issue or deny a certificate of authority to the holder of a provisional certificate of authority. If a certificate of authority is denied, the office must notify the holder of the provisional certificate in writing, citing the specific failures to satisfy the provisions of this chapter. The period for review by the office may not be tolled if the office requests additional information and the applicant provides the requested information within 5 business days. If denied, the holder of the provisional certificate is entitled to an administrative hearing pursuant to chapter 120.

(4) The office shall issue a certificate of authority upon determining that the applicant meets all requirements of law and has submitted all of the information required by this section, that all escrow requirements have been satisfied, and that the fees prescribed in s. 651.015(2) have been paid.

(a) A ~~Notwithstanding satisfaction of the 30-percent minimum reservation requirement of paragraph (1)(c), no~~ certificate of authority may not ~~shall~~ be issued until documentation evidencing that the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee~~, and proof~~ is provided to the office. If a provider offering continuing care at-home is applying for a certificate of authority ~~or approval of an expansion pursuant to~~

~~s. 651.021(2)~~, the same minimum reservation requirements must be met for the continuing care and continuing care at-home contracts, independently of each other.

(b) In order for a unit to be considered reserved under this section, the provider must collect a minimum deposit of the lesser of $40,000 or 10 percent of the then-current entrance fee for that unit, and may assess a forfeiture penalty of 2 percent of the entrance fee due to termination of the reservation contract after 30 days for any reason other than the death or serious illness of the resident, the failure of the provider to meet its obligations under the reservation contract, or other circumstances beyond the control of the resident that equitably entitle the resident to a refund of the resident's deposit. The reservation contract must state the cancellation policy and the terms of the continuing care or continuing care at-home contract to be entered into.

(5) Up to 25 percent of the moneys paid for all or any part of an initial entrance fee may be included or pledged for the construction or purchase of the facility or as security for long-term financing. The term "initial entrance fee" means the total entrance fee charged by the facility to the first occupant of a unit.

(b) For an expansion as provided in s. 651.0246 ~~s. 651.021(2)~~, a minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee collected for continuing care and 50 percent of the moneys paid for all or any part of an initial fee collected for continuing care at-home shall be placed in an escrow account or on deposit with the department as prescribed in s. 651.033.

(6) The provider is entitled to secure release of the moneys held in escrow within 7 days after receipt by the office of an affidavit from the provider, along with appropriate copies to verify, and notification to the escrow agent by certified mail, that the following conditions have been satisfied:

(a) A certificate of occupancy has been issued.

(b) Payment in full has been received for at least 70 percent of the total units of a phase or of the total of the combined phases constructed. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts, independently of each other.

~~(c) The consultant who prepared the feasibility study required by this section or a substitute approved by the office certifies within 12 months before the date of filing for office approval that there has been no material adverse change in status with regard to the feasibility study. If a material adverse change exists at the time of submission, sufficient information acceptable to the office and the feasibility consultant must be submitted which remedies the adverse condition.~~

(c) ~~(d)~~ Documents evidencing ~~Proof~~ that commitments have been secured or a documented plan adopted by the applicant has been approved by the office for long-term financing.

(d) ~~(e)~~ Documents evidencing ~~Proof~~ that the provider has sufficient funds to meet the requirements of s. 651.035, which may include funds deposited in the initial entrance fee account.

(e) ~~(f)~~ Documents evidencing ~~Proof as to~~ the intended

application of the proceeds upon release and documentation ~~proof~~ that the entrance fees when released will be applied as represented to the office.

(f) If any material change occurred in the facts set forth in the application filed with the office pursuant to subsection (1), the applicant timely filed the amendment setting forth such change with the office and sent copies of the amendment to the principal office of the facility and to the principal office of the controlling company as required under that subsection.

Notwithstanding chapter 120, no person, other than the provider, the escrow agent, and the office, may have a substantial interest in any office decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter regarding release of escrow funds.

(8) ~~The timeframes provided under s. 651.022(5) and (6) apply to applications submitted under s. 651.021(2).~~ The office may not issue a certificate of authority to a facility that does not have a component that is to be licensed pursuant to part II of chapter 400 or to part I of chapter 429 or that does not offer personal services or nursing services through written contractual agreement. A written contractual agreement must be disclosed in the contract for continuing care or continuing care at-home and is subject to ~~the provisions of~~ s. 651.1151, relating to administrative, vendor, and management contracts.

(9) The office may not approve an application that includes in the plan of financing any encumbrance of the operating reserves or renewal and replacement reserves required by this chapter.

Section 9. Section 651.024, Florida Statutes, is amended to read:

651.024 Acquisition.—

(1) A person who seeks to assume the role of general partner of a provider or otherwise assume ownership or possession of, or control over, 10 percent or more of a provider's assets, based on the balance sheet from the most recent financial audit filed with the office, is ~~issued a certificate of authority to operate a continuing care facility or a provisional certificate of authority shall be~~ subject to ~~the provisions of~~ s. 628.4615 and is not required to make filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

(2) A person who seeks to acquire and become the provider for a facility is subject to s. 651.0245 and is not required to make filings pursuant to ss. 628.4615, 651.022, and 651.023.

(3) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the provider or facility, as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the provider or facility is relieved of any duty to register or report under this section which may arise out of the provider's or facility's relationship with the person, unless the office disallows the disclaimer.

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

(a) "Controlling company" means any corporation, trust, or association that directly or indirectly owns 25 percent or more of the voting securities of one or more facilities that are stock corporations, or 25 percent or more of the ownership interest of one or more facilities that are not stock corporations.

(b) "Natural person" means an individual.

(c) "Person" includes a natural person, corporation, association, trust, general partnership, limited partnership, joint venture, firm, proprietorship, or any other entity that may hold a license or certificate as a facility.

(5) In addition to the facility or the controlling company, the office has standing to petition a circuit court as described in s. 628.4615(9).

Section 10. Section 651.0245, Florida Statutes, is created to read:

651.0245 Application for the simultaneous acquisition of a facility and issuance of a certificate of authority.—

(1) Except with the prior written approval of the office, a person may not, individually or in conjunction with any affiliated person of such person, directly or indirectly acquire a facility operating under a subsisting certificate of authority and engage in the business of providing continuing care.

(2) An applicant seeking simultaneous acquisition of a facility and issuance of a certificate of authority must:

(a) Comply with the notice requirements of s. 628.4615(2)(a); and

(b) File an application in the form required by the office

and cooperate with the office's review of the application.

(3) The commission shall adopt by rule application requirements equivalent to those described in ss. 628.4615(4) and (5), 651.022(2)(a)-(g), and 651.023(1)(b). The office shall review the application and issue an approval or disapproval of the filing in accordance with ss. 628.4615(6)(a) and (c), (7)-(10), and (14); 651.022(9); and 651.023(1)(b).

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

(a) "Controlling company" means any corporation, trust, or association that directly or indirectly owns 25 percent or more of the voting securities of one or more facilities that are stock corporations, or 25 percent or more of the ownership interest of one or more facilities that are not stock corporations.

(b) "Natural person" means an individual.

(c) "Person" includes a natural person, corporation, association, trust, general partnership, limited partnership, joint venture, firm, proprietorship, or any other entity that may hold a license or certificate as a facility.

(5) In addition to the facility or the controlling company, the office has standing to petition a circuit court as described in s. 628.4615(9).

(6) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the provider or facility, as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed

with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the provider or facility is relieved of any duty to register or report under this section which may arise out of the provider's or facility's relationship with the person, unless the office disallows the disclaimer.

(7) The commission may adopt, amend, or repeal rules as necessary to administer this section.

Section 11. Section 651.0246, Florida Statutes, is created to read:

651.0246 Expansions.—

(1)(a) A provider must obtain written approval from the office before commencing construction or marketing for an expansion of a certificated facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more in the number of continuing care at-home contracts. If the provider has exceeded the current statewide median for days cash on hand, debt service coverage ratio, and total campus occupancy for two consecutive annual reporting periods, the provider is automatically granted approval to expand the total number of existing units by up to 35 percent upon submitting a letter to the office indicating the total number of planned units in the expansion, the proposed sources and uses of funds, and an attestation that the provider understands and pledges to comply with all minimum liquid reserve and escrow account requirements. As used in this section, the term "existing units" means the sum of the total number of independent living units and assisted living units identified in the most recent annual report filed

with the office pursuant to s. 651.026. For purposes of this section, the statewide median for days cash on hand, debt service coverage ratio, and total campus occupancy is the median calculated in the most recent annual report submitted by the office to the Continuing Care Advisory Council pursuant to s. 651.121(8). This section does not apply to construction for which a certificate of need from the Agency for Health Care Administration is required.

(b) The application for such approval must be on forms adopted by the commission and provided by the office. The application must include the feasibility study required by this section and such other information as reasonably requested by the office. If the expansion is only for continuing care at-home contracts, an actuarial study prepared by an independent actuary in accordance with standards adopted by the American Academy of Actuaries which presents the financial impact of the expansion may be substituted for the feasibility study.

(c) In determining whether an expansion should be approved, the office shall consider:

1. Whether the application meets all requirements of law;

2. Whether the feasibility study was based on sufficient data and reasonable assumptions; and

3. Whether the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial obligations related to its operations, including the financial requirements of this chapter.

If the application is denied, the office must notify the applicant in writing, citing the specific failures to meet the

provisions of this chapter. A denial entitles the applicant to a hearing pursuant to chapter 120.

(2) A provider applying for expansion of a certificated facility must submit all of the following:

(a) A feasibility study prepared by an independent certified public accountant. The feasibility study must include at least the following information:

1. A description of the facility and proposed expansion, including the location, size, anticipated completion date, and the proposed construction program.

2. An identification and evaluation of the primary and, if applicable, secondary market areas of the facility and the projected unit sales per month.

3. Projected revenues, including anticipated entrance fees; monthly service fees; nursing care rates, if applicable; and all other sources of revenue.

4. Projected expenses, including for staffing requirements and salaries; the cost of property, plant, and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses.

5. A projected balance sheet of the applicant.

6. Expectations of the financial condition of the project, including the projected cash flow and an estimate of the funds anticipated to be necessary to cover startup losses.

7. The inflation factor, if any, assumed in the study for the proposed expansion and how and where it is applied.

8. Project costs, the total amount of debt financing required, marketing projections, resident fees and charges, the competition, resident contract provisions, and other factors

that affect the feasibility of the facility.

9. Appropriate population projections, including morbidity and mortality assumptions.

10. The name of the person who prepared the feasibility study and his or her experience in preparing similar studies or otherwise consulting in the field of continuing care.

11. Financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies for continuing care retirement communities adopted by the Actuarial Standards Board.

12. An independent evaluation and examination opinion for the first 5 years of operations, or a comparable opinion acceptable to the office, by the consultant who prepared the study, of the underlying assumptions used as a basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and the project as proposed is feasible.

13. Any other information that the provider deems relevant and appropriate to provide to enable the office to make a more informed determination.

(b) Such other reasonable data, financial statements, and pertinent information as the commission or office may require with respect to the applicant or the facility to determine the financial status of the facility and the management capabilities of its managers and owners.

(3) A minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee or reservation deposit collected for continuing care and 50 percent of the moneys paid

for all or any part of an initial fee collected for continuing care at-home must be placed in an escrow account or on deposit with the department as prescribed in s. 651.033. Up to 25 percent of the moneys paid for all or any part of an initial entrance fee or reservation deposit may be included or pledged for the construction or purchase of the facility or as security for long-term financing. As used in this section, the term "initial entrance fee" means the total entrance fee charged by the facility to the first occupant of a unit.

Entrance fees and reservation deposits collected for expansions must be held pursuant to the escrow requirements of s. 651.023(5) and (6).

(4) The provider is entitled to secure release of the moneys held in escrow within 7 days after receipt by the office of an affidavit from the provider, along with appropriate copies to verify, and notification to the escrow agent by certified mail that the following conditions have been satisfied:

(a) A certificate of occupancy has been issued.

(b) Payment in full has been received for at least 50 percent of the total units of a phase or of the total of the combined phases constructed. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts independently of each other.

(c) Documents evidencing that commitments have been secured or that a documented plan adopted by the applicant has been approved by the office for long-term financing.

(d) Documents evidencing that the provider has sufficient funds to meet the requirements of s. 651.035, which may include funds deposited in the initial entrance fee account.

(e) Documents evidencing the intended application of the proceeds upon release and documentation that the entrance fees, when released, will be applied as represented to the office.

Notwithstanding chapter 120, only the provider, the escrow agent, and the office have a substantial interest in any office decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter.

(5)(a) Within 30 days after receipt of an application for expansion, the office shall examine the application and shall notify the applicant in writing, specifically setting forth and specifically requesting any additional information that the office is authorized to require. Within 15 days after the office receives all the requested additional information, the office shall notify the applicant in writing that the requested information has been received and that the application is deemed to be complete as of the date of the notice. If the office chooses not to notify the applicant within the 15-day period, then the application is deemed complete for purposes of review on the date the applicant files the additional requested information. If the application submitted is determined by the office to be substantially incomplete so as to require substantial additional information, including biographical information, the office may return the application to the applicant with a written notice that the application as received is substantially incomplete and therefore unacceptable for

filing without further action required by the office. Any filing fee received must be refunded to the applicant.

(b) An application is deemed complete upon the office receiving all requested information and the applicant correcting any error or omission of which the applicant was timely notified or when the time for such notification has expired. The office shall notify the applicant in writing of the date on which the application was deemed complete.

(6) Within 45 days after the date on which an application is deemed complete as set forth in paragraph (5)(b), the office shall complete its review and, based upon its review, approve an expansion by the applicant and issue a determination that the application meets all requirements of law, that the feasibility study was based on sufficient data and reasonable assumptions, and that the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial and contractual obligations related to its operations, including the financial requirements of this chapter. The period for review by the office may not be tolled if the office requests additional information and the applicant provides information acceptable to the office within 5 business days. If the application is denied, the office must notify the applicant in writing, citing the specific failures to meet the provisions of this chapter. The denial entitles the applicant to a hearing pursuant to chapter 120.

Section 12. Paragraph (c) of subsection (2) and subsection (3) of section 651.026, Florida Statutes, are amended, subsection (10) is added to that section, and paragraph (a) of subsection (2) of that section is republished, to read:

651.026 Annual reports.—

(2) The annual report shall be in such form as the commission prescribes and shall contain at least the following:

(a) Any change in status with respect to the information required to be filed under s. 651.022(2).

(c) The following financial information:

1. A detailed listing of the assets maintained in the liquid reserve as required under s. 651.035 and in accordance with part II of chapter 625;

2. A schedule giving additional information relating to property, plant, and equipment having an original cost of at least $25,000, so as to show in reasonable detail with respect to each separate facility original costs, accumulated depreciation, net book value, appraised value or insurable value and date thereof, insurance coverage, encumbrances, and net equity of appraised or insured value over encumbrances. Any property not used in continuing care must be shown separately from property used in continuing care;

3. The level of participation in Medicare or Medicaid programs, or both;

4. A statement of all fees required of residents, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the provider, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases; and

5. Any change or increase in fees if the provider changes the scope of, or the rates for, care or services, regardless of whether the change involves the basic rate or only those

services available at additional costs to the resident.

6. If the provider has more than one certificated facility, or has operations that are not licensed under this chapter, it shall submit a balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of cash flows for each facility licensed under this chapter as supplemental information to the audited financial report ~~statements~~ required under paragraph (b).

7. The management's calculation of the provider's debt service coverage ratio and days cash on hand for the current reporting period, and an opinion from an independent certified public accountant of the management's calculations.

(3) The commission shall adopt by rule additional ~~meaningful~~ measures of assessing the financial viability of a provider. ~~The rule may include the following factors:~~

~~(a) Debt service coverage ratios.~~

~~(b) Current ratios.~~

~~(c) Adjusted current ratios.~~

~~(d) Cash flows.~~

~~(e) Occupancy rates.~~

~~(f) Other measures, ratios, or trends.~~

~~(g) Other factors as may be appropriate.~~

(10) Within 90 days after the conclusion of each annual reporting period, the office shall publish an industry benchmarking report that contains all of the following:

(a) The median days cash on hand for all providers.

(b) The median debt service coverage ratio for all providers.

(c) The median occupancy rate for all providers by setting,

including independent living, assisted living, skilled nursing, and the entire campus.

Section 13. Section 651.0261, Florida Statutes, is amended to read:

651.0261 Quarterly and monthly statements.—

(1) Within 45 days after the end of each fiscal quarter, each provider shall file a quarterly unaudited financial statement of the provider or of the facility in the form prescribed by rule of the commission and a detailed listing of the assets maintained in the liquid reserve as required under s. 651.035. This requirement may be waived by the office upon written request from a provider that is accredited or that has obtained an investment grade credit rating from a United States credit rating agency as authorized under s. 651.028. The last quarterly statement for a fiscal year is not required if a provider does not have pending a regulatory action level event or corrective action plan.

(2) If the office finds~~, pursuant to rules of the commission,~~ that such information is needed to properly monitor the financial condition of a provider or facility or is otherwise needed to protect the public interest, the office may require the provider to file:

(a) Within 25 days after the end of each month, a monthly unaudited financial statement of the provider or of the facility in the form prescribed by the commission by rule and a detailed listing of the assets maintained in the liquid reserve as required under s. 651.035~~, within 45 days after the end of each fiscal quarter, a quarterly unaudited financial statement of the provider or of the facility in the form prescribed by the~~

~~commission by rule. The commission may by rule require all or part of the statements or filings required under this section to be submitted by electronic means in a computer readable form compatible with the electronic data format specified by the commission~~.

(b) Such other data, financial statements, and pertinent information as the commission or office may reasonably require with respect to the provider or the facility, or its directors, trustees, members, branches, subsidiaries, or affiliates, to determine the financial status of the provider or of the facility and the management capabilities of its managers and owners.

(3) A filing under subsection (2) may be required if any of the following apply:

(a) The facility has been operational for less than 2 years.

(b) The provider is:

1. Subject to administrative supervision proceedings;

2. Subject to a corrective action plan resulting from a regulatory action level event for up to 2 years after the factors that caused the regulatory action level event have been corrected; or

3. Subject to delinquency or receivership proceedings.

(c) The provider or facility displays a declining financial position.

(d) A change of ownership of the provider or facility has occurred within the previous 2 years.

(e) The facility is deemed to be impaired.

(4) The commission may by rule require all or part of the

statements or filings required under this section to be submitted by electronic means in a computer-readable form compatible with an electronic data format specified by the commission.

Section 14. Section 651.028, Florida Statutes, is amended to read:

651.028 Accredited or certain credit-rated facilities.—If a provider or obligated group is accredited without stipulations or conditions by a process found by the office to be acceptable and substantially equivalent to the provisions of this chapter or has obtained an investment grade credit rating from a nationally recognized credit rating agency, as applicable, from Moody's Investors Service, Standard & Poor's, or Fitch Ratings, the office may, pursuant to rule of the commission, waive any requirements of this chapter with respect to the provider if the office finds that such waivers are not inconsistent with the security protections intended by this chapter.

Section 15. Paragraphs (a), (c), and (d) of subsection (1) and subsections (2) and (3) of section 651.033, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

651.033 Escrow accounts.—

(1) When funds are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, s. 651.035, or s. 651.055:

(a) The escrow account must ~~shall~~ be established in a Florida bank, Florida savings and loan association, ~~or~~ Florida trust company, or a national bank that is chartered and supervised by the Office of the Comptroller of the Currency

within the United States Department of the Treasury and that has either a branch or a license to operate in this state which is acceptable to the office, or such funds must be deposited ~~on deposit~~ with the department~~;~~ and ~~the funds deposited therein shall~~ be kept and maintained in an account separate and apart from the provider's business accounts.

(c) Any agreement establishing an escrow account required under ~~the provisions of~~ this chapter is ~~shall be~~ subject to approval by the office. The agreement must ~~shall~~ be in writing and ~~shall~~ contain, in addition to any other provisions required by law, a provision whereby the escrow agent agrees to abide by the duties imposed by paragraphs (b) and (e), (3)(a), (3)(b), and (5)(a) and subsection (6) ~~under this section~~.

(d) All funds deposited in an escrow account, if invested, must ~~shall~~ be invested in cash, cash equivalents, mutual funds, equities, or investment grade bonds ~~as set forth in part II of chapter 625~~; however, such investment may not diminish the funds held in escrow below the amount required by this chapter. Funds deposited in an escrow account are not subject to charges by the escrow agent except escrow agent fees associated with administering the accounts, or subject to any liens, judgments, garnishments, creditor's claims, or other encumbrances against the provider or facility except as provided in s. 651.035(1).

(2) Notwithstanding s. 651.035(7), ~~In addition, the escrow agreement shall provide that the escrow agent or another person designated to act in the escrow agent's place and the provider, except as otherwise provided in s. 651.035, shall notify the office in writing at least 10 days before the withdrawal of any portion of any funds required to be escrowed under the~~

~~provisions of s. 651.035. However,~~ in the event of an emergency and upon petition by the provider, the office may ~~waive the 10-day notification period and~~ allow a withdrawal of up to 10 percent of the required minimum liquid reserve. The office shall have 3 working days to deny the petition for the emergency 10-percent withdrawal. If the office fails to deny the petition within 3 working days, the petition is ~~shall be~~ deemed to have been granted by the office. For purposes ~~the purpose~~ of this section, "working day" means each day that is not a Saturday, Sunday, or legal holiday as defined by Florida law. Also, for purposes ~~the purpose~~ of this section, the day the petition is received by the office is ~~shall~~ not ~~be~~ counted as one of the 3 days.

(3) ~~In addition,~~ When entrance fees are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, or s. 651.055:

(a) The provider shall deliver to the resident a written receipt. The receipt must show the payor's name and address, the date, the price of the care contract, and the amount of money paid. A copy of each receipt, together with the funds, must ~~shall~~ be deposited with the escrow agent or as provided in paragraph (c). The escrow agent must ~~shall~~ release such funds to the provider 7 days after the date of receipt of the funds by the escrow agent if the provider, operating under a certificate of authority issued by the office, has met the requirements of s. 651.023(6). However, if the resident rescinds the contract within the 7-day period, the escrow agent must ~~shall~~ release the escrowed fees to the resident.

(b) At the request of an individual resident of a facility,

the escrow agent shall issue a statement indicating the status of the resident's portion of the escrow account.

(c) At the request of an individual resident of a facility, the provider may hold the check for the 7-day period and may ~~shall~~ not deposit it during this time period. If the resident rescinds the contract within the 7-day period, the check must ~~shall~~ be immediately returned to the resident. Upon the expiration of the 7 days, the provider shall deposit the check.

(d) A provider may assess a nonrefundable fee, which is separate from the entrance fee, for processing a prospective resident's application for continuing care or continuing care at-home.

(6) Except as described in paragraph (3)(a), the escrow agent may not release or otherwise allow the transfer of funds without the written approval of the office, unless the withdrawal is from funds in excess of the amounts required by ss. 651.022, 651.023, 651.035, and 651.055.

Section 16. Section 651.034, Florida Statutes, is created to read:

651.034 Financial and operating requirements for providers.—

(1)(a) If a regulatory action level event occurs, the office must:

1. Require the provider to prepare and submit a corrective action plan or, if applicable, a revised corrective action plan;

2. Perform an examination pursuant to s. 651.105 or an analysis, as the office considers necessary, of the assets, liabilities, and operations of the provider, including a review of the corrective action plan or the revised corrective action

plan; and

3. After the examination or analysis, issue a corrective order specifying any corrective actions that the office determines are required.

(b) In determining corrective actions, the office shall consider any factor relevant to the provider based upon the office's examination or analysis of the assets, liabilities, and operations of the provider. The provider must submit the corrective action plan or the revised corrective action plan within 30 days after the occurrence of the regulatory action level event. The office shall review and approve or disapprove the corrective action plan within 15 business days.

(c) The office may use members of the Continuing Care Advisory Council, individually or as a group, or may retain actuaries, investment experts, and other consultants to review a provider's corrective action plan or revised corrective action plan, examine or analyze the assets, liabilities, and operations of a provider, and formulate the corrective order with respect to the provider. The fees, costs, and expenses relating to consultants must be borne by the affected provider.

(2) If an impairment occurs, the office must take any action necessary to place the provider under regulatory control, including any remedy available under chapter 631. An impairment is sufficient grounds for the department to be appointed as receiver as provided in chapter 631. Notwithstanding s. 631.011, impairment of a provider, for purposes of s. 631.051, is defined according to the term "impaired" under s. 651.011. The office may forego taking action for up to 180 days after the impairment if the office finds there is a reasonable expectation that the

impairment may be eliminated within the 180-day period.

(3) There is no liability on the part of, and a cause of action may not arise against, the commission, department, or office, or their employees or agents, for any action they take in the performance of their powers and duties under this section.

(4) The office shall transmit any notice that may result in regulatory action by registered mail, certified mail, or any other method of transmission which includes documentation of receipt by the provider. Notice is effective when the provider receives it.

(5) This section is supplemental to the other laws of this state and does not preclude or limit any power or duty of the department or office under those laws or under the rules adopted pursuant to those laws.

(6) The office may exempt a provider from subsection (1) or subsection (2) until stabilized occupancy is reached or until the time projected to achieve stabilized occupancy as reported in the last feasibility study required by the office as part of an application filing under s. 651.023, s. 651.024, s. 651.0245, or s. 651.0246 has elapsed, but for no longer than 5 years from the date of issuance of the certificate of occupancy.

(7) The commission may adopt rules to administer this section, including, but not limited to, rules regarding corrective action plans, revised corrective action plans, corrective orders, and procedures to be followed in the event of a regulatory action level event or an impairment.

Section 17. Paragraphs (a), (b), and (c) of subsection (1) of section 651.035, Florida Statutes, are amended, and

subsections (7) through (10) are added to that section, to read:

651.035 Minimum liquid reserve requirements.—

(1) A provider shall maintain in escrow a minimum liquid reserve consisting of the following reserves, as applicable:

(a) Each provider shall maintain in escrow as a debt service reserve the aggregate amount of all principal and interest payments due during the fiscal year on any mortgage loan or other long-term financing of the facility, including property taxes as recorded in the audited financial report ~~statements~~ required under s. 651.026. The amount must include any leasehold payments and all costs related to such payments. If principal payments are not due during the fiscal year, the provider must ~~shall~~ maintain in escrow as a minimum liquid reserve an amount equal to interest payments due during the next 12 months on any mortgage loan or other long-term financing of the facility, including property taxes. If a provider does not have a mortgage loan or other financing on the facility, the provider must deposit monthly in escrow as a minimum liquid reserve an amount equal to one-twelfth of the annual property tax liability as indicated in the most recent tax notice provided pursuant to s. 197.322(3).

(b) A provider that has outstanding indebtedness that requires a debt service reserve to be held in escrow pursuant to a trust indenture or mortgage lien on the facility and for which the debt service reserve may only be used to pay principal and interest payments on the debt that the debtor is obligated to pay, and which may include property taxes and insurance, may include such debt service reserve in computing the minimum liquid reserve needed to satisfy this subsection if the provider

furnishes to the office a copy of the agreement under which such debt service is held, together with a statement of the amount being held in escrow for the debt service reserve, certified by the lender or trustee and the provider to be correct. The trustee shall provide the office with any information concerning the debt service reserve account upon request of the provider or the office. Such separate debt service reserves, if any, are not subject to the transfer provisions set forth in subsection (8).

(c) Each provider shall maintain in escrow an operating reserve equal to 30 percent of the total operating expenses projected in the feasibility study required by s. 651.023 for the first 12 months of operation. Thereafter, each provider shall maintain in escrow an operating reserve equal to 15 percent of the total operating expenses in the annual report filed pursuant to s. 651.026. If a provider has been in operation for more than 12 months, the total annual operating expenses must ~~shall~~ be determined by averaging the total annual operating expenses reported to the office by the number of annual reports filed with the office within the preceding 3-year period subject to adjustment if there is a change in the number of facilities owned. For purposes of this subsection, total annual operating expenses include all expenses of the facility except~~:~~ depreciation and amortization; interest and property taxes included in paragraph (a); extraordinary expenses that are adequately explained and documented in accordance with generally accepted accounting principles; liability insurance premiums in excess of those paid in calendar year 1999; and changes in the obligation to provide future services to current residents. For providers initially licensed during or after calendar year 1999,

liability insurance must ~~shall~~ be included in the total operating expenses in an amount not to exceed the premium paid during the first 12 months of facility operation. ~~Beginning January 1, 1993,~~ The operating reserves required under this subsection must ~~shall~~ be in an unencumbered account held in escrow for the benefit of the residents. Such funds may not be encumbered or subject to any liens or charges by the escrow agent or judgments, garnishments, or creditors' claims against the provider or facility. However, if a facility had a lien, mortgage, trust indenture, or similar debt instrument in place before January 1, 1993, which encumbered all or any part of the reserves required by this subsection and such funds were used to meet the requirements of this subsection, then such arrangement may be continued, unless a refinancing or acquisition has occurred, and the provider is ~~shall be~~ in compliance with this subsection.

(7)(a) A provider may withdraw funds held in escrow without the approval of the office if the amount held in escrow exceeds the requirements of this section and if the withdrawal will not affect compliance with this section.

(b)1. For all other proposed withdrawals, in order to receive the consent of the office, the provider must file documentation showing why the withdrawal is necessary for the continued operation of the facility and such additional information as the office reasonably requires.

2. The office shall notify the provider when the filing is deemed complete. If the provider has complied with all prior requests for information, the filing is deemed complete after 30 days without communication from the office.

3. Within 30 days after the date a file is deemed complete, the office shall provide the provider with written notice of its approval or disapproval of the request. The office may disapprove any request to withdraw such funds if it determines that the withdrawal is not in the best interest of the residents.

(8) The office may order the immediate transfer of up to 100 percent of the funds held in the minimum liquid reserve to the custody of the department pursuant to part III of chapter 625 if the office finds that the provider is impaired or insolvent. The office may order such a transfer regardless of whether the office has suspended or revoked, or intends to suspend or revoke, the certificate of authority of the provider.

(9) Each facility shall file with the office annually, together with the annual report required by s. 651.026, a calculation of its minimum liquid reserve, determined in accordance with this section, on a form prescribed by the commission. The minimum liquid reserve must be maintained at the calculated level within 60 days after filing the annual report.

(10) If the balance of the minimum liquid reserve is below the required amount at the end of any month, the provider must fund the shortfall in the reserve within 10 business days after the beginning of the following month. If the balance of the minimum liquid reserve is not restored to the required amount within such time, the provider will be deemed out of compliance with this section.

Section 18. Section 651.043, Florida Statutes, is created to read:

651.043 Approval of change in management.—

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

(a) A manager or management company; or

(b) A person who exercises or who has the ability to exercise effective control of the provider or organization, or who influences or has the ability to influence the transaction of the business of the provider.

(2) A contract for management entered into after July 1, 2018, must be in writing and include a provision that the contract will be canceled upon issuance of an order by the office pursuant to this section without the application of any cancellation fee or penalty. If a provider contracts with a management company, a separate written contract is not required for the individual manager employed by the management company to oversee a facility.

(3) A provider must notify the office, in writing or electronically, of any change in management within 10 business days. For each new management appointment, the provider must submit the information required by s. 651.022(2) and a copy of the written management contract, if applicable.

(4) For a provider that is deemed to be impaired or that has a regulatory action level event pending, the office may disapprove new management and order the provider to remove the new management after reviewing the information required in subsection (3).

(5) For a provider other than that specified in subsection (4), the office may disapprove new management and order the provider to remove the new management after receiving the required information in subsection (3) if the office:

(a) Finds that the new management is incompetent or

untrustworthy;

(b) Finds that the new management is so lacking in relevant managerial experience as to make the proposed operation hazardous to the residents or potential residents;

(c) Finds that the new management is so lacking in relevant experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or

(d) Has good reason to believe that the new management is affiliated directly or indirectly through ownership, control, or business relations with any person or persons whose business operations are or have been marked by manipulation of assets or accounts or by bad faith, to the detriment of residents, stockholders, investors, creditors, or the public.

The office shall complete its review as required under subsections (4) and (5) and, if applicable, issue notice of disapproval of the new management within 15 business days after the filing is deemed complete. A filing is deemed complete upon the office's receipt of all requested information and the provider's correction of any error or omission for which the provider was timely notified. If the office does not issue notice of disapproval of the new management within 15 business days after the filing is deemed complete, then the new management is deemed approved.

(6) Management disapproved by the office must be removed within 30 days after receipt by the provider of notice of such disapproval.

(7) The office may revoke, suspend, or take other administrative action against the certificate of authority of

the provider if the provider:

(a) Fails to timely remove management disapproved by the office;

(b) Fails to timely notify the office of a change in management;

(c) Appoints new management without a written contract; or

(d) Repeatedly appoints management that was previously disapproved by the office or that is not approvable pursuant to subsection (5).

(8) The provider shall remove any management immediately upon discovery of any of the following conditions, if the conditions were not disclosed in the notice to the office required in subsection (3):

(a) That any person who exercises or has the ability to exercise effective control of the provider, or who influences or has the ability to influence the transaction of the business of the provider, has been found guilty of, or has pled guilty or no contest to, any felony or crime punishable by imprisonment of 1 year or more under the laws of the United States or any state thereof or under the laws of any other country which involves moral turpitude, without regard to whether a judgment or conviction has been entered by the court having jurisdiction in such case.

(b) That any person who exercises or has the ability to exercise effective control of the organization, or who influences or has the ability to influence the transaction of the business of the provider, is now or was in the past affiliated, directly or indirectly, through ownership interest of 10 percent or more in, or control of, any business,

corporation, or other entity that has been found guilty of or has pled guilty or no contest to any felony or crime punishable by imprisonment for 1 year or more under the laws of the United States, any state, or any other country, regardless of adjudication.

The failure to remove such management is grounds for revocation or suspension of the provider's certificate of authority.

Section 19. Section 651.051, Florida Statutes, is amended to read:

651.051 Maintenance of assets and records in state.—All records and assets of a provider must be maintained in this state, or, if the provider's corporate office is located in another state, must be electronically stored in a manner that will ensure that the records are readily accessible to the office. No records or assets may be removed from this state by a provider unless the office consents to such removal in writing before such removal. Such consent must ~~shall~~ be based upon the provider's submitting satisfactory evidence that the removal will facilitate and make more economical the operations of the provider and will not diminish the service or protection thereafter to be given the provider's residents in this state. Before ~~Prior to~~ such removal, the provider shall give notice to the president or chair of the facility's residents' council. If such removal is part of a cash management system which has been approved by the office, disclosure of the system must ~~shall~~ meet the notification requirements. The electronic storage of records on a web-based, secured storage platform by contract with a third party is acceptable if the records are readily accessible

to the office.

Section 20. Subsection (2) of section 651.057, Florida Statutes, is amended to read:

651.057 Continuing care at-home contracts.—

(2) A provider that holds a certificate of authority and wishes to offer continuing care at-home must also:

(a) Submit a business plan to the office with the following information:

1. A description of the continuing care at-home services that will be provided, the market to be served, and the fees to be charged;

2. A copy of the proposed continuing care at-home contract;

3. An actuarial study prepared by an independent actuary in accordance with the standards adopted by the American Academy of Actuaries which presents the impact of providing continuing care at-home on the overall operation of the facility; and

4. A market feasibility study that meets the requirements of s. 651.022(4) ~~s. 651.022(3)~~ and documents that there is sufficient interest in continuing care at-home contracts to support such a program;

(b) Demonstrate to the office that the proposal to offer continuing care at-home contracts to individuals who do not immediately move into the facility will not place the provider in an unsound financial condition;

(c) Comply with the requirements of s. 651.0246(1) ~~s. 651.021(2)~~, except that an actuarial study may be substituted for the feasibility study; and

(d) Comply with the requirements of this chapter.

Section 21. Subsection (1) of section 651.071, Florida

Statutes, is amended to read:

651.071 Contracts as preferred claims on liquidation or receivership.—

(1) In the event of receivership or liquidation proceedings against a provider, all continuing care and continuing care at-home contracts executed by a provider are ~~shall be~~ deemed preferred claims or policyholder loss ~~preferred~~ claims pursuant to s. 631.271(1)(b) against all assets owned by the provider; however, such claims are subordinate to any secured claim.

Section 22. Subsection (2) and present paragraph (g) of subsection (3) of section 651.091, Florida Statutes, are amended, present paragraphs (h) and (i) of subsection (3) of that section are redesignated as paragraphs (g) and (h), respectively, a new paragraph (i) and paragraphs (j), (k), and (l) are added to that subsection, and paragraph (d) of subsection (3) and subsection (4) of that section are republished, to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

(2) Every continuing care facility shall:

(a) Display the certificate of authority in a conspicuous place inside the facility.

(b) Post in a prominent position in the facility which is accessible to all residents and the general public a concise summary of the last examination report issued by the office, with references to the page numbers of the full report noting any deficiencies found by the office, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility.

(c) Provide notice to the president or chair of the residents' council within 10 business days after issuance of a final examination report or the initiation of any legal or administrative proceeding by the office or the department and include a copy of such document.

(d) ~~(c)~~ Post in a prominent position in the facility which is accessible to all residents and the general public a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services must also be posted.

(e) ~~(d)~~ Distribute a copy of the full annual statement and a copy of the most recent third-party ~~third party~~ financial audit filed with the annual report to the president or chair of the residents' council within 30 days after filing the annual report with the office, and designate a staff person to provide explanation thereof.

(f) ~~(e)~~ Deliver the information described in s. 651.085(4) in writing to the president or chair of the residents' council and make supporting documentation available upon request ~~Notify the residents' council of any plans filed with the office to obtain new financing, additional financing, or refinancing for the facility and of any applications to the office for any expansion of the facility~~.

(g) ~~(f)~~ Deliver to the president or chair of the residents' council a summary of entrance fees collected and refunds made during the time period covered in the annual report and the refund balances due at the end of the report period.

(h) ~~(g)~~ Deliver to the president or chair of the residents'

council a copy of each quarterly statement within 30 days after the quarterly statement is filed with the office if the facility is required to file quarterly.

(i) ~~(h)~~ Upon request, deliver to the president or chair of the residents' council a copy of any newly approved continuing care or continuing care at-home contract within 30 days after approval by the office.

(j) Provide to the president or chair of the residents' council a copy of any notice filed with the office relating to any change in ownership within 10 business days after such filing by the provider.

(k) Make the information available to prospective residents pursuant to paragraph (3)(d) available to current residents and provide notice of changes to that information to the president or chair of the residents' council within 3 business days.

(3) Before entering into a contract to furnish continuing care or continuing care at-home, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:

(d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans does not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.

~~(g) The amount and location of any reserve funds required by this chapter, and the name of the person or entity having a claim to such funds in the event of a bankruptcy, foreclosure, or rehabilitation proceeding.~~

(i) Notice of the issuance of a final examination report or the initiation of any legal or administrative proceeding by the office or the department, including where the report or filing may be inspected in the facility, and that upon request, an electronic copy or specific website address will be provided where the document can be downloaded at no cost.

(j) Notice that the entrance fee is the property of the provider after the expiration of the 7-day escrow requirement under s. 651.055(2).

(k) If the provider operates multiple facilities, a disclosure of any distribution of assets or income between facilities that may occur and the manner in which such distributions would be made, or a statement that such distributions will not occur.

(l) Notice of any holding company system or obligated group of which the provider is a member.

(4) A true and complete copy of the full disclosure document to be used must be filed with the office before use. A resident or prospective resident or his or her legal representative may inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the office pursuant to s. 651.022(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual

requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

Section 23. Subsections (1) and (5) of section 651.105, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

651.105 Examination and inspections.—

(1) The office may at any time, and shall at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for the examination of insurance companies pursuant to ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place at least once every 5 years. Such examinations must ~~shall~~ be made by a representative or examiner designated by the office whose compensation will be fixed by the office pursuant to s. 624.320. Routine examinations may be made by having the necessary documents submitted to the office; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, are deemed adequate. The final written report of each examination must be filed with the office and, when so filed, constitutes a public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the office may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or not.

(5) A provider must respond to written correspondence from the office and provide data, financial statements, and pertinent information as requested by the office or by the office's investigators, examiners, or inspectors. The office has standing to petition a circuit court for mandatory injunctive relief to compel access to and require the provider to produce the documents, data, records, and other information requested by the office or its investigators, examiners, or inspectors. The office may petition the circuit court in the county in which the facility is situated or the Circuit Court of Leon County to enforce this section ~~At the time of the routine examination, the office shall determine if all disclosures required under this chapter have been made to the president or chair of the residents' council and the executive officer of the governing body of the provider~~.

(7) Unless a provider or facility is impaired or subject to a regulatory action level event, any parent, subsidiary, or affiliate is not subject to examination by the office as part of a routine examination. However, if a provider or facility relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate the provider or facility's financial condition is in compliance with this chapter, the office may examine any parent, subsidiary, or affiliate that has a contractual or financial relationship with the provider or facility to the extent necessary to ascertain the financial condition of the provider.

(8) If a provider voluntarily contracts with an actuary for an actuarial study or review at regular intervals, the office may not use any recommendations made by the actuary as a measure

of performance when conducting an examination or inspection. The office may not request, as part of the examination or inspection, documents associated with an actuarial study or review marked "restricted distribution" if the study or review is not required by this chapter.

Section 24. Section 651.106, Florida Statutes, is amended to read:

651.106 Grounds for discretionary refusal, suspension, or revocation of certificate of authority.—The office may deny an application or~~,~~ suspend~~,~~ or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider if it finds that any one or more of the following grounds applicable to the applicant or provider exist:

(1) Failure by the provider to continue to meet the requirements for the authority originally granted.

(2) Failure by the provider to meet one or more of the qualifications for the authority specified by this chapter.

(3) Material misstatement, misrepresentation, or fraud in obtaining the authority, or in attempting to obtain the same.

(4) Demonstrated lack of fitness or trustworthiness.

(5) Fraudulent or dishonest practices of management in the conduct of business.

(6) Misappropriation, conversion, or withholding of moneys.

(7) Failure to comply with, or violation of, any proper order or rule of the office or commission or violation of any provision of this chapter.

(8) The insolvent or impaired condition of the provider or the provider's being in such condition or using such methods and practices in the conduct of its business as to render its

further transactions in this state hazardous or injurious to the public.

(9) Refusal by the provider to be examined or to produce its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligation under this chapter when required by the office.

(10) Failure by the provider to comply with the requirements of s. 651.026 or s. 651.033.

(11) Failure by the provider to maintain escrow accounts or funds as required by this chapter.

(12) Failure by the provider to meet the requirements of this chapter for disclosure of information to residents concerning the facility, its ownership, its management, its development, or its financial condition or failure to honor its continuing care or continuing care at-home contracts.

(13) Any cause for which issuance of the license could have been refused had it then existed and been known to the office.

(14) Having been found guilty of, or having pleaded guilty or nolo contendere to, a felony in this state or any other state, without regard to whether a judgment or conviction has been entered by the court having jurisdiction of such cases.

(15) In the conduct of business under the license, engaging in unfair methods of competition or in unfair or deceptive acts or practices prohibited under part IX of chapter 626.

(16) A pattern of bankrupt enterprises.

(17) The ownership, control, or management of the organization includes any person:

(a) Who is not reputable and of responsible character;

(b) Who is so lacking in management expertise as to make the operation of the provider hazardous to potential and existing residents;

(c) Who is so lacking in management experience, ability, and standing as to jeopardize the reasonable promise of successful operation;

(d) Who is affiliated, directly or indirectly, through ownership or control, with any person whose business operations are or have been marked by business practices or conduct that is detrimental to the public, stockholders, investors, or creditors; or

(e) Whose business operations are or have been marked by business practices or conduct that is detrimental to the public, stockholders, investors, or creditors.

(18) The provider has not filed a notice of change in management, fails to remove a disapproved manager, or persists in appointing disapproved managers.

Revocation of a certificate of authority under this section does not relieve a provider from the provider's obligation to residents under the terms and conditions of any continuing care or continuing care at-home contract between the provider and residents or the provisions of this chapter. The provider shall continue to file its annual statement and pay license fees to the office as required under this chapter as if the certificate of authority had continued in full force, but the provider shall not issue any new contracts. The office may seek an action in the Circuit Court of Leon County to enforce the office's order and the provisions of this section.

Section 25. Section 651.1065, Florida Statutes, is created to read:

651.1065 Soliciting or accepting new continuing care contracts by impaired or insolvent facilities or providers.—

(1) Regardless of whether delinquency proceedings as to a continuing care retirement community have been or are to be initiated, a proprietor, general partner, member, officer, director, trustee, or manager of a continuing care retirement community may not actively solicit, approve the solicitation or acceptance of, or accept new continuing care contracts in this state after the proprietor, general partner, member, officer, director, trustee, or manager knew, or reasonably should have known, that the continuing care retirement community was impaired or insolvent, except with the written permission of the office, unless the facility has declared bankruptcy, in which case the bankruptcy court or trustee appointed by the court has jurisdiction over such matters. The office must approve or disapprove the continued marketing of new contracts within 15 days after receiving a request from a provider.

(2) A proprietor, general partner, member, officer, director, trustee, or manager who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 26. Section 651.111, Florida Statutes, is amended to read:

651.111 Requests for inspections.—

(1) Any interested party may request an inspection of the records and related financial affairs of a provider providing care in accordance with ~~the provisions of~~ this chapter by

transmitting to the office notice of an alleged violation of applicable requirements prescribed by statute or by rule, specifying to a reasonable extent the details of the alleged violation, which notice must ~~shall~~ be signed by the complainant.

(2) The substance of the complaint must ~~shall~~ be given to the provider no earlier than the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint which is provided to the provider nor any copy of the complaint, closure statement, or any record which is published, released, or otherwise made available to the provider may ~~shall~~ disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the office conducting the investigation or inspection pursuant to this chapter.

(3) Upon receipt of a complaint, the office shall make a preliminary review; and, unless the office determines that the complaint is without any reasonable basis or the complaint does not request an inspection, the office shall make an inspection. The office shall provide the complainant with a written acknowledgment of the complaint within 15 days after receipt by the office. Such acknowledgment must include the case number assigned by the office to the complaint and the name and contact information of any duly authorized officer, employee, or agent of the office conducting the investigation or inspection pursuant to this chapter. The complainant must ~~shall~~ be advised, within 30 days after the receipt of the complaint by the office, of the proposed course of action of the office, including an estimated timeframe for the handling of the complaint. If the office does not conclude its inspection or investigation within

the office's estimated timeframe, the office must advise the complainant in writing within 15 days after any revised course of action, including a revised estimated timeframe for the handling of the complaint. Within 15 days after the office completes its inspection or concludes its investigation, the office shall provide the complainant and the provider a written closure statement specifying the office's findings and the results of any inspection or investigation.

(4) A ~~No~~ provider operating under a certificate of authority under this chapter may not discriminate or retaliate in any manner against a resident or an employee of a facility providing care because such resident or employee or any other person has initiated a complaint pursuant to this section.

Section 27. Section 651.114, Florida Statutes, is amended to read:

651.114 Delinquency proceedings; remedial rights.—

(1) Upon determination by the office that a provider is not in compliance with this chapter, the office may notify the chair of the Continuing Care Advisory Council, who may assist the office in formulating a corrective action plan.

(2) Within 30 days after a request by either the advisory council or the office, a provider shall make a plan for obtaining compliance or solvency available to the advisory council and the office~~, within 30 days after being requested to do so by the council, a plan for obtaining compliance or solvency~~.

(3) Within 30 days after receipt of a plan for obtaining compliance or solvency, the office, or ~~notification,~~ the advisory council at the request of the office, shall:

(a) Consider and evaluate the plan submitted by the provider.

(b) Discuss the problem and solutions with the provider.

(c) Conduct such other business as is necessary.

(d) Report its findings and recommendations to the office, which may require additional modification of the plan.

This subsection may not be interpreted so as to delay or prevent the office from taking any regulatory measures it deems necessary regarding the provider that submitted the plan.

(4) If the financial condition of a continuing care facility or provider is impaired or is such that if not modified or corrected, its continued operation would result in insolvency, the office may direct the provider to formulate and file with the office a corrective action plan. If the provider fails to submit a plan within 30 days after the office's directive, or submits a plan that is insufficient to correct the condition, the office may specify a plan and direct the provider to implement the plan. Before specifying a plan, the office may seek a recommended plan from the advisory council.

(5) ~~(4)~~ After receiving approval of a plan by the office, the provider shall submit a progress report monthly to the advisory council or the office, or both, in a manner prescribed by the office. After 3 months, or at any earlier time deemed necessary, the council shall evaluate the progress by the provider and shall advise the office of its findings.

(6) ~~(5)~~ If ~~Should~~ the office finds ~~find~~ that sufficient grounds exist for rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceedings of an insurer as

set forth in ss. 631.051, 631.061, and 631.071, the department ~~office~~ may petition for an appropriate court order or may pursue such other relief as is afforded in part I of chapter 631. Before invoking its powers under part I of chapter 631, the department ~~office~~ shall notify the chair of the advisory council.

(7) Notwithstanding s. 631.011, impairment of a provider, for purposes of s. 631.051, is defined according to the term "impaired" in s. 651.011.

(8) ~~(6)~~ In the event an order of conservation, rehabilitation, liquidation, or ~~conservation, reorganization,~~ seizure~~, or summary proceeding~~ has been entered against a provider, the department and office are vested with all of the powers and duties they have under ~~the provisions of~~ part I of chapter 631 in regard to delinquency proceedings of insurance companies. A provider shall give written notice of the proceeding to its residents within 3 business days after the initiation of a delinquency proceeding under chapter 631 and shall include a notice of the delinquency proceeding in any written materials provided to prospective residents.

~~(7) If the financial condition of the continuing care facility or provider is such that, if not modified or corrected, its continued operation would result in insolvency, the office may direct the provider to formulate and file with the office a corrective action plan. If the provider fails to submit a plan within 30 days after the office's directive or submits a plan that is insufficient to correct the condition, the office may specify a plan and direct the provider to implement the plan.~~

(9) A provider subject to an order to show cause entered

pursuant to chapter 631 must file its written response to the order, together with any defenses it may have to the department's allegations, no later than 20 days after service of the order to show cause, but no less than 15 days before the date of the hearing set by the order to show cause.

(10) A hearing held pursuant to chapter 631 to determine whether cause exists for the department to be appointed receiver must be commenced within 60 days after an order directing a provider to show cause.

(11)(a) ~~(8)(a)~~ The rights of the office described in this section are subordinate to the rights of a trustee or lender pursuant to the terms of a resolution, ordinance, loan agreement, indenture of trust, mortgage, lease, security agreement, or other instrument creating or securing bonds or notes issued to finance a facility, and the office, subject to ~~the provisions of~~ paragraph (c), may ~~shall~~ not exercise its remedial rights provided under this section and ss. 651.018, 651.106, 651.108, and 651.116 with respect to a facility that is not in default of any financial or contractual obligation other than ~~subject to~~ a lien, mortgage, lease, or other encumbrance or trust indenture securing bonds or notes issued in connection with the financing of the facility, if the trustee or lender, by inclusion or by amendment to the loan documents or by a separate contract with the office, agrees that the rights of residents under a continuing care or continuing care at-home contract will be honored and will not be disturbed by a foreclosure or conveyance in lieu thereof as long as the resident:

1. Is current in the payment of all monetary obligations required by the contract;

2. Is in compliance and continues to comply with all provisions of the contract; and

3. Has asserted no claim inconsistent with the rights of the trustee or lender.

(b) This subsection does not require a trustee or lender to:

1. Continue to engage in the marketing or resale of new continuing care or continuing care at-home contracts;

2. Pay any rebate of entrance fees as may be required by a resident's continuing care or continuing care at-home contract as of the date of acquisition of the facility by the trustee or lender and until expiration of the period described in paragraph (d);

3. Be responsible for any act or omission of any owner or operator of the facility arising before the acquisition of the facility by the trustee or lender; or

4. Provide services to the residents to the extent that the trustee or lender would be required to advance or expend funds that have not been designated or set aside for such purposes.

(c) Should the office determine, at any time during the suspension of its remedial rights as provided in paragraph (a), that the trustee or lender is not in compliance with paragraph (a), or that a lender or trustee has assigned or has agreed to assign all or a portion of a delinquent or defaulted loan to a third party without the office's written consent, the office shall notify the trustee or lender in writing of its determination, setting forth the reasons giving rise to the determination and specifying those remedial rights afforded to the office which the office shall then reinstate.

(d) Upon acquisition of a facility by a trustee or lender and evidence satisfactory to the office that the requirements of paragraph (a) have been met, the office shall issue a 90-day temporary certificate of authority granting the trustee or lender the authority to engage in the business of providing continuing care or continuing care at-home and to issue continuing care or continuing care at-home contracts subject to the office's right to immediately suspend or revoke the temporary certificate of authority if the office determines that any of the grounds described in s. 651.106 apply to the trustee or lender or that the terms of the contract used as the basis for the issuance of the temporary certificate of authority by the office have not been or are not being met by the trustee or lender since the date of acquisition.

Section 28. Section 651.1141, Florida Statutes, is created to read:

651.1141 Immediate final orders.—The office may issue an immediate final order to cease and desist if the office finds that installation of a general partner of a provider or assumption of ownership or possession or control of 10 percent or more of a provider's assets in violation of s. 651.024 or s. 651.0245, the removal or commitment of 10 percent or more of the required minimum liquid reserve funds in violation of s. 651.035, or the assumption of control over a facility's operations in violation of s. 651.043 has occurred.

Section 29. Paragraphs (d) and (e) of subsection (1) of section 651.121, Florida Statutes, are amended to read:

651.121 Continuing Care Advisory Council.—

(1) The Continuing Care Advisory Council to the office is

created consisting of 10 members who are residents of this state appointed by the Governor and geographically representative of this state. Three members shall be administrators of facilities that hold valid certificates of authority under this chapter and shall have been actively engaged in the offering of continuing care contracts in this state for 5 years before appointment. The remaining members include:

~~(d) An attorney.~~

(d) ~~(c)~~ Four ~~Three~~ residents who hold continuing care or continuing care at-home contracts with a facility certified in this state.

Section 30. Subsections (1) and (4) of section 651.125, Florida Statutes, are amended to read:

651.125 Criminal penalties; injunctive relief.—

(1) Any person who maintains, enters into, or, as manager or officer or in any other administrative capacity, assists in entering into, maintaining, or performing any continuing care or continuing care at-home contract subject to this chapter without ~~doing so in pursuance of~~ a valid provisional certificate of authority or certificate of authority ~~or renewal thereof~~, as contemplated by or provided in this chapter, or who otherwise violates any provision of this chapter or rule adopted in pursuance of this chapter, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Each violation of this chapter constitutes a separate offense.

(4) Any action brought by the office against a provider shall not abate by reason of a sale or other transfer of ownership of the facility used to provide care, which provider is a party to the action, except with the express written

consent of the ~~director of the~~ office.

Section 31. Effective July 1, 2018, the sum of $74,141 in recurring funds from the Insurance Regulatory Trust Fund is appropriated to the Office of Insurance Regulation, and one full-time equivalent position with associated salary rate of 45,043 is authorized, for the purpose of administering this act.

Section 32. This act shall take effect July 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 438
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Lee and Campbell
SUBJECT:	Continuing Care Contracts
DATE:	February 23, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AGG	**Recommend: Fav/CS**
3.	Sanders	Hansen	AP	**Fav/CS**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 438 revises provisions within the Insurance Code governing continuing care retirement communities (CCRC) or providers, which are regulated by the Office of Insurance Regulation (OIR). Generally, the CCRCs provide lifelong housing, household assistance, and nursing care in exchange for a significant entrance fee and monthly fees. The CCRCs appeal to older Americans because they offer an independent lifestyle for as long as possible but also provide the reassurance that, as residents age or become sick or frail, they will receive the care they need.

The bill provides the following changes throughout ch. 651, F.S., relating to CCRCs:

Solvency/Financial Accountability:

- The bill creates an impairment framework to allow the OIR to work with the provider much earlier when negative financial trends are identified in order to mitigate or resolve any potential issues that would put residents' interests in jeopardy.
- The bill specifies that a provider is deemed to be experiencing a regulatory action level event and must submit a corrective action to the OIR if the provider's performance fails to meet certain requirements.
- The OIR must examine the provider and issue a corrective order specifying any corrective actions that the OIR deems necessary.

- Effective July 1, 2019, a provider is considered impaired if it does not meet the minimum liquid reserves requirements or debt service coverage ratios, as applicable.

Protections and Transparency for Residents:
- The bill requires the provider to make additional information, notices, and reports available to the residents or residents' council.
- The bill also provides an expanded process for resident complaints against providers, including the establishment of a complaint tracking system and a requirement that the OIR provide a written report to the complainant upon the disposition of a complaint.
- The bill provides the OIR with additional authority to approve or disapprove management. The bill would also allow the OIR to revoke, suspend, or take other administrative action in the event a CCRC does not remove a manager in a timely manner by the CCRC.

Regulatory Oversight:
- The bill clarifies the duty of a provider to respond to written correspondence from the OIR.
- The bill provides that the OIR has standing to petition a circuit court for mandatory injunctive relief to compel access to and require a provider to produce requested records.
- The bill provides that, if a facility or provider relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate that the financial condition of the provider or facility complies with ch. 651, F.S., the OIR is authorized to examine these entities.
- The bill clarifies and streamlines existing regulatory requirements. For example, the bill consolidates the application process for the acquisition of a facility and the issuance of certificate of authority (COA) into a single application.

The bill appropriates $74,141 from the Insurance Regulatory Trust Fund and one position with associated salary rate of 45,043. The OIR estimates it will need to modify current technology systems, which can be absorbed within existing resources.[1]

The bill provides an effective date of July 1, 2018.

II. Present Situation:

Continuing Care Retirement Communities (CCRC)

A provider or a CCRC offer shelter and nursing care or personal services upon the payment of an entrance fee.[2] The CCRCs offer a transitional approach to the aging process, accommodating residents' changing level of care. A CCRC can include independent living apartments or houses, as well as an assisted living facility or a nursing home. The CCRCs may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.[3] In addition to the entrance fee, a CCRC also generally

[1] Conversation with Richard Fox, Budget Director, Office of Insurance Regulation (February 5, 2018).
[2] Section 651.011(2), F.S.
[3] Sections 651.057 and 651.118, F.S.

charges residents monthly fees to cover costs related to health care and other aspects of community living. [4]

Regulatory oversight responsibility of CCRCs in Florida is shared primarily between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR).[5] The OIR regulates CCRC providers[6] as specialty insurers. The AHCA regulates aspects of CCRCs related to the provision of health care, such as nursing facilities, assisted living facilities, home health agencies, quality of care, and medical facilities.[7]

There are currently 70 licensed continuing care retirement communities in Florida.[8] About 30,000 residents live in CCRCs.[9]

Oversight by the Office of Insurance Regulation

Continuing care services are governed by a contract between the facility and the resident of a CCRC. In Florida, continuing care contracts are considered an insurance product and are reviewed and approved by the OIR.[10]

Certificate of Authority (COA)

The OIR has primary responsibility to regulate and monitor the operation of CCRCs and to determine facilities' financial condition and the management capabilities of their managers and owners.[11] If a provider is accredited through a process "substantially equivalent" to the requirements of ch. 651, F.S., the OIR may waive requirements of the chapter.[12]

In order to operate a CCRC in Florida, a provider must obtain from the OIR a COA predicated upon first receiving a provisional certificate of authority.[13] The application process involves submitting various financial statements and information, expectations of the financial condition of the project, and copies of contracts.[14] Further, the applicant must provide evidence that the applicant is reputable and of responsible character.[15] A certificate of authority will be issued once a provider meets the requirements prescribed in s. 651.023, F.S.[16]

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[4] AARP, *About Continuing Care Retirement Communities*, available at http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last viewed Jan. 7, 2018).
[5] Chapter 651, F.S.
[6] Section 651.011(12), F.S., a provider means an owner or operator.
[7] Agency for Health Care Administration reports, available at *http://www.floridahealthfinder.gov/reports-guides/nursinghomesfl.aspx* (last viewed Jan. 7, 2018) and s. 651.118, F.S.
[8] Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (Aug. 2017), available at https://www.floir.com/siteDocuments/CCRCAdvisoryCouncilOIRPresentation08172017.pdf (last viewed Jan. 11, 2018).
[9] *Id.*
[10] Section 651.055(1), F.S.
[11] See ss. 651.021, 651.22, and 651.023, F.S.
[12] Section 651.028, F.S.
[13] Section 651.022, F.S.
[14] See ss. 651.021-651.023, F.S.
[15] Section 651.022(2)(c), F.S.
[16] Section 651.023(4)(a), F.S.

Continuing Care Contracts

A CCRC enters into contracts with seniors (residents) to provide housing and medical care in exchange for an entrance fee and monthly fees. Entrance fees are a significant commitment by the resident as entrance fees range from around $100,000 to over $1 million. The CCRCs offer different types of contracts that provide for varying amounts of monthly fees and levels of healthcare discounts.

All CCRC contracts provide for a refund of a declining portion of the entrance fee if the contract is cancelled for reasons other than the death of the resident, during the first four years of occupancy in the CCRC by the resident.[17] However, many contracts exceed this requirement and contain minimum refund provisions that guarantee a refund of a specified portion (typically 50 to 90 percent) of the entrance fee upon the death of the resident or termination of the contract regardless of the length of occupancy by the resident.[18]

Financial Requirements/Solvency

Each CCRC is required to file an annual report with the OIR, which includes an audited financial report and other detailed financial information, such as a listing of assets maintained in the liquid reserve required under s. 651.035, F.S., and information about fees required of residents.[19] Section 651.033, F.S., prescribes requirements relating to the establishment and maintenance of escrow accounts. Providers are required to maintain a minimum liquid reserve, as applicable, as prescribed in s. 651.035, F.S.

Rights of Residents in a Continuing Care Retirement Community

The OIR is authorized to discipline a facility for violations of residents' rights.[20] These rights include: a right to live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community; and present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.[21]

Each CCRC must establish a resident's council to provide a forum for residents' input on issues that affect the general residential quality of life, such as the facility's financial trends, and problems, as well as proposed changes in policies, programs, and services.[22] The CCRCs are required to maintain and make available certain public information and records.[23]

[17] Section 651.055, F.S.
[18] *See* Office of Insurance Regulation, *Analysis of SB 438* (Oct. 11, 2017) (on file with the Senate Committee on Banking and Insurance).
[19] Section 651.026, F.S.
[20] Section 651.083, F.S.
[21] *Id*.
[22] Section 651.081, F.S.
[23] Section 651.091, F.S.

OIR Enforcement Authority

If a provider fails to meet the requirements of ch. 651, F.S., relating to a provisional certificate of authority or a COA, the OIR must notify the provider of any deficiencies and require the provider to take corrective action within a period determined by the OIR. If the provider does not correct the deficiencies by the expiration of such time required by the OIR, the OIR may initiate delinquency proceedings as provided in s. 651.114, F.S., or seek other relief provided under ch. 651, F.S. The OIR may deny, suspend, or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider for grounds specified in s. 651.106, F.S**.**

If the OIR institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider. Such claims are subordinate, however, to any secured claim. Florida law does not specify the claim status of continuing care contracts in a bankruptcy proceeding.

Department of Financial Services

The Department of Financial Services (DFS) may become involved with a resident after a CCRC contractual agreement has been signed by both parties or during a mediation or arbitration process.[24] Typically, residents will contact the DFS's Division of Consumer Services, which receives and resolves complaints involving products and entities regulated by the OIR or the DFS.[25]

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law provides that insurance companies are not eligible to be a debtor in federal bankruptcy proceedings and are instead subject to state laws regarding receivership. In Florida, the Division of Rehabilitation and Liquidation (division) within the DFS is responsible for managing insurance companies placed into receivership. The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay claims, including those of policyholders, creditors, and employees.

III. Effect of Proposed Changes:

Section 1 amends s. 651.011, F.S., to create definitions of the following terms: actuarial opinion, actuarial study, actuary, corrective order, days cash on hand, debt service coverage ratio, impaired, manager or management company, obligated group, occupancy, and regulatory action level event. The term, "impaired," means any of the following has occurred:

- A provider has failed to maintain its minimum liquid reserve as required in s. 651.035, F.S., unless the provider has received prior written approval from the office for a withdrawal pursuant to s. 651.035(6), F.S., and is compliant with the approved payment schedule; or
- Beginning July 1, 2019:
  - For a provider with mortgage financing from a third-party lender or public bond issue, the provider's debt service coverage ratio is less than 1:1 and the provider's days cash on hand is less than 90; or

[24] *See* Rules 69O-193.062 and 69O-193.063, F.A.C.
[25] Section 624.307, F.S.

- For a provider without mortgage financing from a third-party lender or public bond issue, the provider's days cash on hand is less than 90.

Solvency/Financial Accountability

Section 12 amends s. 651.026, F.S., to provide that the annual report submitted to the Office of Insurance Regulation (OIR) must include the reporting of the management's calculation of the provider's debt service coverage ratio and days cash on hand for the current reporting period, and an opinion from an independent certified public accountant of the management's calculations. The OIR is required to publish an annual industry benchmarking report that contains specified information about the industry's performance.

Section 13 amends s. 651.0261, F.S., to codify the current discretionary monthly financial reporting rule[26] and revises the quarterly financial reporting requirements. This section provides the conditions that trigger a monthly financial reporting to the OIR. The OIR may waive the quarterly reporting requirements if a written request from a provider that is accredited or that has obtained an investment grade credit rating from a U.S. credit rating agency. Further, the section requires a provider to submit a detailed listing of assets in the minimum liquid reserve with the quarterly and monthly unaudited financial statement filings, if applicable, which will enable the OIR to determine whether the provider is impaired and to take action to assist providers who may fall below the impairment threshold.

Section 14 amends s. 651.028, F.S., relating to waivers of ch. 651, F.S., requirements. The section provides that if a provider or obligated group has obtained an investment grade credit rating from Moody's Investors Services, Standard & Poor's, or Fitch Ratings, the OIR may waive any requirements of ch. 631, F.S., if the OIR finds that such waivers are not inconsistent with the protections intended by this chapter. Currently, the OIR may waive ch. 631, F.S., requirements if a provider is accredited.

Section 15 amends s. 651.033, F.S., to clarify the terms and conditions relating to an escrow account and the duties of escrow agents. The section provides that an escrow agent must receive the OIR's prior approval before releasing escrowed funds with some exceptions. According to the OIR, these changes are based on conversations with escrow agents who expressed confusion over their statutory responsibilities because some of the requirements are beyond those customarily undertaken by escrow agents. The section also clarifies permissible investments (e.g., cash, cash equivalents, mutual funds, equities, or investment grade bonds) of escrowed funds and removes references to part II of ch. 625, F.S.

Section 16 creates s. 651.034, F.S., to establish a financial and operating framework of required actions if a regulatory action level event or impairment occurs. A regulatory action level event occurs when a provider fails to meet minimum requirements of two of the three following key indicators: occupancy rate, day's cash on hand, and debt service coverage ratios. If the provider is a member of an obligated group with an investment grade credit rating, the indicators of the obligated group may be substituted. Once a regulatory action level event is triggered, the OIR is

[26] Rule 69O-193.005, F.A.C.

required to examine the provider, review the provider's corrective action plan, and issue a corrective order specifying any corrective actions that the OIR deems necessary.

Further, this section details the information the provider must submit to the OIR if a regulatory action level event occurs, which would include the submission of a corrective action plan within 30 days after the regulatory action level event. The OIR must approve or disapprove the corrective plan within 15 days. If an impairment occurs, the OIR must take action, which could include "any remedy available under ch. 631, F.S." An impairment is sufficient grounds for the Department of Financial Services (DFS) to be appointed as receiver, as provided in ch. 631, F.S. The section provides that the OIR may exempt a provider from provisions relating to the regulatory action level event and impairment if certain conditions are met.

Section 17 amends s. 651.035, F.S., relating to the minimum liquid reserve requirements and reporting. Each facility must file annually with the OIR a calculation of the minimum liquid reserve along with the annual report. The section allows a provider to withdraw funds held in escrow without the approval of the OIR if the amount in escrow exceeds the requirements of this section and the withdrawal will not affect compliance with this section. For all other proposed withdrawals, the provider must file information documenting the necessity of the withdrawal. Within 30 days after the file is deemed complete, the OIR must notify the provider of its approval or disapproval of the withdrawal request. The section also requires a provider that does not have a mortgage loan or other financing on the facility, to deposit monthly in escrow one-twelfth of its annual property tax liability. This change modifies the current requirement that a provider hold funds equivalent to one year's property taxes in escrow as a reserve. The section authorizes the OIR to require the transfer of up to 100 percent of the funds held in the minimum liquid reserve to the custody of the Bureau of Collateral Management of the DFS if the OIR finds that the provider is impaired or insolvent in order to ensure the safety of those assets.

Section 27 amends s. 651.114, F.S., relating to delinquency proceedings and remedial rights. A provider must develop a plan for obtaining compliance or solvency within 30 days after a request from the advisory council or the office. The OIR or advisory council is required to respond within 30 days after receipt of a plan. If the financial conditions of the provider is impaired or the provider fails to submit a plan or submits a plan that is insufficient to correct the condition, the OIR may specify a plan. However, the section clarifies that the availability of remedial rights will not delay or prevent the OIR from taking regulatory measures it deems necessary.

The section requires a provider to give residents a written notice of a delinquency proceeding under ch. 631, F.S., within three business days of initiation. If a ch. 631, F.S., show cause order is issued, the provider must respond within 20 days after service, but no less than 15 days prior to the hearing. Any hearing must be held within 60 days after the order to show cause. A hearing to determine whether cause exists for DFS to be appointed a receiver must be commenced within 60 days after an order directing a provider to show cause. Further, the section provides that, notwithstanding s. 631.011, F.S., impairment of a provider, for purposes of s. 631.051, F.S., is defined according to the term, "impaired" in s. 651.011, F.S.

Regulatory Oversight

Section 3 amends s. 651.013, F.S., to expand the scope of laws applicable to continuing care retirement communities (CCRCs). Sections 624.307, 624.308, 624.310, 624.102, 624.311, 624.312, 624.318 and 624.422, F.S., are added. These provisions provide the OIR with additional authority to take enforcement authority against licensed entities, affiliates, and unlicensed entities subject to OIR's regulation. Further, these provisions specify that CCRCs must appoint the Chief Financial Officer for service of process; clarify the role of the DFS Division of Consumer Services in resolving consumer complaints; specify requirements for the retention of records by the OIR; and provide immunity from civil liability for persons providing the DFS, Financial Services Commission (FSC), or the OIR with information about the condition of an insurer and clarify the authority of the OIR in regards to examinations and investigations. Section 624.318, F.S., which applies generally to insurers, provides that it is the duty of every person being examined, and its officers, attorneys, employees, agents, and representatives, to "make freely available" to the OIR the accounts, records and documents during an examination or investigation. This section also specifies, "any individual who willfully obstructs the DFS, the OIR, or the examiner in the examinations or investigations authorized by this part is guilty of a misdemeanor." Finally, s. 624.312, F.S., provides that reproductions and certified copies of records are admissible as evidence. These requirements are consistent with the oversight of other licensees and consumer complaint handling subject to the Insurance Code.

Section 5 amends s. 651.021, F.S., which relates to the certificate of authority process, to move provisions relating to expansion of a certified facility to the newly created s. 651.0246, F.S.

Section 6 creates s. 651.0215, F.S., to allow an applicant to qualify for a certificate of authority without first obtaining a provisional certificate of authority if the following conditions are met:

- Placement of all reservation deposits and entrance fees in escrow and not pledging initial entrance fees for construction or purchase of the facility or a security for long-term financing;
- Compliance with the requirement of s. 651.022(2), F.S.;
- Submission of a feasibility study, financial forecasts or projections, an audited financial report, and quarterly unaudited financial reports;
- Evidence of compliance with lenders' conditions;
- Documentation evidencing that aggregate amount of entrance fee received by or pledged by the applicant and other specified sources equal at 100 percent of the aggregate cost of constructing, acquiring, equipping, and furnishing the facility plus 100 percent of the anticipated losses of the facility;
- Evidence that the applicant will meet minimum liquid requirements; and
- Such other reasonable data and information requested by the OIR.

Section 7 amends s. 651.022, F.S., which relates to the provisional certificate of authority process, to clarify that an applicant must disclose material changes that occur while a provisional certificate of authority application is pending before the OIR. This change is consistent with other requirements in the Insurance Code.

Section 8 amends s. 651.023, F.S., relating to the requirements for a certificate of authority application. After issuance of a provisional certificate of authority, the OIR will issue the holder a certificate of authority if the holder provides certain information. For example, an applicant

must submit a feasibility study that contains specified information, such as information evidencing commitments had been made for construction financing and long-term financing or a documented plan acceptable to the OIR. Further, audited financial reports are required. The bill clarifies the deadlines for the OIR's approval or denial of completed applications.

A certificate of authority may not be issued until documentation is submitted to the OIR evidencing the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee. In order for a unit to be considered reserved, the provider must collect a minimum deposit of the lesser of $40,000 or 10 percent of the then-current entrance fee for that unit. The provider may assess a forfeiture penalty of two percent of the entrance fee due to termination of the reservation contract after 30 days for any reason other than death or serious illness of the resident, the failure of the provider to meet obligations under the reservation contract, or other circumstances beyond the control of the resident.

Section 9 amends s. 651.024, F.S., relating to acquisitions, to clarify which filing or application for acquisition statutory provision applies to each type of transaction, including the new, consolidated provisions of s. 651.0245, F.S. The section clarifies that the assumption of the role of a general partner of a CCRC or the assumption of ownership, or possession of, or control over, 10 percent or more of a provider's assets requires an acquisition filing. However, this type of acquisition is not subject to the filing requirements pursuant to s. 651.022, s. 651.023, or s. 651.0245, F.S.

A person who seeks to acquire and become the provider for a facility will be subject to s. 651.0245, F.S., and will not be required to make filings pursuant to ss. 651.4615, 651.022, and 651.023, F.S. The section provides that a person may rebut a presumption of control by filing a disclaimer of control form with the OIR. The federal Securities and Exchange Commission (SEC) Schedule 13G form may be filed in lieu of a disclaimer of control form. This SEC filing is used to report a party's ownership of stock in a company. Insurers are permitted to use this filing, and some CCRCs have requested that the OIR accept such filings from them.

Section 10 creates s. 651.0245, F.S., to establish an application for the simultaneous acquisition of a facility and issuance of a certificate of authority. The section provides that a person must obtain the OIR's prior approval before acquiring a facility operating under an existing Certificate of Authority (COA) and engaging in the business of continuing care. Under current law, if a person applies to acquire an existing facility and become the provider, the person must submit an acquisition application, a provisional certificate of authority application, and a certificate of authority application. This section streamlines the application process by creating a single application.

Section 11 creates s. 651.0246, F.S., relating to expansions, to clarify the requirements and approval process. The section establishes requirements for an expansion of a facility equivalent to the addition of at least 20 percent of the existing units or 20 percent more continuing care at-home contracts. Such expansion applications will require the submission of a feasibility study to the OIR. The section prescribes the factors the OIR must consider in deciding whether to approve the application. It also requires 75 percent of the initial entrance fees/reservation deposits for continuing care contracts, and 50 percent of the moneys paid for initial fees for continuing care at-home contracts be placed in escrow or on deposit with the Department of

Financial Services (DFS). Up to 25 percent of these funds may be used for construction or financing. The escrow funds may be released once certain conditions are met. Only the provider, escrow agent, and the Office of Insurance Regulation (OIR) have standing under ch. 120, F.S., to seek redress regarding the OIR's decision regarding the release of escrow funds. The OIR has 90 days to review and act upon complete expansion applications. If a provider has exceeded the current statewide median for certain indicators, the provider is automatically granted authority to expand the total number of existing units by up to 35 percent upon submission of specified information and an attestation to the OIR.

Section 18 creates s. 651.043, F.S., relating to changes in management. This section establishes criteria for the OIR to use in determining whether management meets minimum qualification standards and allows for the disapproval and removal of unqualified management. This section requires management contracts be in writing and providers to file notices of a change in management within 10 days of the appointment of new management. The OIR must approve or disapprove the filing within 15 days after the filing is deemed complete. Disapproved management must be removed within 30 days after receipt of the OIR's notice. Currently, the OIR does not have authority to disapprove unaffiliated management except by taking action against the certificate of authority (COA) of the provider.

Effective July 1, 2018, management contracts must be in writing. Currently, Rule 690-193.002(13), F.A.C., specifies that a manager or management company agrees to administer the day-to-day activities of a facility pursuant to a written contract with the provider. However, the rule does not address situations where a manager or management company does not have a written contract with the provider. This change closes a loophole that has allowed management serving under an oral contract to evade regulation by the OIR.

Section 19 amends s. 651.051, F.S., to clarify the requirements relating to the maintenance of records and assets. The section provides that the records and assets of a provider must be maintained in Florida, or, if the provider's corporate office is located in another state, they must be electronically stored in a manner that will ensure the records are accessible to the OIR.

Section 23 amends s. 651.105, F.S., relating to examinations and inspections by the OIR. The section requires a provider to respond to written correspondence from the OIR. Further, the section provides that the OIR has standing to petition a circuit court for mandatory injunctive relief to compel access to and require a provider to produce requested records. Unless a provider or facility is impaired or subject to a regulatory level event, any parent, subsidiary, or affiliate is not subject to examination by the OIR as part of a routine examination. However, an exception is provided if a facility or provider relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate that the financial condition of the provider or facility is in compliance with ch. 651, F.S. The books and records of affiliates often reflect on the financial state of the provider and may be relevant to the ability of the continuing care retirement community (CCRC) to provide the care promised to residents.

Section 24 amends s. 651.106, F.S., to provide additional grounds for the OIR to refuse, suspend, or revoke a COA. The section provides that the OIR may deny an application, suspend, or revoke the provisional certificate of authority or certificate of authority if the provider is

impaired or the owners, managers, or controlling persons are not reputable or lack sufficient management expertise or experience to operate a CCRC. Other grounds are delineated.

Section 25 creates s. 651.1065, F.S., relating to soliciting or accepting new contracts by impaired or insolvent facilities or providers. This section prohibits an impaired or insolvent provider from soliciting or accepting new contracts after the proprietor, general partner, its member, officer, director, trustee, or manager knew, or reasonably should have known, that the CCRC is impaired or insolvent, even if a delinquency hearing had not been initiated. According to the OIR, this provision will help to protect potential residents who may be considering investing substantial funds into the purchase of a CCRC contract. The OIR will have discretion to allow the issuance of new contracts where safeguards are adequate unless the facility had declared bankruptcy. The provision provides that a violation of this section is a felony of the third degree, which is consistent with regulations for other insurance entities.

Section 28 creates s. 651.1141, F.S., to clarify that certain statutory violations are an immediate danger to the public health, safety, or welfare, which allows the OIR to issue an immediate final order to cease and desist. These violations are:

- Installation of a general partner of a provider or assumption of ownership or possession or control of 10 percent or more of a provider's assets in violation of s. 651.024, F.S., or s. 651.0245, F.S.;
- The removal or commitment of 10 percent or more for the required minimum liquid reserve funds in violation of s. 651.035, F.S.; or
- The assumption of control over a facility's operations in violation of s. 651.043, F.S., has occurred.

This section will allow the OIR to take more expedited action to protect the assets of the provider and the significant investments of the residents.

Section 30 amends s. 651.125, F.S., relating to criminal penalties and injunctive relief, to clarify that any person who assists in entering into, maintaining, or performing any continuing care or continuing care at-home contract subject to ch. 651, F.S., without a valid provisional certificate of authority or certificate of authority commits a felony of the third degree.

Increased Transparency and Protections for Residents

Section 4 amends s. 651.019, F.S., provisions relating to CCRC financing. A provider must notify the residents' council of any new financing or refinancing at least 30 days before the closing date of the transaction. This allows residents to object to financing transactions that concern them. Under current law, the residents' council receives notice of all financing documents filed with the OIR. Such documents must be submitted to the OIR within 30 days after the closing date to remove the perception that the OIR can prevent a provider from securing new financing, additional financing, or refinancing that may be hazardous to the residents. Currently, providers are required to file a general outline and intended use of proceeds with the OIR prior to the closing date of the financing.

Section 21 amends s. 651.071, F.S., to deem all continuing care and continuing care at-home contracts preferred claims or policyholder loss claims pursuant to s. 631.271(1)(b), F.S., in the

event the provider is liquidated or put into receivership. The intent of this provision is to protect the claims of residents in the event of a liquidation.

Section 22 amends s. 651.091, F.S., to create additional provider reporting requirements to the residents or residents' council. These reports will help residents and prospective residents to remain apprised of the status and stability of the provider and to take action to protect their interests. The section requires the provider to furnish information to the chair of the residents' council, such as, a notice of the issuance of any examination reports, a notice of the initiation of any legal or administrative proceedings by the OIR or the DFS, and the reasons for any increase in the monthly fee that exceeds the consumer price index.

Section 26 amends s. 651.111, F.S., relating to resident complaints and inspections by the OIR to provide more guidance as to inspections or investigations by the OIR regarding the status and resolution of the complaint. The section requires the OIR to acknowledge receipt of a complaint within 15 days and issue a written closure statement to the complainant upon the final disposition of the complaint.

Section 29 amends s. 651.121, F.S., relating to the Continuing Care Advisory Council, to increase the number of residents on the council from three to four and remove the requirement that one of the 10 members is an attorney.

Sections 2 and 20 provide technical, conforming changes.

Section 31 provides the bill takes effect July 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 bill provides additional consumer protections for current and potential residents of a continuing care retirement community (CCRC).

A CCRC whose performance falls below the key indicators may incur increased costs in providing additional information to the OIR. Costs of acquisition may decrease due to the consolidation of the three filings currently required into one filing.

C. Government Sector Impact:

Office of Insurance Regulation

The OIR[27] indicates that it needs one additional full time equivalent employee (FTE), a Reinsurance Financial Specialist, at a cost of $74,141, to implement the provisions of the bill.[28] In addition, the OIR estimates it will need to modify current technology systems. The OIR indicates the required technology systems modifications can be absorbed within existing resources.[29]

VI. Technical Deficiencies:

Consumer Complaints, Examinations, Investigations, and Inspections

The handling of complaints and inspections, as provided in Section 26 of the bill, may create confusion and duplication with the existing provisions found in s. 624.307, F.S., and s. 651.105, F.S. Section 651.105, F.S., relates to the Office of Insurance Regulations' (OIR's) authority to conduct examinations and inspections. Currently, s. 624.307(10), F.S., authorizes the Department of Financial Services' (DFS') Division of Consumer Services (division) to receive and respond to complaints concerning products or services regulated by the DFS or the OIR, which would include continuing care retirement communities (CCRCs). According to the DFS, these types of inquiries are usually handled through coordination between the OIR and the division because the OIR lacks personnel to handle consumer inquiries but the division lacks access to financial documents as well as the technical knowledge to interpret and understand financial reports. Consumer inquiries are logged into the division's database and follow the same timelines and requirements as other entities regulated by the OIR.[30] Consumers may initiate contact with the DFS through the DFS website or by telephone.

Section 26 of the bill amends s. 651.111, F.S., relating to complaints and inspections received by the OIR. Under current law, the OIR is required to make an inspection unless the OIR determines a complaint is without reasonable basis. The language appears to require the OIR to make an inspection if one is requested even if the OIR determines the request is without merit. The term, "inspection," is used in ss. 651.105 and 651.111, F.S.; however, the term is undefined.

[27] Office of Insurance Regulation, *Analysis of SB 438* (Oct. 11, 2017) (on file with the Senate Banking and Insurance Committee).
[28] *Id* at pp. 8-9.
[29] Conversation with Richard Fox, Budget Director, Office of Insurance Regulation (February 5, 2018).
[30] Department of Financial Services, *Analysis of SB 438* (Dec. 28, 2017) (on file with Senate Banking and Insurance Committee).

Solvency

Currently, chapters 631, F.S., relating to insurer insolvency, and 651, F.S., do not define the term "impaired." However, s. 631.051, F.S., does use the term as one of the grounds for the initiation of delinquency proceedings. In addition, The Insurance Code uses the terms "impaired" and "impairment" throughout but does not define either term. **Section 1** of the bill contains a definition of "impaired" and given that term is not defined in ch. 631, F.S., it is unclear how the receivership court would treat actions based on the amended definition of "impaired." [31]

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 651.011, 651.012, 651.013, 651.019, 651.021, 651.022, 651.023, 651.024, 651.026, 651.0261, 651.028, 651.033, 651.035, 651.051, 651.057, 651.071, 651.091, 651.105, 651.106, 651.111, 651.114, 651.1151, 651.121, and 651.125.

This bill creates the following sections of the Florida Statutes: 651.0215, 651.0245, 651.0246, 651.034. 651.043, 651.1065, and 651.1141.

IX. Additional Information:

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

CS/CS by Appropriations on February 22, 2018:
The committee substitute provides an appropriation of $74,141 and one full time equivalent position with associated salary rate of 45,043 to the Office of Insurance Regulation.

CS by Banking and Insurance on January 16, 2018:
The CS provides the following changes:

- Revises definitions.
- Creates consolidated application for provisional certificate of authority and certificate of authority.
- Revises and clarifies escrow account requirements.
- Revises requirements for expansions.
- Revises annual and quarterly report requirements.
- Allows the Office of Insurance Regulation (OIR) to waive requirements of ch. 651, F.S., if a provider or obligator group has obtained an investment grade credit rating and has met certain conditions.

[31] Department of Financial Services, *Analysis of SB 438* (Oct. 16, 2017) (on file with Senate Banking and Insurance Committee).

- Revises minimum liquid reserve requirements.
- Revises provisions relating to approval of changes in management.
- Revises maintenance of record provisions.
- Revises provisions relating to examinations and inspections.
- Revises grounds for discretionary refusal, suspension, or revocation of a certificate of authority.
- Provides technical, conforming changes.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Lee

597-02156-18 2018438c1

A bill to be entitled

An act relating to continuing care contracts; amending s. 651.011, F.S.; defining and redefining terms; amending s. 651.012, F.S.; conforming a cross-reference; deleting an obsolete date; amending s. 651.013, F.S.; revising applicability of specified provisions of the Florida Insurance Code to the Office of Insurance Regulation's authority to regulate providers of continuing care and continuing care at-home; amending s. 651.019, F.S.; revising notice and filing requirements for providers and facilities with respect to new and additional financing and refinancing; amending s. 651.021, F.S.; conforming provisions to changes made by the act; creating s. 651.0215, F.S.; specifying conditions that qualify an applicant for a certificate of authority without first obtaining a provisional certificate of authority; specifying requirements for the consolidated application; requiring an applicant to obtain separate certificates of authority for multiple facilities; specifying procedures and requirements for the office's review of such applications and issuance or denial of certificates of authority; providing requirements for reservation contracts, entrance fees, and reservation deposits; authorizing a provider to secure release of moneys held in escrow under specified circumstances; providing construction relating to the release of escrow funds; amending s. 651.022, F.S.; revising the office's authority to make

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certain inquiries in the review of applications for provisional certificates of authority; specifying requirements for application amendments if material changes occur; requiring applicants to submit a specified feasibility study; revising procedures and requirements for the office's review of such applications; conforming a provision to changes made by the act; making a technical change; conforming cross-references; amending s. 651.023, F.S.; revising requirements for an application for a certificate of authority; specifying requirements for application amendments if material changes occur; revising procedures and requirements for the office's review of such applications; revising minimum unit reservation and minimum deposit requirements; revising conditions under which a provider is entitled to secure release of certain moneys held in escrow; conforming provisions to changes made by the act; conforming cross-references; amending s. 651.024, F.S.; providing and revising applicability of certain provisions to a person seeking to assume the role of general partner of a provider or seeking specified ownership, possession, or control of a provider's assets; providing applicability of certain provisions to a person seeking to acquire and become the provider for a facility; providing procedures for filing a disclaimer of control; defining terms; providing standing to the office to petition a circuit court in certain proceedings; creating s. 651.0245, F.S.;

prohibiting a person, without the office's prior written approval, from acquiring a facility operating under a subsisting certificate of authority and engaging in the business of providing continuing care; providing requirements for an applicant seeking simultaneous acquisition of a facility and issuance of a certificate of authority; requiring the Financial Services Commission to adopt by rule certain application requirements; requiring the office to review applications and issue approvals or disapprovals of filings in accordance with specified provisions; defining terms; providing standing to the office to petition a specified circuit court under certain circumstances; providing procedures for filing a disclaimer of control; providing construction; authorizing the commission to adopt, amend, and repeal rules; creating s. 651.0246, F.S.; requiring a provider to obtain written approval from the office before commencing construction or marketing for specified expansions of a certificated facility; providing that a provider is automatically granted approval for certain expansions under specified circumstances; defining the term "existing units"; providing applicability; specifying requirements for applying for such approval; requiring the office to consider certain factors in reviewing such applications; providing procedures and requirements for the office's review of applications and approval or denial of expansions; specifying requirements for

escrowed moneys and for the release of the moneys; defining the term "initial entrance fee"; providing construction; amending s. 651.026, F.S.; revising requirements for annual reports that providers file with the office; revising guidelines for commission rulemaking; requiring the office to publish, within specified timeframes, a specified annual report; amending s. 651.0261, F.S.; revising requirements for quarterly statements filed by providers and facilities with the office; authorizing the office to waive certain filing requirements under certain circumstances; authorizing the office to require, under certain circumstances, providers or facilities to file monthly unaudited financial statements and certain other information; authorizing the commission to adopt certain rules; amending s. 651.028, F.S.; authorizing the office, under certain circumstances, to waive any requirement of ch. 651, F.S., for providers or obligated groups having certain accreditations or credit ratings; amending s. 651.033, F.S.; revising requirements for escrow accounts and escrow agreements; revising requirements for, and restrictions on, agents of escrow accounts; revising permissible investments for funds in an escrow account; revising requirements for the withdrawal of escrowed funds under certain circumstances; creating s. 651.034, F.S.; specifying requirements and procedures for the office if a regulatory action level event occurs; authorizing the office to use members of

the Continuing Care Advisory Council or retain consultants for specified purposes; requiring affected providers to bear fees, costs, and expenses for such consultants; requiring the office to take certain actions if an impairment occurs; authorizing the office to forego taking action for a certain timeframe under certain circumstances; providing immunity from liability to the commission, the Department of Financial Services, the office, and their employees or agents for certain actions; requiring the office to transmit any notice that may result in regulatory action by certain methods; authorizing the office to exempt a provider from specified requirements under certain circumstances and for a specified timeframe; authorizing the commission to adopt rules; providing construction; amending s. 651.035, F.S.; revising provider minimum liquid reserve requirements under specified circumstances; deleting an obsolete date; authorizing providers, under certain circumstances, to withdraw funds held in escrow without the office's approval; providing procedures and requirements to request approval for certain withdrawals; providing procedures and requirements for the office's review of such requests; authorizing the office, under certain circumstances, to order the immediate transfer of funds in the minimum liquid reserve to the custody of the department; providing that certain debt service reserves of a provider are not subject to such transfer provision; requiring facilities to file

annual calculations of their minimum liquid reserves with the office and maintain such reserves beginning at specified periods; requiring providers to fund reserve shortfalls within a specified timeframe; providing construction; creating s. 651.043, F.S.; defining the term "management"; providing requirements for a contract for management made after a certain date; specifying procedures and requirements for providers filing notices of change in management with the office; specifying procedures, requirements, and factors for the office's review of such changes and approval or disapproval of the new management; requiring management disapproved by the office to be removed within a specified timeframe; authorizing the office to take certain disciplinary actions under certain circumstances; requiring providers to immediately remove management under certain circumstances; amending s. 651.051, F.S.; revising requirements for the maintenance of a provider's records and assets; amending s. 651.057, F.S.; conforming cross-references; amending s. 651.071, F.S.; revising construction as to the priority of continuing care and continuing care at-home contracts in the event of receivership or liquidation proceedings against a provider; amending s. 651.091, F.S.; revising requirements for continuing care facilities and providers relating to the availability, distribution, and posting of reports and records; amending s. 651.105, F.S.; providing applicability of

a provision of the Insurance Code relating to examinations and investigations to the office's authority in examining certain applicants and providers; requiring providers to respond to written correspondence from the office and provide certain information; declaring that the office has standing to petition a circuit court for certain injunctive relief; specifying venue; deleting a requirement for the office to determine if certain disclosures have been made; providing that a provider's or facility's parent, subsidiary, or affiliate is not subject to routine examination by the office except under certain circumstances; authorizing the office to examine certain parents, subsidiaries, or affiliates to ascertain the financial condition of a provider under certain circumstances; prohibiting the office, when conducting an examination or inspection, from using certain actuary recommendations for a certain purpose or requesting certain documents under certain circumstances; amending s. 651.106, F.S.; authorizing the office to deny an application for a provisional certificate of authority or a certificate of authority on certain grounds; revising and adding grounds for application denial or disciplinary action by the office; creating s. 651.1065, F.S.; prohibiting certain persons of a continuing care retirement community, except with the office's written permission, from actively soliciting, approving the solicitation or acceptance of, or accepting new

continuing care contracts if they knew or should have known that the retirement community was impaired or insolvent; providing an exception; requiring the office to approve or disapprove the continued marketing of new contracts within a specified timeframe; providing a criminal penalty; amending s. 651.111, F.S.; revising procedures and requirements for the office's review of complaints requesting inspections of records and related financial affairs of a provider; amending s. 651.114, F.S.; providing that certain duties relating to a certain compliance or solvency plan must be performed by the office, or the Continuing Care Advisory Council at the request of the office, rather than solely by the council; providing construction relating to the office's authority to take certain measures; authorizing the office to seek a recommended plan from the advisory council; replacing the office with the department as the entity taking certain actions under ch. 631, F.S.; providing construction; revising circumstances under which the department and office are vested with certain powers and duties in regard to delinquency proceedings; specifying requirements for providers to notify residents and prospective residents of delinquency proceedings; specifying procedures relating to orders to show cause and hearings pursuant to ch. 631, F.S.; revising facilities with respect to which the office may not exercise certain remedial rights; creating s. 651.1141, F.S.; authorizing the

office to issue an immediate final order for a provider to cease and desist from specified violations; amending s. 651.121, F.S.; revising the composition of the Continuing Care Advisory Council; amending s. 651.125, F.S.; providing a criminal penalty for certain actions performed without a valid provisional certificate of authority; making a technical change; providing an effective date.

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

Section 1. Section 651.011, Florida Statutes, is amended to read:

651.011 Definitions.—As used in this chapter, the term:

(1) "Actuarial opinion" means an opinion issued by an actuary in accordance with Actuarial Standards of Practice No. 3 for Continuing Care Retirement Communities, Revised Edition, effective May 1, 2011, or any future amendments or replacements to this standard which may be adopted by the Actuarial Standards Board.

(2) "Actuarial study" means an analysis prepared for an individual facility, or consolidated for multiple facilities, for either a certified provider, as of a current valuation date or the most recent fiscal year, or for an applicant, as of a projected future valuation date, which includes an actuary's opinion as to whether such provider or applicant is in satisfactory actuarial balance in accordance with Actuarial Standards of Practice No. 3 for Continuing Care Retirement Communities, Revised Edition, effective May 1, 2011, or any

future amendments or replacements to this standard which may be adopted by the Actuarial Standards Board.

(3) "Actuary" means an individual who is qualified to sign an actuarial opinion in accordance with the American Academy of Actuaries' qualification standards and who is a member in good standing of the American Academy of Actuaries.

(4) ~~(1)~~ "Advertising" means the dissemination of written, visual, or electronic information by a provider, or any person affiliated with or controlled by a provider, to potential residents or their representatives for the purpose of inducing such persons to subscribe to or enter into a contract for continuing care or continuing care at-home.

(5) ~~(2)~~ "Continuing care" or "care" means, pursuant to a contract, furnishing shelter and nursing care or personal services to a resident who resides in a facility, whether such nursing care or personal services are provided in the facility or in another setting designated in the contract for continuing care, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee. The terms may also be referred to as a "life plan."

(6) ~~(3)~~ "Continuing Care Advisory Council" or "advisory council" means the council established in s. 651.121.

(7) ~~(4)~~ "Continuing care at-home" means, pursuant to a contract other than a contract described in subsection (5) ~~(2)~~, furnishing to a resident who resides outside the facility the right to future access to shelter and nursing care or personal services, whether such services are provided in the facility or in another setting designated in the contract, by an individual not related by consanguinity or affinity to the resident, upon

payment of an entrance fee. The term may also be referred to as a "life plan at-home."

(8) "Corrective order" means an order issued by the office which specifies corrective actions the office has determined are required.

(9) "Days cash on hand" means, for a facility or obligated group, the quotient obtained by dividing the value of paragraph (a) by the value of paragraph (b).

(a) The sum of unrestricted cash, unrestricted short-term and long-term investments, provider restricted funds, and the minimum liquid reserve as of the reporting period.

(b) Operating expenses less depreciation, amortization, and other noncash expenses and nonoperating losses, divided by 365. Operating expenses, depreciation, amortization, and other noncash expenses and nonoperating losses are each the sum of their respective values over the 12-month period immediately preceding the reporting date.

With prior written approval of the office, a demand note or other parental guarantee may be considered a short-term or long-term investment for the purposes of paragraph (a). However, the total of all demand notes issued by the parent may not, at any time, be more than the sum of unrestricted cash and unrestricted short-term and long-term investments held by the parent.

(10) "Debt service coverage ratio" means, for a facility or obligated group, the quotient obtained by dividing the value of paragraph (a) by the value of paragraph (b).

(a) The sum of total expenses less interest expense on the facility, depreciation, amortization, and other noncash expenses

and nonoperating losses, subtracted from the sum of total revenues and gross entrance fees received less earned entrance fees and refunds paid. Expenses, interest expense on the facility, depreciation, amortization, other noncash expenses and nonoperating losses, revenues, noncash revenues, nonoperating gains, gross entrance fees, earned entrance fees, and refunds are each the sum of their respective values over the 12-month period immediately preceding the reporting date.

(b) Total annual principal and interest expense due on the facility or obligated group over the 12-month period immediately preceding the reporting date. For purposes of this paragraph, principal excludes any balloon principal payment amounts, and interest expense due is the sum of the interest over the 12-month period immediately preceding the reporting date which is reflected in the provider's audit.

(11) ~~(5)~~ "Entrance fee" means an initial or deferred payment of a sum of money or property made as full or partial payment for continuing care or continuing care at-home. An accommodation fee, admission fee, member fee, or other fee of similar form and application are considered to be an entrance fee.

(12) ~~(6)~~ "Facility" means a place where continuing care is furnished and may include one or more physical plants on a primary or contiguous site or an immediately accessible site. As used in this subsection, the term "immediately accessible site" means a parcel of real property separated by a reasonable distance from the facility as measured along public thoroughfares, and the term "primary or contiguous site" means the real property contemplated in the feasibility study required by this chapter.

~~(7) "Generally accepted accounting principles" means those accounting principles and practices adopted by the Financial Accounting Standards Board and the American Institute of Certified Public Accountants, including Statement of Position 90-8 with respect to any full year to which the statement applies.~~

(13) "Impaired" means that any of the following have occurred:

(a) A provider has failed to maintain its minimum liquid reserve as required in s. 651.035, unless the provider has received prior written approval from the office for a withdrawal pursuant to s. 651.035(6) and is compliant with the approved payment schedule; or

(b) Beginning July 1, 2019:

1. For a provider with mortgage financing from a third-party lender or public bond issue, the provider's debt service coverage ratio is less than 1.00:1 and the provider's days cash on hand is less than 90; or

2. For a provider without mortgage financing from a third-party lender or public bond issue, the provider's days cash on hand is less than 90.

(14)~~(8)~~ "Insolvency" means the condition in which a ~~the~~ provider is unable to pay its obligations as they come due in the normal course of business.

(15)~~(9)~~ "Licensed" means that a ~~the~~ provider has obtained a certificate of authority from the office ~~department~~.

(16) "Manager" or "management company" means a person who administers the day-to-day business operations of a facility for a provider, subject to the policies, directives, and oversight

of the provider.

(17)~~(10)~~ "Nursing care" means those services or acts rendered to a resident by an individual licensed or certified pursuant to chapter 464.

(18) "Obligated group" means one or more entities that jointly agree to be bound by a financing structure containing security provisions and covenants applicable to the group. For purposes of this subsection, debt issued under such a financing structure must be a joint and several obligation of each member of the group.

(19) "Occupancy" means the total number of occupied independent living, assisted living, and skilled nursing units in a facility divided by the total number of units in that facility, excluding units that are unavailable to market or reserve, as of the most recent annual report.

(20)~~(11)~~ "Personal services" has the same meaning as in s. 429.02.

(21)~~(12)~~ "Provider" means the owner or operator, whether a natural person, partnership or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, which owner or operator provides continuing care or continuing care at-home for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments. The term does not apply to an entity that has existed and continuously operated a facility located on at least 63 acres in this state providing residential lodging to members and their spouses for

at least 66 years on or before July 1, 1989, and has the residential capacity of 500 persons, is directly or indirectly owned or operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its members and their spouses as residents.

(22) ~~(13)~~ "Records" means all documents, correspondence, and ~~the permanent~~ financial, directory, and personnel information and data maintained by a provider pursuant to this chapter, regardless of the physical form, characteristics, or means of transmission.

(23) "Regulatory action level event" means that any two of the following have occurred:

(a) The provider's debt service coverage ratio is less than the minimum ratio specified in the provider's bond covenants or lending agreement for long-term financing, or, if the provider does not have a debt service coverage ratio required by its lending institution, the provider's debt service coverage ratio is less than 1.20:1 as of the most recent annual report filed with the office. If the provider is a member of an obligated group having cross-collateralized debt and the obligated group has obtained an investment grade credit rating from a nationally recognized credit rating agency, as applicable, from Moody's Investors Service, Standard & Poor's, or Fitch Ratings, the obligated group's debt service coverage ratio will be used as the provider's debt service coverage ratio.

(b) The provider's days cash on hand is less than the minimum number of days cash on hand specified in the provider's bond covenants or lending agreement for long-term financing. If the provider does not have a days cash on hand required by its

lending institution, the days cash on hand may not be less than 100 as of the most recent annual report filed with the office. If the provider is a member of an obligated group having cross-collateralized debt and the obligated group has obtained an investment grade credit rating from a nationally recognized credit rating agency, as applicable, from Moody's Investors Service, Standard & Poor's, or Fitch Ratings, the days cash on hand of the obligated group will be used as the provider's days cash on hand.

(c) The occupancy at the provider's facility is less than 80 percent, averaged over the 12-month period immediately preceding the reporting date.

(24) ~~(14)~~ "Resident" means a purchaser of, a nominee of, or a subscriber to a continuing care or continuing care at-home contract. Such contract does not give the resident a part ownership of the facility in which the resident is to reside, unless expressly provided in the contract.

(25) ~~(15)~~ "Shelter" means an independent living unit, room, apartment, cottage, villa, personal care unit, nursing bed, or other living area within a facility set aside for the exclusive use of one or more identified residents.

Section 2. Section 651.012, Florida Statutes, is amended to read:

651.012 Exempted facility; written disclosure of exemption.—Any facility exempted under ss. 632.637(1)(e) and 651.011(21) ~~651.011(12)~~ must provide written disclosure of such exemption to each person admitted to the facility ~~after October 1, 1996~~. This disclosure must be written using language likely to be understood by the person and must briefly explain the

exemption.

Section 3. Subsection (2) of section 651.013, Florida Statutes, is amended to read:

651.013 Chapter exclusive; applicability of other laws.—

(2) In addition to other applicable provisions cited in this chapter, the office has the authority granted under ss. 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312~~, 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, and 624.422 of the Florida Insurance Code to regulate providers of continuing care and continuing care at-home.

Section 4. Section 651.019, Florida Statutes, is amended to read:

651.019 New financing, additional financing, or refinancing.—

(1)(a) A provider shall provide notice to the residents' council of any new financing or refinancing at least 30 days before the closing date of the financing or refinancing transaction. The notice must include a general outline of the amount and terms of the financing or refinancing and the intended use of proceeds.

(b) If the facility does not have a residents' council, the facility must make available, in the same manner as other community notices, the information required by paragraph (a) ~~After issuance of a certificate of authority, the provider shall submit to the office a general outline, including intended use of proceeds, with respect to any new financing, additional financing, or refinancing at least 30 days before the closing date of such financing transaction~~.

(2) Within 30 days after the closing date of such financing

or refinancing transaction, ~~The provider shall furnish any information the office may reasonably request in connection with any new financing, additional financing, or refinancing, including, but not limited to, the financing agreements and any related documents, escrow or trust agreements, and statistical or financial data.~~ the provider shall ~~also~~ submit to the office copies of executed financing documents and escrow or trust agreements prepared in support of such financing or refinancing transaction, and a copy of all documents required to be submitted to the residents' council under paragraph (1)(a) ~~within 30 days after the closing date~~.

Section 5. Section 651.021, Florida Statutes, is amended to read:

651.021 Certificate of authority required.—

~~(1)~~ A ~~No~~ person may not engage in the business of providing continuing care, issuing contracts for continuing care or continuing care at-home, or constructing a facility for the purpose of providing continuing care in this state without a certificate of authority obtained from the office as provided in this chapter. This section ~~subsection~~ does not prohibit the preparation of a construction site or construction of a model residence unit for marketing purposes, or both. The office may allow the purchase of an existing building for the purpose of providing continuing care if the office determines that the purchase is not being made to circumvent the prohibitions in this section.

~~(2) Written approval must be obtained from the office before commencing construction or marketing for an expansion of a certificated facility equivalent to the addition of at least~~

~~20 percent of existing units or 20 percent or more in the number of continuing care at-home contracts. This provision does not apply to construction for which a certificate of need from the Agency for Health Care Administration is required.~~

~~(a) For providers that offer both continuing care and continuing care at-home, the 20 percent is based on the total of both existing units and existing contracts for continuing care at-home. For purposes of this subsection, an expansion includes increases in the number of constructed units or continuing care at-home contracts or a combination of both.~~

~~(b) The application for such approval shall be on forms adopted by the commission and provided by the office. The application must include the feasibility study required by s. 651.022(3) or s. 651.023(1)(b) and such other information as required by s. 651.023. If the expansion is only for continuing care at-home contracts, an actuarial study prepared by an independent actuary in accordance with standards adopted by the American Academy of Actuaries which presents the financial impact of the expansion may be substituted for the feasibility study.~~

~~(c) In determining whether an expansion should be approved, the office shall use the criteria provided in ss. 651.022(6) and 651.023(4).~~

Section 6. Section 651.0215, Florida Statutes, is created to read:

651.0215 Consolidated application for provisional certificate of authority and certificate of authority; required restrictions on use of entrance fees.—

(1) For an applicant to qualify for a certificate of

authority without first obtaining a provisional certificate of authority, the following conditions must be met:

(a) All reservation deposits and entrance fees must be placed in escrow in accordance with s. 651.033. The applicant may not use or pledge any part of an initial entrance fee for the construction or purchase of the facility or as security for long-term financing.

(b) The reservation deposit may not exceed $5,000 upon a resident's selection of a unit and must be refundable at any time before the resident takes occupancy of the selected unit.

(c) The resident contract must state that collection of the balance of the entrance fee is to occur after the resident is notified that his or her selected unit is available for occupancy and on or before the occupancy date.

(2) The consolidated application must be on a form prescribed by the commission and must contain all of the following information:

(a) All of the information required under s 651.022(2).

(b) A feasibility study prepared by an independent consultant which contains all of the information required by s. 651.022(3) and financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies for continuing care retirement communities adopted by the Actuarial Standards Board.

1. The feasibility study must take into account project costs, actual marketing results to date and marketing projections, resident fees and charges, competition, resident contract provisions, and other factors that affect the

feasibility of operating the facility.

2. If the feasibility study is prepared by an independent certified public accountant, it must contain an examination report, or a compilation report acceptable to the office, containing a financial forecast or projections for the first 5 years of operations which take into account an actuary's mortality and morbidity assumptions as the study relates to turnover, rates, fees, and charges. If the study is prepared by an independent consulting actuary, it must contain mortality and morbidity assumptions as it relates to turnover, rates, fees, and charges and an actuary's signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with Actuarial Standards of Practice No. 3 for Continuing Care Retirement Communities, Revised Edition, effective May 1, 2011.

(c) Documents evidencing that commitments have been secured for construction financing and long-term financing or that a documented plan acceptable to the office has been adopted by the applicant for long-term financing.

(d) Documents evidencing that all conditions of the lender have been satisfied to activate the commitment to disburse funds, other than the obtaining of the certificate of authority, the completion of construction, or the closing of the purchase of realty or buildings for the facility.

(e) Documents evidencing that the aggregate amount of entrance fees received by or pledged to the applicant, plus anticipated proceeds from any long-term financing commitment and funds from all other sources in the actual possession of the applicant, equal at least 100 percent of the aggregate cost of

constructing or purchasing, equipping, and furnishing the facility plus 100 percent of the anticipated startup losses of the facility.

(f) A complete audited financial report of the applicant, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, as of the date the applicant commenced business operations or for the fiscal year that ended immediately preceding the date of application, whichever is later, and complete unaudited quarterly financial statements attested to by the applicant after the date of the last audit.

(g) Documents evidencing that the applicant will be able to comply with s. 651.035.

(h) Such other reasonable data, financial statements, and pertinent information as the commission or office may require with respect to the applicant or the facility to determine the financial status of the facility and the management capabilities of its managers and owners.

(3) If an applicant has or proposes to have more than one facility offering continuing care or continuing care at-home, a separate certificate of authority must be obtained for each facility.

(4) Within 45 days after receipt of the information required under subsection (2), the office shall examine the information and notify the applicant in writing, specifically requesting any additional information that the office is authorized to require. An application is deemed complete when the office receives all requested information and the applicant corrects any error or omission of which the applicant was timely

notified or when the time for such notification has expired. Within 15 days after receipt of all of the requested additional information, the office shall notify the applicant in writing that all of the requested information has been received and that the application is deemed to be complete as of the date of the notice. Failure to notify the applicant in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application is deemed complete for purposes of review on the date the applicant files all of the required additional information.

(5) Within 45 days after an application is deemed complete as set forth in subsection (4) and upon completion of the remaining requirements of this section, the office shall complete its review and issue or deny a certificate of authority to the applicant. The period for review by the office may not be tolled if the office requests additional information and the applicant provides the requested information within 5 business days. If a certificate of authority is denied, the office must notify the applicant in writing, citing the specific failures to satisfy this chapter, and the applicant is entitled to an administrative hearing pursuant to chapter 120.

(6) The office shall issue a certificate of authority upon determining that the applicant meets all requirements of law and has submitted all of the information required under this section, that all escrow requirements have been satisfied, and that the fees prescribed in s. 651.015(2) have been paid.

(7) The issuance of a certificate of authority entitles the applicant to begin construction and collect reservation deposits

and entrance fees from prospective residents. The reservation contract must state the cancellation policy and the terms of the continuing care contract to be entered into. All or any part of an entrance fee or reservation deposit collected must be placed in an escrow account or on deposit with the department pursuant to s. 651.033.

(8) The provider is entitled to secure release of the moneys held in escrow within 7 days after the office receives an affidavit from the provider, along with appropriate documentation to verify, and notification is provided to the escrow agent by certified mail, that the following conditions have been satisfied:

(a) A certificate of occupancy has been issued.

(b) Payment in full has been received for at least 70 percent of the total units of a phase or of the total of the combined phases constructed. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts independently of each other.

(c) The provider has evidence of sufficient funds to meet the requirements of s. 651.035, which may include funds deposited in the initial entrance fee account.

(d) Documents evidencing the intended application of the proceeds upon release and documents evidencing that the entrance fees, when released, will be applied as represented to the office.

Notwithstanding chapter 120, a person, other than the provider,

the escrow agent, and the office, may not have a substantial interest in any decision by the office regarding the release of escrow funds in any proceeding under chapter 120 or this chapter.

(9) The office may not approve any application that includes in the plan of financing any encumbrance of the operating reserves or renewal and replacement reserves required by this chapter.

(10) The office may not issue a certificate of authority to a facility that does not have a component that is to be licensed pursuant to part II of chapter 400 or part I of chapter 429, or that does not offer personal services or nursing services through written contractual agreement. A written contractual agreement must be disclosed in the contract for continuing care or continuing care at-home and is subject to s. 651.1151.

Section 7. Subsection (2) and present subsections (6) and (8) of section 651.022, Florida Statutes, are amended, present subsections (3) through (8) of that section are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

651.022 Provisional certificate of authority; application.—

(2) The application for a provisional certificate of authority must ~~shall~~ be on a form prescribed by the commission and must ~~shall~~ contain the following information:

(a) If the applicant or provider is a corporation, a copy of the articles of incorporation and bylaws; if the applicant or provider is a partnership or other unincorporated association, a copy of the partnership agreement, articles of association, or other membership agreement; and, if the applicant or provider is

a trust, a copy of the trust agreement or instrument.

(b) The full names, residences, and business addresses of:

1. The proprietor, if the applicant or provider is an individual.

2. Every partner or member, if the applicant or provider is a partnership or other unincorporated association, however organized, having fewer than 50 partners or members, together with the business name and address of the partnership or other organization.

3. The principal partners or members, if the applicant or provider is a partnership or other unincorporated association, however organized, having 50 or more partners or members, together with the business name and business address of the partnership or other organization. If such unincorporated organization has officers and a board of directors, the full name and business address of each officer and director may be set forth in lieu of the full name and business address of its principal members.

4. The corporation and each officer and director thereof, if the applicant or provider is a corporation.

5. Every trustee and officer, if the applicant or provider is a trust.

6. The manager, whether an individual, corporation, partnership, or association.

7. Any stockholder holding at least a 10 percent interest in the operations of the facility in which the care is to be offered.

8. Any person whose name is required to be provided in the application under this paragraph and who owns any interest in or

receives any remuneration from, directly or indirectly, any professional service firm, association, trust, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, with a real or anticipated value of $10,000 or more, and the name and address of the professional service firm, association, trust, partnership, or corporation in which such interest is held. The applicant shall describe such goods, leases, or services and the probable cost to the facility or provider and shall describe why such goods, leases, or services should not be purchased from an independent entity.

9. Any person, corporation, partnership, association, or trust owning land or property leased to the facility, along with a copy of the lease agreement.

10. Any affiliated parent or subsidiary corporation or partnership.

(c)1. Evidence that the applicant is reputable and of responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, the form must ~~shall~~ require evidence that the members or shareholders ~~are reputable and of responsible character,~~ and the person in charge of providing care under a certificate of authority are ~~shall likewise be required to produce evidence of being~~ reputable and of responsible character.

2. Evidence satisfactory to the office of the ability of the applicant to comply with ~~the provisions of~~ this chapter and with rules adopted by the commission pursuant to this chapter.

3. A statement of whether a person identified in the application for a provisional certificate of authority or the

administrator or manager of the facility, if such person has been designated, or any such person living in the same location:

a. Has been convicted of a felony or has pleaded nolo contendere to a felony charge, or has been held liable or has been enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

b. Is subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, an action affecting a license under chapter 400 or chapter 429.

The statement must ~~shall~~ set forth the court or agency, the date of conviction or judgment, and the penalty imposed or damages assessed, or the date, nature, and issuer of the order. Before determining whether a provisional certificate of authority is to be issued, the office may make an inquiry to determine the accuracy of the information submitted pursuant to subparagraphs 1., 2., and 3. ~~1. and 2.~~

(d) The contracts for continuing care and continuing care at-home to be entered into between the provider and residents which meet the minimum requirements of s. 651.055 or s. 651.057 and which include a statement describing the procedures required by law relating to the release of escrowed entrance fees. Such statement may be furnished through an addendum.

(e) Any advertisement or other written material proposed to be used in the solicitation of residents.

(f) Such other reasonable data, financial statements, and pertinent information as the commission or office may reasonably require with respect to the provider or the facility, including the most recent audited financial report ~~statements~~ of comparable facilities currently or previously owned, managed, or developed by the applicant or its principal, to assist in determining the financial viability of the project and the management capabilities of its managers and owners.

(g) The forms of the residency contracts, reservation contracts, escrow agreements, and wait list contracts, if applicable, which are proposed to be used by the provider in the furnishing of care. The office shall approve contracts and escrow agreements that comply with ss. 651.023(1)(c), 651.033, 651.055, and 651.057. Thereafter, no other form of contract or agreement may be used by the provider until it has been submitted to the office and approved.

If any material change occurs in the facts set forth in an application filed with the office pursuant to this subsection, an amendment setting forth such change must be filed with the office within 10 business days after the applicant becomes aware of such change, and a copy of the amendment must be sent by registered mail to the principal office of the facility and to the principal office of the controlling company.

(3) In addition to the information required in subsection (2), an applicant for a provisional certificate of authority must submit a feasibility study with appropriate financial, marketing, and actuarial assumptions for the first 5 years of operations. The feasibility study must include at least the

following information:

(a) A description of the proposed facility, including the location, size, anticipated completion date, and the proposed construction program.

(b) Identification and an evaluation of the primary and, if appropriate, the secondary market areas of the facility and the projected unit sales per month.

(c) Projected revenues, including anticipated entrance fees; monthly service fees; nursing care revenues, if applicable; and all other sources of revenue.

(d) Projected expenses, including staffing requirements and salaries; cost of property, plant, and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses.

(e) A projected balance sheet of the applicant.

(f) Expectations of the financial condition of the project, including the projected cash flow, and an estimate of the funds anticipated to be necessary to cover startup losses.

(g) The inflation factor, if any, assumed in the feasibility study for the proposed facility and how and where it is applied.

(h) Project costs and the total amount of debt financing required, marketing projections, resident fees and charges, the competition, resident contract provisions, and other factors that affect the feasibility of the facility.

(i) Appropriate population projections, including morbidity and mortality assumptions.

(j) The name of the person who prepared the feasibility study and the experience of such person in preparing similar

studies or otherwise consulting in the field of continuing care. The preparer of the feasibility study may be the provider or a contracted third party.

(k) Any other information that the applicant deems relevant and appropriate to enable the office to make a more informed determination.

(7)~~(6)~~ Within 45 days after the date an application is deemed complete as set forth in paragraph (6)(b) ~~(5)(b)~~, the office shall complete its review and issue a provisional certificate of authority to the applicant based upon its review and a determination that the application meets all requirements of law, that the feasibility study was based on sufficient data and reasonable assumptions, and that the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial and contractual obligations related to its operations, including the financial requirements of this chapter. The period for review by the office may not be tolled if the office requests additional information and the applicant provides the requested information within 5 business days. If the application is denied, the office shall notify the applicant in writing, citing the specific failures to meet the provisions of this chapter. Such denial entitles the applicant to a hearing pursuant to chapter 120.

(9)~~(8)~~ The office may ~~shall~~ not approve any application that ~~which~~ includes in the plan of financing any encumbrance of the operating reserves or renewal and replacement reserves required by this chapter.

Section 8. Subsections (1) through (4), paragraph (b) of subsection (5), and subsections (6), (8), and (9) of section

651.023, Florida Statutes, are amended to read:

651.023 Certificate of authority; application.—

(1) After issuance of a provisional certificate of authority, the office shall issue to the holder of such provisional certificate a certificate of authority if the holder of the provisional certificate provides the office with the following information:

(a) Any material change in status with respect to the information required to be filed under s. 651.022(2) in the application for the provisional certificate.

(b) A feasibility study prepared by an independent consultant which contains all of the information required by s. 651.022(4) ~~s. 651.022(3)~~ and financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies or continuing care retirement communities adopted by the Actuarial Standards Board.

~~1. The study must also contain an independent evaluation and examination opinion, or a comparable opinion acceptable to the office, by the consultant who prepared the study, of the underlying assumptions used as a basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and the project as proposed is feasible.~~

1.~~2.~~ The study must take into account project costs, actual marketing results to date and marketing projections, resident fees and charges, competition, resident contract provisions, and any other factors which affect the feasibility of operating the facility.

2.~~3.~~ If the study is prepared by an independent certified

public accountant, it must contain an examination opinion, or a compilation report acceptable to the office, containing a financial forecast or projections for the first 5 ~~3~~ years of operations which take into account an actuary's mortality and morbidity assumptions as the study relates to turnover, rates, fees, and charges ~~and financial projections having a compilation opinion for the next 3 years~~. If the study is prepared by an independent consulting actuary, it must contain mortality and morbidity assumptions as the study relates to turnover, rates, fees, and charges, ~~data~~ and an actuary's signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with standards adopted by the American Academy of Actuaries.

(c) Subject to subsection (4), a provider may submit an application for a certificate of authority and any required exhibits upon submission of documents evidencing ~~proof~~ that the project has a minimum of 30 percent of the units reserved for which the provider is charging an entrance fee. ~~This does not apply to an application for a certificate of authority for the acquisition of a facility for which a certificate of authority was issued before October 1, 1983, to a provider who subsequently becomes a debtor in a case under the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for which the department has been appointed receiver pursuant to part II of chapter 631.~~

(d) Documents evidencing ~~Proof~~ that commitments have been secured for both construction financing and long-term financing or a documented plan acceptable to the office has been adopted by the applicant for long-term financing.

(e) Documents evidencing ~~Proof~~ that all conditions of the lender have been satisfied to activate the commitment to disburse funds other than the obtaining of the certificate of authority, the completion of construction, or the closing of the purchase of realty or buildings for the facility.

(f) Documents evidencing ~~Proof~~ that the aggregate amount of entrance fees received by or pledged to the applicant, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the applicant, equal at least 100 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus 100 percent of the anticipated startup losses of the facility.

(g) A complete audited financial report ~~statements~~ of the applicant, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, as of the date the applicant commenced business operations or for the fiscal year that ended immediately preceding the date of application, whichever is later, and complete unaudited quarterly financial statements attested to by the applicant after the date of the last audit.

(h) Documents evidencing ~~Proof~~ that the applicant has complied with the escrow requirements of subsection (5) or subsection (7) and will be able to comply with s. 651.035.

(i) Such other reasonable data, financial statements, and pertinent information as the commission or office may require with respect to the applicant or the facility, to determine the financial status of the facility and the management capabilities of its managers and owners.

If any material change occurs in the facts set forth in an application filed with the office pursuant to this subsection, an amendment setting forth such change must be filed with the office within 10 business days, and a copy of the amendment must be sent by registered mail to the principal office of the facility and to the principal office of the controlling company.

(2) Within 30 days after receipt of the information required under subsection (1), the office shall examine such information and notify the provider in writing, specifically requesting any additional information the office is permitted by law to require. Within 15 days after receipt of all of the requested additional information, the office shall notify the provider in writing that all of the requested information has been received, and the application is deemed to be complete as of the date of the notice. Failure to notify the provider in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application is deemed complete for purposes of review on the date of filing all of the required additional information ~~Within 15 days after receipt of all of the requested additional information, the office shall notify the provider in writing that all of the requested information has been received and the application is deemed to be complete as of the date of the notice. Failure to notify the applicant in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application shall be deemed complete for purposes of review on the date of filing all of the required additional information~~.

(3) Within 45 days after an application is deemed complete as set forth in subsection (2), and upon completion of the remaining requirements of this section, the office shall complete its review and issue or deny a certificate of authority to the holder of a provisional certificate of authority. If a certificate of authority is denied, the office must notify the holder of the provisional certificate in writing, citing the specific failures to satisfy the provisions of this chapter. The period for review by the office may not be tolled if the office requests additional information and the applicant provides the requested information within 5 business days. If denied, the holder of the provisional certificate is entitled to an administrative hearing pursuant to chapter 120.

(4) The office shall issue a certificate of authority upon determining that the applicant meets all requirements of law and has submitted all of the information required by this section, that all escrow requirements have been satisfied, and that the fees prescribed in s. 651.015(2) have been paid.

(a) A ~~Notwithstanding satisfaction of the 30-percent minimum reservation requirement of paragraph (1)(c), no~~ certificate of authority may not ~~shall~~ be issued until documentation evidencing that the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee~~, and proof~~ is provided to the office. If a provider offering continuing care at-home is applying for a certificate of authority ~~or approval of an expansion pursuant to s. 651.021(2)~~, the same minimum reservation requirements must be met for the continuing care and continuing care at-home contracts, independently of each other.

(b) In order for a unit to be considered reserved under this section, the provider must collect a minimum deposit of the lesser of $40,000 or 10 percent of the then-current entrance fee for that unit, and may assess a forfeiture penalty of 2 percent of the entrance fee due to termination of the reservation contract after 30 days for any reason other than the death or serious illness of the resident, the failure of the provider to meet its obligations under the reservation contract, or other circumstances beyond the control of the resident that equitably entitle the resident to a refund of the resident's deposit. The reservation contract must state the cancellation policy and the terms of the continuing care or continuing care at-home contract to be entered into.

(5) Up to 25 percent of the moneys paid for all or any part of an initial entrance fee may be included or pledged for the construction or purchase of the facility or as security for long-term financing. The term "initial entrance fee" means the total entrance fee charged by the facility to the first occupant of a unit.

(b) For an expansion as provided in s. 651.0246 ~~s. 651.021(2)~~, a minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee collected for continuing care and 50 percent of the moneys paid for all or any part of an initial fee collected for continuing care at-home shall be placed in an escrow account or on deposit with the department as prescribed in s. 651.033.

(6) The provider is entitled to secure release of the moneys held in escrow within 7 days after receipt by the office of an affidavit from the provider, along with appropriate copies

to verify, and notification to the escrow agent by certified mail, that the following conditions have been satisfied:

(a) A certificate of occupancy has been issued.

(b) Payment in full has been received for at least 70 percent of the total units of a phase or of the total of the combined phases constructed. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts, independently of each other.

~~(c) The consultant who prepared the feasibility study required by this section or a substitute approved by the office certifies within 12 months before the date of filing for office approval that there has been no material adverse change in status with regard to the feasibility study. If a material adverse change exists at the time of submission, sufficient information acceptable to the office and the feasibility consultant must be submitted which remedies the adverse condition.~~

(c) ~~(d)~~ Documents evidencing ~~Proof~~ that commitments have been secured or a documented plan adopted by the applicant has been approved by the office for long-term financing.

(d) ~~(c)~~ Documents evidencing ~~Proof~~ that the provider has sufficient funds to meet the requirements of s. 651.035, which may include funds deposited in the initial entrance fee account.

(e) ~~(f)~~ Documents evidencing ~~Proof as to~~ the intended application of the proceeds upon release and documentation ~~proof~~ that the entrance fees when released will be applied as represented to the office.

(f) If any material change occurred in the facts set forth in the application filed with the office pursuant to subsection (1), the applicant timely filed the amendment setting forth such change with the office and sent copies of the amendment to the principal office of the facility and to the principal office of the controlling company as required under that subsection.

Notwithstanding chapter 120, no person, other than the provider, the escrow agent, and the office, may have a substantial interest in any office decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter regarding release of escrow funds.

(8) ~~The timeframes provided under s. 651.022(5) and (6) apply to applications submitted under s. 651.021(2).~~ The office may not issue a certificate of authority to a facility that does not have a component that is to be licensed pursuant to part II of chapter 400 or to part I of chapter 429 or that does not offer personal services or nursing services through written contractual agreement. A written contractual agreement must be disclosed in the contract for continuing care or continuing care at-home and is subject to ~~the provisions of~~ s. 651.1151, relating to administrative, vendor, and management contracts.

(9) The office may not approve an application that includes in the plan of financing any encumbrance of the operating reserves or renewal and replacement reserves required by this chapter.

Section 9. Section 651.024, Florida Statutes, is amended to read:

651.024 Acquisition.—

(1) A person who seeks to assume the role of general partner of a provider or otherwise assume ownership or possession of, or control over, 10 percent or more of a provider's assets, based on the balance sheet from the most recent financial audit filed with the office, is ~~issued a certificate of authority to operate a continuing care facility or a provisional certificate of authority shall be~~ subject to ~~the provisions of~~ s. 628.4615 and is not required to make filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

(2) A person who seeks to acquire and become the provider for a facility is subject to s. 651.0245 and is not required to make filings pursuant to ss. 628.4615, 651.022, and 651.023.

(3) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the provider or facility, as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the provider or facility is relieved of any duty to register or report under this section which may arise out of the provider's or facility's relationship with the person, unless the office disallows the disclaimer.

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

(a) "Controlling company" means any corporation, trust, or association that directly or indirectly owns 25 percent or more

of the voting securities of one or more facilities that are stock corporations, or 25 percent or more of the ownership interest of one or more facilities that are not stock corporations.

(b) "Natural person" means an individual.

(c) "Person" includes a natural person, corporation, association, trust, general partnership, limited partnership, joint venture, firm, proprietorship, or any other entity that may hold a license or certificate as a facility.

(5) In addition to the facility or the controlling company, the office has standing to petition a circuit court as described in s. 628.4615(9).

Section 10. Section 651.0245, Florida Statutes, is created to read:

651.0245 Application for the simultaneous acquisition of a facility and issuance of a certificate of authority.—

(1) Except with the prior written approval of the office, a person may not, individually or in conjunction with any affiliated person of such person, directly or indirectly acquire a facility operating under a subsisting certificate of authority and engage in the business of providing continuing care.

(2) An applicant seeking simultaneous acquisition of a facility and issuance of a certificate of authority must:

(a) Comply with the notice requirements of s. 628.4615(2)(a); and

(b) File an application in the form required by the office and cooperate with the office's review of the application.

(3) The commission shall adopt by rule application requirements equivalent to those described in ss. 628.4615(4)

and (5), 651.022(2)(a)-(g), and 651.023(1)(b). The office shall review the application and issue an approval or disapproval of the filing in accordance with ss. 628.4615(6)(a) and (c), (7)-(10), and (14); 651.022(9); and 651.023(1)(b).

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

(a) "Controlling company" means any corporation, trust, or association that directly or indirectly owns 25 percent or more of the voting securities of one or more facilities that are stock corporations, or 25 percent or more of the ownership interest of one or more facilities that are not stock corporations.

(b) "Natural person" means an individual.

(c) "Person" includes a natural person, corporation, association, trust, general partnership, limited partnership, joint venture, firm, proprietorship, or any other entity that may hold a license or certificate as a facility.

(5) In addition to the facility or the controlling company, the office has standing to petition a circuit court as described in s. 628.4615(9).

(6) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the provider or facility, as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been

filed, the provider or facility is relieved of any duty to register or report under this section which may arise out of the provider's or facility's relationship with the person, unless the office disallows the disclaimer.

(7) The commission may adopt, amend, or repeal rules as necessary to administer this section.

Section 11. Section 651.0246, Florida Statutes, is created to read:

651.0246 Expansions.—

(1)(a) A provider must obtain written approval from the office before commencing construction or marketing for an expansion of a certificated facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more in the number of continuing care at-home contracts. If the provider has exceeded the current statewide median for days cash on hand, debt service coverage ratio, and total campus occupancy for two consecutive annual reporting periods, the provider is automatically granted approval to expand the total number of existing units by up to 35 percent upon submitting a letter to the office indicating the total number of planned units in the expansion, the proposed sources and uses of funds, and an attestation that the provider understands and pledges to comply with all minimum liquid reserve and escrow account requirements. As used in this section, the term "existing units" means the sum of the total number of independent living units and assisted living units identified in the most recent annual report filed with the office pursuant to s. 651.026. For purposes of this section, the statewide median for days cash on hand, debt service coverage ratio, and total campus occupancy is the median

calculated in the most recent annual report submitted by the office to the Continuing Care Advisory Council pursuant to s. 651.121(8). This section does not apply to construction for which a certificate of need from the Agency for Health Care Administration is required.

(b) The application for such approval must be on forms adopted by the commission and provided by the office. The application must include the feasibility study required by this section and such other information as reasonably requested by the office. If the expansion is only for continuing care at-home contracts, an actuarial study prepared by an independent actuary in accordance with standards adopted by the American Academy of Actuaries which presents the financial impact of the expansion may be substituted for the feasibility study.

(c) In determining whether an expansion should be approved, the office shall consider:

1. Whether the application meets all requirements of law;

2. Whether the feasibility study was based on sufficient data and reasonable assumptions; and

3. Whether the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial obligations related to its operations, including the financial requirements of this chapter.

If the application is denied, the office must notify the applicant in writing, citing the specific failures to meet the provisions of this chapter. A denial entitles the applicant to a hearing pursuant to chapter 120.

(2) A provider applying for expansion of a certificated

facility must submit all of the following:

(a) A feasibility study prepared by an independent certified public accountant. The feasibility study must include at least the following information:

1. A description of the facility and proposed expansion, including the location, size, anticipated completion date, and the proposed construction program.

2. An identification and evaluation of the primary and, if applicable, secondary market areas of the facility and the projected unit sales per month.

3. Projected revenues, including anticipated entrance fees; monthly service fees; nursing care rates, if applicable; and all other sources of revenue.

4. Projected expenses, including for staffing requirements and salaries; the cost of property, plant, and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses.

5. A projected balance sheet of the applicant.

6. Expectations of the financial condition of the project, including the projected cash flow and an estimate of the funds anticipated to be necessary to cover startup losses.

7. The inflation factor, if any, assumed in the study for the proposed expansion and how and where it is applied.

8. Project costs, the total amount of debt financing required, marketing projections, resident fees and charges, the competition, resident contract provisions, and other factors that affect the feasibility of the facility.

9. Appropriate population projections, including morbidity and mortality assumptions.

10. The name of the person who prepared the feasibility study and his or her experience in preparing similar studies or otherwise consulting in the field of continuing care.

11. Financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies for continuing care retirement communities adopted by the Actuarial Standards Board.

12. An independent evaluation and examination opinion for the first 5 years of operations, or a comparable opinion acceptable to the office, by the consultant who prepared the study, of the underlying assumptions used as a basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and the project as proposed is feasible.

13. Any other information that the provider deems relevant and appropriate to provide to enable the office to make a more informed determination.

(b) Such other reasonable data, financial statements, and pertinent information as the commission or office may require with respect to the applicant or the facility to determine the financial status of the facility and the management capabilities of its managers and owners.

(3) A minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee or reservation deposit collected for continuing care and 50 percent of the moneys paid for all or any part of an initial fee collected for continuing care at-home must be placed in an escrow account or on deposit with the department as prescribed in s. 651.033. Up to 25

percent of the moneys paid for all or any part of an initial entrance fee or reservation deposit may be included or pledged for the construction or purchase of the facility or as security for long-term financing. As used in this section, the term "initial entrance fee" means the total entrance fee charged by the facility to the first occupant of a unit.

Entrance fees and reservation deposits collected for expansions must be held pursuant to the escrow requirements of s. 651.023(5) and (6).

(4) The provider is entitled to secure release of the moneys held in escrow within 7 days after receipt by the office of an affidavit from the provider, along with appropriate copies to verify, and notification to the escrow agent by certified mail that the following conditions have been satisfied:

(a) A certificate of occupancy has been issued.

(b) Payment in full has been received for at least 50 percent of the total units of a phase or of the total of the combined phases constructed. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts independently of each other.

(c) Documents evidencing that commitments have been secured or that a documented plan adopted by the applicant has been approved by the office for long-term financing.

(d) Documents evidencing that the provider has sufficient funds to meet the requirements of s. 651.035, which may include funds deposited in the initial entrance fee account.

(e) Documents evidencing the intended application of the proceeds upon release and documentation that the entrance fees, when released, will be applied as represented to the office.

Notwithstanding chapter 120, only the provider, the escrow agent, and the office have a substantial interest in any office decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter.

(5)(a) Within 30 days after receipt of an application for expansion, the office shall examine the application and shall notify the applicant in writing, specifically setting forth and specifically requesting any additional information that the office is authorized to require. Within 15 days after the office receives all the requested additional information, the office shall notify the applicant in writing that the requested information has been received and that the application is deemed to be complete as of the date of the notice. If the office chooses not to notify the applicant within the 15-day period, then the application is deemed complete for purposes of review on the date the applicant files the additional requested information. If the application submitted is determined by the office to be substantially incomplete so as to require substantial additional information, including biographical information, the office may return the application to the applicant with a written notice that the application as received is substantially incomplete and therefore unacceptable for filing without further action required by the office. Any filing fee received must be refunded to the applicant.

(b) An application is deemed complete upon the office

receiving all requested information and the applicant correcting any error or omission of which the applicant was timely notified or when the time for such notification has expired. The office shall notify the applicant in writing of the date on which the application was deemed complete.

(6) Within 45 days after the date on which an application is deemed complete as set forth in paragraph (5)(b), the office shall complete its review and, based upon its review, approve an expansion by the applicant and issue a determination that the application meets all requirements of law, that the feasibility study was based on sufficient data and reasonable assumptions, and that the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial and contractual obligations related to its operations, including the financial requirements of this chapter. The period for review by the office may not be tolled if the office requests additional information and the applicant provides information acceptable to the office within 5 business days. If the application is denied, the office must notify the applicant in writing, citing the specific failures to meet the provisions of this chapter. The denial entitles the applicant to a hearing pursuant to chapter 120.

Section 12. Paragraph (c) of subsection (2) and subsection (3) of section 651.026, Florida Statutes, are amended, subsection (10) is added to that section, and paragraph (a) of subsection (2) of that section is republished, to read:

651.026 Annual reports.—

(2) The annual report shall be in such form as the commission prescribes and shall contain at least the following:

(a) Any change in status with respect to the information required to be filed under s. 651.022(2).

(c) The following financial information:

1. A detailed listing of the assets maintained in the liquid reserve as required under s. 651.035 and in accordance with part II of chapter 625;

2. A schedule giving additional information relating to property, plant, and equipment having an original cost of at least $25,000, so as to show in reasonable detail with respect to each separate facility original costs, accumulated depreciation, net book value, appraised value or insurable value and date thereof, insurance coverage, encumbrances, and net equity of appraised or insured value over encumbrances. Any property not used in continuing care must be shown separately from property used in continuing care;

3. The level of participation in Medicare or Medicaid programs, or both;

4. A statement of all fees required of residents, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the provider, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases; and

5. Any change or increase in fees if the provider changes the scope of, or the rates for, care or services, regardless of whether the change involves the basic rate or only those services available at additional costs to the resident.

6. If the provider has more than one certificated facility, or has operations that are not licensed under this chapter, it

shall submit a balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of cash flows for each facility licensed under this chapter as supplemental information to the audited financial report ~~statements~~ required under paragraph (b).

7. The management's calculation of the provider's debt service coverage ratio and days cash on hand for the current reporting period, and an opinion from an independent certified public accountant of the management's calculations.

(3) The commission shall adopt by rule additional ~~meaningful~~ measures of assessing the financial viability of a provider. ~~The rule may include the following factors:~~

~~(a) Debt service coverage ratios.~~

~~(b) Current ratios.~~

~~(c) Adjusted current ratios.~~

~~(d) Cash flows.~~

~~(e) Occupancy rates.~~

~~(f) Other measures, ratios, or trends.~~

~~(g) Other factors as may be appropriate.~~

(10) Within 90 days after the conclusion of each annual reporting period, the office shall publish an industry benchmarking report that contains all of the following:

(a) The median days cash on hand for all providers.

(b) The median debt service coverage ratio for all providers.

(c) The median occupancy rate for all providers by setting, including independent living, assisted living, skilled nursing, and the entire campus.

Section 13. Section 651.0261, Florida Statutes, is amended

to read:

651.0261 Quarterly and monthly statements.—

(1) Within 45 days after the end of each fiscal quarter, each provider shall file a quarterly unaudited financial statement of the provider or of the facility in the form prescribed by rule of the commission and a detailed listing of the assets maintained in the liquid reserve as required under s. 651.035. This requirement may be waived by the office upon written request from a provider that is accredited or that has obtained an investment grade credit rating from a United States credit rating agency as authorized under s. 651.028. The last quarterly statement for a fiscal year is not required if a provider does not have pending a regulatory action level event or corrective action plan.

(2) If the office finds~~, pursuant to rules of the commission,~~ that such information is needed to properly monitor the financial condition of a provider or facility or is otherwise needed to protect the public interest, the office may require the provider to file:

(a) Within 25 days after the end of each month, a monthly unaudited financial statement of the provider or of the facility in the form prescribed by the commission by rule and a detailed listing of the assets maintained in the liquid reserve as required under s. 651.035~~, within 45 days after the end of each fiscal quarter, a quarterly unaudited financial statement of the provider or of the facility in the form prescribed by the commission by rule. The commission may by rule require all or part of the statements or filings required under this section to be submitted by electronic means in a computer-readable form~~

~~compatible with the electronic data format specified by the commission~~.

(b) Such other data, financial statements, and pertinent information as the commission or office may reasonably require with respect to the provider or the facility, or its directors, trustees, members, branches, subsidiaries, or affiliates, to determine the financial status of the provider or of the facility and the management capabilities of its managers and owners.

(3) A filing under subsection (2) may be required if any of the following apply:

(a) The facility has been operational for less than 2 years.

(b) The provider is:

1. Subject to administrative supervision proceedings;

2. Subject to a corrective action plan resulting from a regulatory action level event for up to 2 years after the factors that caused the regulatory action level event have been corrected; or

3. Subject to delinquency or receivership proceedings.

(c) The provider or facility displays a declining financial position.

(d) A change of ownership of the provider or facility has occurred within the previous 2 years.

(e) The facility is deemed to be impaired.

(4) The commission may by rule require all or part of the statements or filings required under this section to be submitted by electronic means in a computer-readable form compatible with an electronic data format specified by the

commission.

Section 14. Section 651.028, Florida Statutes, is amended to read:

651.028 Accredited or certain credit-rated facilities.—If a provider or obligated group is accredited without stipulations or conditions by a process found by the office to be acceptable and substantially equivalent to the provisions of this chapter or has obtained an investment grade credit rating from a nationally recognized credit rating agency, as applicable, from Moody's Investors Service, Standard & Poor's, or Fitch Ratings, the office may, pursuant to rule of the commission, waive any requirements of this chapter with respect to the provider if the office finds that such waivers are not inconsistent with the security protections intended by this chapter.

Section 15. Paragraphs (a), (c), and (d) of subsection (1) and subsections (2) and (3) of section 651.033, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

651.033 Escrow accounts.—

(1) When funds are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, s. 651.035, or s. 651.055:

(a) The escrow account must ~~shall~~ be established in a Florida bank, Florida savings and loan association, ~~or~~ Florida trust company, or a national bank that is chartered and supervised by the Office of the Comptroller of the Currency within the United States Department of the Treasury and that has either a branch or a license to operate in this state which is acceptable to the office, or such funds must be deposited ~~on~~

~~deposit~~ with the department~~,~~ and ~~the funds deposited therein shall~~ be kept and maintained in an account separate and apart from the provider's business accounts.

(c) Any agreement establishing an escrow account required under ~~the provisions of~~ this chapter is ~~shall be~~ subject to approval by the office. The agreement must ~~shall~~ be in writing and ~~shall~~ contain, in addition to any other provisions required by law, a provision whereby the escrow agent agrees to abide by the duties imposed by paragraphs (b) and (e), (3)(a), (3)(b), and (5)(a) and subsection (6) ~~under this section~~.

(d) All funds deposited in an escrow account, if invested, must ~~shall~~ be invested in cash, cash equivalents, mutual funds, equities, or investment grade bonds ~~as set forth in part II of chapter 625~~; however, such investment may not diminish the funds held in escrow below the amount required by this chapter. Funds deposited in an escrow account are not subject to charges by the escrow agent except escrow agent fees associated with administering the accounts, or subject to any liens, judgments, garnishments, creditor's claims, or other encumbrances against the provider or facility except as provided in s. 651.035(1).

(2) Notwithstanding s. 651.035(7), ~~In addition, the escrow agreement shall provide that the escrow agent or another person designated to act in the escrow agent's place and the provider, except as otherwise provided in s. 651.035, shall notify the office in writing at least 10 days before the withdrawal of any portion of any funds required to be escrowed under the provisions of s. 651.035. However,~~ in the event of an emergency and upon petition by the provider, the office may ~~waive the 10-day notification period and~~ allow a withdrawal of up to 10

percent of the required minimum liquid reserve. The office shall have 3 working days to deny the petition for the emergency 10-percent withdrawal. If the office fails to deny the petition within 3 working days, the petition is ~~shall be~~ deemed to have been granted by the office. For purposes ~~the purpose~~ of this section, "working day" means each day that is not a Saturday, Sunday, or legal holiday as defined by Florida law. Also, for purposes ~~the purpose~~ of this section, the day the petition is received by the office is ~~shall~~ not ~~be~~ counted as one of the 3 days.

(3) ~~In addition,~~ When entrance fees are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, or s. 651.055:

(a) The provider shall deliver to the resident a written receipt. The receipt must show the payor's name and address, the date, the price of the care contract, and the amount of money paid. A copy of each receipt, together with the funds, must ~~shall~~ be deposited with the escrow agent or as provided in paragraph (c). The escrow agent must ~~shall~~ release such funds to the provider 7 days after the date of receipt of the funds by the escrow agent if the provider, operating under a certificate of authority issued by the office, has met the requirements of s. 651.023(6). However, if the resident rescinds the contract within the 7-day period, the escrow agent must ~~shall~~ release the escrowed fees to the resident.

(b) At the request of an individual resident of a facility, the escrow agent shall issue a statement indicating the status of the resident's portion of the escrow account.

(c) At the request of an individual resident of a facility,

the provider may hold the check for the 7-day period and may ~~shall~~ not deposit it during this time period. If the resident rescinds the contract within the 7-day period, the check must ~~shall~~ be immediately returned to the resident. Upon the expiration of the 7 days, the provider shall deposit the check.

(d) A provider may assess a nonrefundable fee, which is separate from the entrance fee, for processing a prospective resident's application for continuing care or continuing care at-home.

(6) Except as described in paragraph (3)(a), the escrow agent may not release or otherwise allow the transfer of funds without the written approval of the office, unless the withdrawal is from funds in excess of the amounts required by ss. 651.022, 651.023, 651.035, and 651.055.

Section 16. Section 651.034, Florida Statutes, is created to read:

651.034 Financial and operating requirements for providers.—

(1)(a) If a regulatory action level event occurs, the office must:

1. Require the provider to prepare and submit a corrective action plan or, if applicable, a revised corrective action plan;

2. Perform an examination pursuant to s. 651.105 or an analysis, as the office considers necessary, of the assets, liabilities, and operations of the provider, including a review of the corrective action plan or the revised corrective action plan; and

3. After the examination or analysis, issue a corrective order specifying any corrective actions that the office

determines are required.

(b) In determining corrective actions, the office shall consider any factor relevant to the provider based upon the office's examination or analysis of the assets, liabilities, and operations of the provider. The provider must submit the corrective action plan or the revised corrective action plan within 30 days after the occurrence of the regulatory action level event. The office shall review and approve or disapprove the corrective action plan within 15 business days.

(c) The office may use members of the Continuing Care Advisory Council, individually or as a group, or may retain actuaries, investment experts, and other consultants to review a provider's corrective action plan or revised corrective action plan, examine or analyze the assets, liabilities, and operations of a provider, and formulate the corrective order with respect to the provider. The fees, costs, and expenses relating to consultants must be borne by the affected provider.

(2) If an impairment occurs, the office must take any action necessary to place the provider under regulatory control, including any remedy available under chapter 631. An impairment is sufficient grounds for the department to be appointed as receiver as provided in chapter 631. Notwithstanding s. 631.011, impairment of a provider, for purposes of s. 631.051, is defined according to the term "impaired" under s. 651.011. The office may forego taking action for up to 180 days after the impairment if the office finds there is a reasonable expectation that the impairment may be eliminated within the 180-day period.

(3) There is no liability on the part of, and a cause of action may not arise against, the commission, department, or

office, or their employees or agents, for any action they take in the performance of their powers and duties under this section.

(4) The office shall transmit any notice that may result in regulatory action by registered mail, certified mail, or any other method of transmission which includes documentation of receipt by the provider. Notice is effective when the provider receives it.

(5) This section is supplemental to the other laws of this state and does not preclude or limit any power or duty of the department or office under those laws or under the rules adopted pursuant to those laws.

(6) The office may exempt a provider from subsection (1) or subsection (2) until stabilized occupancy is reached or until the time projected to achieve stabilized occupancy as reported in the last feasibility study required by the office as part of an application filing under s. 651.023, s. 651.024, s. 651.0245, or s. 651.0246 has elapsed, but for no longer than 5 years from the date of issuance of the certificate of occupancy.

(7) The commission may adopt rules to administer this section, including, but not limited to, rules regarding corrective action plans, revised corrective action plans, corrective orders, and procedures to be followed in the event of a regulatory action level event or an impairment.

Section 17. Paragraphs (a), (b), and (c) of subsection (1) of section 651.035, Florida Statutes, are amended, and subsections (7) through (10) are added to that section, to read:

651.035 Minimum liquid reserve requirements.—

(1) A provider shall maintain in escrow a minimum liquid

reserve consisting of the following reserves, as applicable:

(a) Each provider shall maintain in escrow as a debt service reserve the aggregate amount of all principal and interest payments due during the fiscal year on any mortgage loan or other long-term financing of the facility, including property taxes as recorded in the audited financial report ~~statements~~ required under s. 651.026. The amount must include any leasehold payments and all costs related to such payments. If principal payments are not due during the fiscal year, the provider must ~~shall~~ maintain in escrow as a minimum liquid reserve an amount equal to interest payments due during the next 12 months on any mortgage loan or other long-term financing of the facility, including property taxes. If a provider does not have a mortgage loan or other financing on the facility, the provider must deposit monthly in escrow as a minimum liquid reserve an amount equal to one-twelfth of the annual property tax liability as indicated in the most recent tax notice provided pursuant to s. 197.322(3).

(b) A provider that has outstanding indebtedness that requires a debt service reserve to be held in escrow pursuant to a trust indenture or mortgage lien on the facility and for which the debt service reserve may only be used to pay principal and interest payments on the debt that the debtor is obligated to pay, and which may include property taxes and insurance, may include such debt service reserve in computing the minimum liquid reserve needed to satisfy this subsection if the provider furnishes to the office a copy of the agreement under which such debt service is held, together with a statement of the amount being held in escrow for the debt service reserve, certified by

the lender or trustee and the provider to be correct. The trustee shall provide the office with any information concerning the debt service reserve account upon request of the provider or the office. Such separate debt service reserves, if any, are not subject to the transfer provisions set forth in subsection (8).

(c) Each provider shall maintain in escrow an operating reserve equal to 30 percent of the total operating expenses projected in the feasibility study required by s. 651.023 for the first 12 months of operation. Thereafter, each provider shall maintain in escrow an operating reserve equal to 15 percent of the total operating expenses in the annual report filed pursuant to s. 651.026. If a provider has been in operation for more than 12 months, the total annual operating expenses must ~~shall~~ be determined by averaging the total annual operating expenses reported to the office by the number of annual reports filed with the office within the preceding 3-year period subject to adjustment if there is a change in the number of facilities owned. For purposes of this subsection, total annual operating expenses include all expenses of the facility except~~:~~ depreciation and amortization; interest and property taxes included in paragraph (a); extraordinary expenses that are adequately explained and documented in accordance with generally accepted accounting principles; liability insurance premiums in excess of those paid in calendar year 1999; and changes in the obligation to provide future services to current residents. For providers initially licensed during or after calendar year 1999, liability insurance must ~~shall~~ be included in the total operating expenses in an amount not to exceed the premium paid during the first 12 months of facility operation. ~~Beginning~~

~~January 1, 1993,~~ The operating reserves required under this subsection must ~~shall~~ be in an unencumbered account held in escrow for the benefit of the residents. Such funds may not be encumbered or subject to any liens or charges by the escrow agent or judgments, garnishments, or creditors' claims against the provider or facility. However, if a facility had a lien, mortgage, trust indenture, or similar debt instrument in place before January 1, 1993, which encumbered all or any part of the reserves required by this subsection and such funds were used to meet the requirements of this subsection, then such arrangement may be continued, unless a refinancing or acquisition has occurred, and the provider is ~~shall be~~ in compliance with this subsection.

(7)(a) A provider may withdraw funds held in escrow without the approval of the office if the amount held in escrow exceeds the requirements of this section and if the withdrawal will not affect compliance with this section.

(b)1. For all other proposed withdrawals, in order to receive the consent of the office, the provider must file documentation showing why the withdrawal is necessary for the continued operation of the facility and such additional information as the office reasonably requires.

2. The office shall notify the provider when the filing is deemed complete. If the provider has complied with all prior requests for information, the filing is deemed complete after 30 days without communication from the office.

3. Within 30 days after the date a file is deemed complete, the office shall provide the provider with written notice of its approval or disapproval of the request. The office may

disapprove any request to withdraw such funds if it determines that the withdrawal is not in the best interest of the residents.

(8) The office may order the immediate transfer of up to 100 percent of the funds held in the minimum liquid reserve to the custody of the department pursuant to part III of chapter 625 if the office finds that the provider is impaired or insolvent. The office may order such a transfer regardless of whether the office has suspended or revoked, or intends to suspend or revoke, the certificate of authority of the provider.

(9) Each facility shall file with the office annually, together with the annual report required by s. 651.026, a calculation of its minimum liquid reserve, determined in accordance with this section, on a form prescribed by the commission. The minimum liquid reserve must be maintained at the calculated level within 60 days after filing the annual report.

(10) If the balance of the minimum liquid reserve is below the required amount at the end of any month, the provider must fund the shortfall in the reserve within 10 business days after the beginning of the following month. If the balance of the minimum liquid reserve is not restored to the required amount within such time, the provider will be deemed out of compliance with this section.

Section 18. Section 651.043, Florida Statutes, is created to read:

651.043 Approval of change in management.—

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

(a) A manager or management company; or

(b) A person who exercises or who has the ability to

exercise effective control of the provider or organization, or who influences or has the ability to influence the transaction of the business of the provider.

(2) A contract for management entered into after July 1, 2018, must be in writing and include a provision that the contract will be canceled upon issuance of an order by the office pursuant to this section without the application of any cancellation fee or penalty. If a provider contracts with a management company, a separate written contract is not required for the individual manager employed by the management company to oversee a facility.

(3) A provider must notify the office, in writing or electronically, of any change in management within 10 business days. For each new management appointment, the provider must submit the information required by s. 651.022(2) and a copy of the written management contract, if applicable.

(4) For a provider that is deemed to be impaired or that has a regulatory action level event pending, the office may disapprove new management and order the provider to remove the new management after reviewing the information required in subsection (3).

(5) For a provider other than that specified in subsection (4), the office may disapprove new management and order the provider to remove the new management after receiving the required information in subsection (3) if the office:

(a) Finds that the new management is incompetent or untrustworthy;

(b) Finds that the new management is so lacking in relevant managerial experience as to make the proposed operation

hazardous to the residents or potential residents;

(c) Finds that the new management is so lacking in relevant experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or

(d) Has good reason to believe that the new management is affiliated directly or indirectly through ownership, control, or business relations with any person or persons whose business operations are or have been marked by manipulation of assets or accounts or by bad faith, to the detriment of residents, stockholders, investors, creditors, or the public.

The office shall complete its review as required under subsections (4) and (5) and, if applicable, issue notice of disapproval of the new management within 15 business days after the filing is deemed complete. A filing is deemed complete upon the office's receipt of all requested information and the provider's correction of any error or omission for which the provider was timely notified. If the office does not issue notice of disapproval of the new management within 15 business days after the filing is deemed complete, then the new management is deemed approved.

(6) Management disapproved by the office must be removed within 30 days after receipt by the provider of notice of such disapproval.

(7) The office may revoke, suspend, or take other administrative action against the certificate of authority of the provider if the provider:

(a) Fails to timely remove management disapproved by the office;

(b) Fails to timely notify the office of a change in management;

(c) Appoints new management without a written contract; or

(d) Repeatedly appoints management that was previously disapproved by the office or that is not approvable pursuant to subsection (5).

(8) The provider shall remove any management immediately upon discovery of any of the following conditions, if the conditions were not disclosed in the notice to the office required in subsection (3):

(a) That any person who exercises or has the ability to exercise effective control of the provider, or who influences or has the ability to influence the transaction of the business of the provider, has been found guilty of, or has pled guilty or no contest to, any felony or crime punishable by imprisonment of 1 year or more under the laws of the United States or any state thereof or under the laws of any other country which involves moral turpitude, without regard to whether a judgment or conviction has been entered by the court having jurisdiction in such case.

(b) That any person who exercises or has the ability to exercise effective control of the organization, or who influences or has the ability to influence the transaction of the business of the provider, is now or was in the past affiliated, directly or indirectly, through ownership interest of 10 percent or more in, or control of, any business, corporation, or other entity that has been found guilty of or has pled guilty or no contest to any felony or crime punishable by imprisonment for 1 year or more under the laws of the United

States, any state, or any other country, regardless of adjudication.

The failure to remove such management is grounds for revocation or suspension of the provider's certificate of authority.

Section 19. Section 651.051, Florida Statutes, is amended to read:

651.051 Maintenance of assets and records in state.—All records and assets of a provider must be maintained in this state, or, if the provider's corporate office is located in another state, must be electronically stored in a manner that will ensure that the records are readily accessible to the office. No records or assets may be removed from this state by a provider unless the office consents to such removal in writing before such removal. Such consent must ~~shall~~ be based upon the provider's submitting satisfactory evidence that the removal will facilitate and make more economical the operations of the provider and will not diminish the service or protection thereafter to be given the provider's residents in this state. Before ~~Prior to~~ such removal, the provider shall give notice to the president or chair of the facility's residents' council. If such removal is part of a cash management system which has been approved by the office, disclosure of the system must ~~shall~~ meet the notification requirements. The electronic storage of records on a web-based, secured storage platform by contract with a third party is acceptable if the records are readily accessible to the office.

Section 20. Subsection (2) of section 651.057, Florida Statutes, is amended to read:

651.057 Continuing care at-home contracts.—

(2) A provider that holds a certificate of authority and wishes to offer continuing care at-home must also:

(a) Submit a business plan to the office with the following information:

1. A description of the continuing care at-home services that will be provided, the market to be served, and the fees to be charged;

2. A copy of the proposed continuing care at-home contract;

3. An actuarial study prepared by an independent actuary in accordance with the standards adopted by the American Academy of Actuaries which presents the impact of providing continuing care at-home on the overall operation of the facility; and

4. A market feasibility study that meets the requirements of s. 651.022(4) ~~s. 651.022(3)~~ and documents that there is sufficient interest in continuing care at-home contracts to support such a program;

(b) Demonstrate to the office that the proposal to offer continuing care at-home contracts to individuals who do not immediately move into the facility will not place the provider in an unsound financial condition;

(c) Comply with the requirements of s. 651.0246(1) ~~s. 651.021(2)~~, except that an actuarial study may be substituted for the feasibility study; and

(d) Comply with the requirements of this chapter.

Section 21. Subsection (1) of section 651.071, Florida Statutes, is amended to read:

651.071 Contracts as preferred claims on liquidation or receivership.—

(1) In the event of receivership or liquidation proceedings against a provider, all continuing care and continuing care at-home contracts executed by a provider are ~~shall be~~ deemed preferred claims or policyholder loss ~~preferred~~ claims pursuant to s. 631.271(1)(b) against all assets owned by the provider; however, such claims are subordinate to any secured claim.

Section 22. Subsection (2) and present paragraph (g) of subsection (3) of section 651.091, Florida Statutes, are amended, present paragraphs (h) and (i) of subsection (3) of that section are redesignated as paragraphs (g) and (h), respectively, a new paragraph (i) and paragraphs (j), (k), and (l) are added to that subsection, and paragraph (d) of subsection (3) and subsection (4) of that section are republished, to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

(2) Every continuing care facility shall:

(a) Display the certificate of authority in a conspicuous place inside the facility.

(b) Post in a prominent position in the facility which is accessible to all residents and the general public a concise summary of the last examination report issued by the office, with references to the page numbers of the full report noting any deficiencies found by the office, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility.

(c) Provide notice to the president or chair of the residents' council within 10 business days after issuance of a final examination report or the initiation of any legal or

administrative proceeding by the office or the department and include a copy of such document.

(d) ~~(c)~~ Post in a prominent position in the facility which is accessible to all residents and the general public a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services must also be posted.

(e) ~~(d)~~ Distribute a copy of the full annual statement and a copy of the most recent third-party ~~third party~~ financial audit filed with the annual report to the president or chair of the residents' council within 30 days after filing the annual report with the office, and designate a staff person to provide explanation thereof.

(f) ~~(e)~~ Deliver the information described in s. 651.085(4) in writing to the president or chair of the residents' council and make supporting documentation available upon request ~~Notify the residents' council of any plans filed with the office to obtain new financing, additional financing, or refinancing for the facility and of any applications to the office for any expansion of the facility~~.

(g) ~~(f)~~ Deliver to the president or chair of the residents' council a summary of entrance fees collected and refunds made during the time period covered in the annual report and the refund balances due at the end of the report period.

(h) ~~(g)~~ Deliver to the president or chair of the residents' council a copy of each quarterly statement within 30 days after the quarterly statement is filed with the office if the facility is required to file quarterly.

(i) ~~(h)~~ Upon request, deliver to the president or chair of the residents' council a copy of any newly approved continuing care or continuing care at-home contract within 30 days after approval by the office.

(j) Provide to the president or chair of the residents' council a copy of any notice filed with the office relating to any change in ownership within 10 business days after such filing by the provider.

(k) Make the information available to prospective residents pursuant to paragraph (3)(d) available to current residents and provide notice of changes to that information to the president or chair of the residents' council within 3 business days.

(3) Before entering into a contract to furnish continuing care or continuing care at-home, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:

(d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans does not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.

~~(g) The amount and location of any reserve funds required by this chapter, and the name of the person or entity having a claim to such funds in the event of a bankruptcy, foreclosure,~~

~~or rehabilitation proceeding.~~

(i) Notice of the issuance of a final examination report or the initiation of any legal or administrative proceeding by the office or the department, including where the report or filing may be inspected in the facility, and that upon request, an electronic copy or specific website address will be provided where the document can be downloaded at no cost.

(j) Notice that the entrance fee is the property of the provider after the expiration of the 7-day escrow requirement under s. 651.055(2).

(k) If the provider operates multiple facilities, a disclosure of any distribution of assets or income between facilities that may occur and the manner in which such distributions would be made, or a statement that such distributions will not occur.

(l) Notice of any holding company system or obligated group of which the provider is a member.

(4) A true and complete copy of the full disclosure document to be used must be filed with the office before use. A resident or prospective resident or his or her legal representative may inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the office pursuant to s. 651.022(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

Section 23. Subsections (1) and (5) of section 651.105,

Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

651.105 Examination and inspections.—

(1) The office may at any time, and shall at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for the examination of insurance companies pursuant to ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place at least once every 5 years. Such examinations must ~~shall~~ be made by a representative or examiner designated by the office whose compensation will be fixed by the office pursuant to s. 624.320. Routine examinations may be made by having the necessary documents submitted to the office; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, are deemed adequate. The final written report of each examination must be filed with the office and, when so filed, constitutes a public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the office may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or not.

(5) A provider must respond to written correspondence from the office and provide data, financial statements, and pertinent information as requested by the office or by the office's

investigators, examiners, or inspectors. The office has standing to petition a circuit court for mandatory injunctive relief to compel access to and require the provider to produce the documents, data, records, and other information requested by the office or its investigators, examiners, or inspectors. The office may petition the circuit court in the county in which the facility is situated or the Circuit Court of Leon County to enforce this section ~~At the time of the routine examination, the office shall determine if all disclosures required under this chapter have been made to the president or chair of the residents' council and the executive officer of the governing body of the provider~~.

(7) Unless a provider or facility is impaired or subject to a regulatory action level event, any parent, subsidiary, or affiliate is not subject to examination by the office as part of a routine examination. However, if a provider or facility relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate the provider or facility's financial condition is in compliance with this chapter, the office may examine any parent, subsidiary, or affiliate that has a contractual or financial relationship with the provider or facility to the extent necessary to ascertain the financial condition of the provider.

(8) If a provider voluntarily contracts with an actuary for an actuarial study or review at regular intervals, the office may not use any recommendations made by the actuary as a measure of performance when conducting an examination or inspection. The office may not request, as part of the examination or inspection, documents associated with an actuarial study or

review marked "restricted distribution" if the study or review is not required by this chapter.

Section 24. Section 651.106, Florida Statutes, is amended to read:

651.106 Grounds for discretionary refusal, suspension, or revocation of certificate of authority.—The office may deny an application or~~,~~ suspend~~,~~ or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider if it finds that any one or more of the following grounds applicable to the applicant or provider exist:

(1) Failure by the provider to continue to meet the requirements for the authority originally granted.

(2) Failure by the provider to meet one or more of the qualifications for the authority specified by this chapter.

(3) Material misstatement, misrepresentation, or fraud in obtaining the authority, or in attempting to obtain the same.

(4) Demonstrated lack of fitness or trustworthiness.

(5) Fraudulent or dishonest practices of management in the conduct of business.

(6) Misappropriation, conversion, or withholding of moneys.

(7) Failure to comply with, or violation of, any proper order or rule of the office or commission or violation of any provision of this chapter.

(8) The insolvent or impaired condition of the provider or the provider's being in such condition or using such methods and practices in the conduct of its business as to render its further transactions in this state hazardous or injurious to the public.

(9) Refusal by the provider to be examined or to produce

its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligation under this chapter when required by the office.

(10) Failure by the provider to comply with the requirements of s. 651.026 or s. 651.033.

(11) Failure by the provider to maintain escrow accounts or funds as required by this chapter.

(12) Failure by the provider to meet the requirements of this chapter for disclosure of information to residents concerning the facility, its ownership, its management, its development, or its financial condition or failure to honor its continuing care or continuing care at-home contracts.

(13) Any cause for which issuance of the license could have been refused had it then existed and been known to the office.

(14) Having been found guilty of, or having pleaded guilty or nolo contendere to, a felony in this state or any other state, without regard to whether a judgment or conviction has been entered by the court having jurisdiction of such cases.

(15) In the conduct of business under the license, engaging in unfair methods of competition or in unfair or deceptive acts or practices prohibited under part IX of chapter 626.

(16) A pattern of bankrupt enterprises.

(17) The ownership, control, or management of the organization includes any person:

(a) Who is not reputable and of responsible character;

(b) Who is so lacking in management expertise as to make the operation of the provider hazardous to potential and existing residents;

(c) Who is so lacking in management experience, ability, and standing as to jeopardize the reasonable promise of successful operation;

(d) Who is affiliated, directly or indirectly, through ownership or control, with any person whose business operations are or have been marked by business practices or conduct that is detrimental to the public, stockholders, investors, or creditors; or

(e) Whose business operations are or have been marked by business practices or conduct that is detrimental to the public, stockholders, investors, or creditors.

(18) The provider has not filed a notice of change in management, fails to remove a disapproved manager, or persists in appointing disapproved managers.

Revocation of a certificate of authority under this section does not relieve a provider from the provider's obligation to residents under the terms and conditions of any continuing care or continuing care at-home contract between the provider and residents or the provisions of this chapter. The provider shall continue to file its annual statement and pay license fees to the office as required under this chapter as if the certificate of authority had continued in full force, but the provider shall not issue any new contracts. The office may seek an action in the Circuit Court of Leon County to enforce the office's order and the provisions of this section.

Section 25. Section 651.1065, Florida Statutes, is created to read:

651.1065 Soliciting or accepting new continuing care

contracts by impaired or insolvent facilities or providers.—

(1) Regardless of whether delinquency proceedings as to a continuing care retirement community have been or are to be initiated, a proprietor, general partner, member, officer, director, trustee, or manager of a continuing care retirement community may not actively solicit, approve the solicitation or acceptance of, or accept new continuing care contracts in this state after the proprietor, general partner, member, officer, director, trustee, or manager knew, or reasonably should have known, that the continuing care retirement community was impaired or insolvent, except with the written permission of the office, unless the facility has declared bankruptcy, in which case the bankruptcy court or trustee appointed by the court has jurisdiction over such matters. The office must approve or disapprove the continued marketing of new contracts within 15 days after receiving a request from a provider.

(2) A proprietor, general partner, member, officer, director, trustee, or manager who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 26. Section 651.111, Florida Statutes, is amended to read:

651.111 Requests for inspections.—

(1) Any interested party may request an inspection of the records and related financial affairs of a provider providing care in accordance with ~~the provisions of~~ this chapter by transmitting to the office notice of an alleged violation of applicable requirements prescribed by statute or by rule, specifying to a reasonable extent the details of the alleged

violation, which notice must ~~shall~~ be signed by the complainant.

(2) The substance of the complaint must ~~shall~~ be given to the provider no earlier than the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint which is provided to the provider nor any copy of the complaint, closure statement, or any record which is published, released, or otherwise made available to the provider may ~~shall~~ disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the office conducting the investigation or inspection pursuant to this chapter.

(3) Upon receipt of a complaint, the office shall make a preliminary review; and, unless the office determines that the complaint is without any reasonable basis or the complaint does not request an inspection, the office shall make an inspection. The office shall provide the complainant with a written acknowledgment of the complaint within 15 days after receipt by the office. Such acknowledgment must include the case number assigned by the office to the complaint and the name and contact information of any duly authorized officer, employee, or agent of the office conducting the investigation or inspection pursuant to this chapter. The complainant must ~~shall~~ be advised, within 30 days after the receipt of the complaint by the office, of the proposed course of action of the office, including an estimated timeframe for the handling of the complaint. If the office does not conclude its inspection or investigation within the office's estimated timeframe, the office must advise the complainant in writing within 15 days after any revised course of action, including a revised estimated timeframe for the

handling of the complaint. Within 15 days after the office completes its inspection or concludes its investigation, the office shall provide the complainant and the provider a written closure statement specifying the office's findings and the results of any inspection or investigation.

(4) A ~~No~~ provider operating under a certificate of authority under this chapter may not discriminate or retaliate in any manner against a resident or an employee of a facility providing care because such resident or employee or any other person has initiated a complaint pursuant to this section.

Section 27. Section 651.114, Florida Statutes, is amended to read:

651.114 Delinquency proceedings; remedial rights.—

(1) Upon determination by the office that a provider is not in compliance with this chapter, the office may notify the chair of the Continuing Care Advisory Council, who may assist the office in formulating a corrective action plan.

(2) Within 30 days after a request by either the advisory council or the office, a provider shall make a plan for obtaining compliance or solvency available to the advisory council and the office~~, within 30 days after being requested to do so by the council, a plan for obtaining compliance or solvency~~.

(3) Within 30 days after receipt of a plan for obtaining compliance or solvency, the office, or ~~notification,~~ the advisory council at the request of the office, shall:

(a) Consider and evaluate the plan submitted by the provider.

(b) Discuss the problem and solutions with the provider.

(c) Conduct such other business as is necessary.

(d) Report its findings and recommendations to the office, which may require additional modification of the plan.

This subsection may not be interpreted so as to delay or prevent the office from taking any regulatory measures it deems necessary regarding the provider that submitted the plan.

(4) If the financial condition of a continuing care facility or provider is impaired or is such that if not modified or corrected, its continued operation would result in insolvency, the office may direct the provider to formulate and file with the office a corrective action plan. If the provider fails to submit a plan within 30 days after the office's directive, or submits a plan that is insufficient to correct the condition, the office may specify a plan and direct the provider to implement the plan. Before specifying a plan, the office may seek a recommended plan from the advisory council.

(5) ~~(4)~~ After receiving approval of a plan by the office, the provider shall submit a progress report monthly to the advisory council or the office, or both, in a manner prescribed by the office. After 3 months, or at any earlier time deemed necessary, the council shall evaluate the progress by the provider and shall advise the office of its findings.

(6) ~~(5)~~ If ~~Should~~ the office finds ~~find~~ that sufficient grounds exist for rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceedings of an insurer as set forth in ss. 631.051, 631.061, and 631.071, the department ~~office~~ may petition for an appropriate court order or may pursue such other relief as is afforded in part I of chapter 631.

Before invoking its powers under part I of chapter 631, the department ~~office~~ shall notify the chair of the advisory council.

(7) Notwithstanding s. 631.011, impairment of a provider, for purposes of s. 631.051, is defined according to the term "impaired" in s. 651.011.

(8) ~~(6)~~ In the event an order of conservation, rehabilitation, liquidation, or ~~conservation, reorganization,~~ seizure~~, or summary proceeding~~ has been entered against a provider, the department and office are vested with all of the powers and duties they have under ~~the provisions of~~ part I of chapter 631 in regard to delinquency proceedings of insurance companies. A provider shall give written notice of the proceeding to its residents within 3 business days after the initiation of a delinquency proceeding under chapter 631 and shall include a notice of the delinquency proceeding in any written materials provided to prospective residents.

~~(7) If the financial condition of the continuing care facility or provider is such that, if not modified or corrected, its continued operation would result in insolvency, the office may direct the provider to formulate and file with the office a corrective action plan. If the provider fails to submit a plan within 30 days after the office's directive or submits a plan that is insufficient to correct the condition, the office may specify a plan and direct the provider to implement the plan.~~

(9) A provider subject to an order to show cause entered pursuant to chapter 631 must file its written response to the order, together with any defenses it may have to the department's allegations, no later than 20 days after service of

the order to show cause, but no less than 15 days before the date of the hearing set by the order to show cause.

(10) A hearing held pursuant to chapter 631 to determine whether cause exists for the department to be appointed receiver must be commenced within 60 days after an order directing a provider to show cause.

(11)(a) ~~(8)(a)~~ The rights of the office described in this section are subordinate to the rights of a trustee or lender pursuant to the terms of a resolution, ordinance, loan agreement, indenture of trust, mortgage, lease, security agreement, or other instrument creating or securing bonds or notes issued to finance a facility, and the office, subject to ~~the provisions of~~ paragraph (c), may ~~shall~~ not exercise its remedial rights provided under this section and ss. 651.018, 651.106, 651.108, and 651.116 with respect to a facility that is not in default of any financial or contractual obligation other than ~~subject to~~ a lien, mortgage, lease, or other encumbrance or trust indenture securing bonds or notes issued in connection with the financing of the facility, if the trustee or lender, by inclusion or by amendment to the loan documents or by a separate contract with the office, agrees that the rights of residents under a continuing care or continuing care at-home contract will be honored and will not be disturbed by a foreclosure or conveyance in lieu thereof as long as the resident:

1. Is current in the payment of all monetary obligations required by the contract;

2. Is in compliance and continues to comply with all provisions of the contract; and

3. Has asserted no claim inconsistent with the rights of

the trustee or lender.

(b) This subsection does not require a trustee or lender to:

1. Continue to engage in the marketing or resale of new continuing care or continuing care at-home contracts;

2. Pay any rebate of entrance fees as may be required by a resident's continuing care or continuing care at-home contract as of the date of acquisition of the facility by the trustee or lender and until expiration of the period described in paragraph (d);

3. Be responsible for any act or omission of any owner or operator of the facility arising before the acquisition of the facility by the trustee or lender; or

4. Provide services to the residents to the extent that the trustee or lender would be required to advance or expend funds that have not been designated or set aside for such purposes.

(c) Should the office determine, at any time during the suspension of its remedial rights as provided in paragraph (a), that the trustee or lender is not in compliance with paragraph (a), or that a lender or trustee has assigned or has agreed to assign all or a portion of a delinquent or defaulted loan to a third party without the office's written consent, the office shall notify the trustee or lender in writing of its determination, setting forth the reasons giving rise to the determination and specifying those remedial rights afforded to the office which the office shall then reinstate.

(d) Upon acquisition of a facility by a trustee or lender and evidence satisfactory to the office that the requirements of paragraph (a) have been met, the office shall issue a 90-day

temporary certificate of authority granting the trustee or lender the authority to engage in the business of providing continuing care or continuing care at-home and to issue continuing care or continuing care at-home contracts subject to the office's right to immediately suspend or revoke the temporary certificate of authority if the office determines that any of the grounds described in s. 651.106 apply to the trustee or lender or that the terms of the contract used as the basis for the issuance of the temporary certificate of authority by the office have not been or are not being met by the trustee or lender since the date of acquisition.

Section 28. Section 651.1141, Florida Statutes, is created to read:

651.1141 Immediate final orders.—The office may issue an immediate final order to cease and desist if the office finds that installation of a general partner of a provider or assumption of ownership or possession or control of 10 percent or more of a provider's assets in violation of s. 651.024 or s. 651.0245, the removal or commitment of 10 percent or more of the required minimum liquid reserve funds in violation of s. 651.035, or the assumption of control over a facility's operations in violation of s. 651.043 has occurred.

Section 29. Paragraphs (d) and (e) of subsection (1) of section 651.121, Florida Statutes, are amended to read:

651.121 Continuing Care Advisory Council.—

(1) The Continuing Care Advisory Council to the office is created consisting of 10 members who are residents of this state appointed by the Governor and geographically representative of this state. Three members shall be administrators of facilities

that hold valid certificates of authority under this chapter and shall have been actively engaged in the offering of continuing care contracts in this state for 5 years before appointment. The remaining members include:

~~(d) An attorney.~~

(d)~~(c)~~ Four ~~Three~~ residents who hold continuing care or continuing care at-home contracts with a facility certified in this state.

Section 30. Subsections (1) and (4) of section 651.125, Florida Statutes, are amended to read:

651.125 Criminal penalties; injunctive relief.—

(1) Any person who maintains, enters into, or, as manager or officer or in any other administrative capacity, assists in entering into, maintaining, or performing any continuing care or continuing care at-home contract subject to this chapter without ~~doing so in pursuance of~~ a valid provisional certificate of authority or certificate of authority ~~or renewal thereof~~, as contemplated by or provided in this chapter, or who otherwise violates any provision of this chapter or rule adopted in pursuance of this chapter, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Each violation of this chapter constitutes a separate offense.

(4) Any action brought by the office against a provider shall not abate by reason of a sale or other transfer of ownership of the facility used to provide care, which provider is a party to the action, except with the express written consent of the ~~director of the~~ office.

Section 31. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Senate Committee on Appropriations

Subject: Committee Agenda Request

Date: February 8, 2018

I respectfully request that **Senate Bill #438**, relating to **Continuing Care Contracts**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

2-22-18
Meeting Date

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

SB 438
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Support of SB 438

Name Eric Thorn

Job Title Staff Counsel

Address 325 John Knox Rd, ste L103 (*Street*)

Tally (*City*) FL (*State*) 32303 (*Zip*)

Phone 850-224-071

Email ethorn@executive offices.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Life Care Residents 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)

Feb 22
Meeting Date

438
Bill Number (if applicable)

Topic For the Bill

Amendment Barcode (if applicable)

Name Tim Meenan

Job Title

Address 300 S. Duval St.
Street

Tallahassee FL 32312
City *State* *Zip*

Phone (850)425-4000

Email Tim@meenanlawfirm.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Brookdale Senior Living

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

~~CSF~~ CSSB 438
Bill Number (if applicable)

Topic CCRC REGULATION

Amendment Barcode (if applicable)

Name STEVE BAHMER

Job Title PRESIDENT / CEO

Address 1812 RIGGINS ROAD
Street

Phone 850 671 3700

TALLAHASSEE FL 32308
City *State* *Zip*

Email SBahmer@LeadingAgeFlorida.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LEADINGAGE 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:	SB 440
INTRODUCER:	Senator Garcia and others
SUBJECT:	Florida Veterans Care Program
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Ryon	Ryon	MS	**Favorable**
3.	Kidd	Hansen	AP	**Favorable**

I. Summary:

SB 440 creates the Florida Veterans Care program (program) in statute, within the Agency for Health Care Administration (AHCA), to provide Florida veterans and their families an alternative for health care that is operated similar to or through the Medicaid managed care program. The bill authorizes AHCA, in conjunction with the Florida Department of Veterans' Affairs, to seek and negotiate a federal waiver or state plan amendment to the Medicaid program, or other federal authorization necessary to implement the program.

Participation by Florida veterans and their families is voluntary. Benefits and services provided through the program shall meet or exceed those provided in the Medicaid long-term care or managed care program as provided under part IV of chapter 409 and will be provided by plans competitively procured by AHCA.

No state funds may be used to provide medical or long-term care services or administer the program. The AHCA may incur some administrative costs to negotiate final approval for the program. The AHCA and the department may not implement the program without final legislative approval.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Veterans' Health Care Services

Veterans of the United States Armed Forces may be eligible for a range of benefits, which are codified in Title 38 of the United States Code. Certain former members of the Reserves or

National Guard who were called to active duty may also be eligible for benefits.[1] Benefits may include:

- Medical care;
- Disability compensation;
- Special monthly compensation;
- Housing grants for disabled veterans;
- Vocational rehabilitation and employment;
- Pension;
- Education and training;
- Home loan guaranty;
- Life insurance; and
- Dependents and survivors benefits.[2]

If a person served in the active military service and was separated under any condition other than dishonorable, that individual may be eligible for health care and other benefits under the federal Veterans Health Administration (VHA) through the United States Department of Veterans Affairs (VA). Most veterans who enlisted after September 7, 1980 or entered active duty after October 16, 1981, must have served at least 24 continuous months; however, this time standard may not apply to those veterans who were discharged due to a disability incurred or aggravated in the line of duty or under other exceptions.[3]

Veterans must register or apply for health care benefits through the VHA. Certain categories of veterans are provided enhanced enrollment. These veterans are those who:

- Are former Prisoners of War;
- Are Purple Heart Recipients;
- Are Medal of Honor Recipients;
- Receive compensable VA awarded service-connected disability[4] of 10 percent or more;
- Receive a VA pension;
- Were discharged from the military because of a disability (not pre-existing), early out, or hardship;
- Served in a Theater of Operations for 5 years post discharge;
- Served in the Republic of Vietnam from January 9, 1962 to May 7, 1975;
- Served in the Persian Gulf from August 2, 1990 to November 11, 1998;
- Were stationed or resided at Camp Lejeune for 30 days or more between August 1, 1953 and December 31, 1987;
- Were found catastrophically disabled by the VA; or

[1] U.S. Department of Veterans Affairs, *Health Benefits*, https://www.va.gov/HEALTHBENEFITS/apply/veterans.asp (last visited Dec. 4, 2017).
[2] U.S. Department of Veterans Affairs, *Federal Benefits for Veterans, Dependents and Survivors* (2016 Edition), https://www.va.gov/opa/publications/benefits_book/2016_Federal_Benefits_for_Veterans.pdf (last visited Dec. 4, 2017).
[3] *Supra* note 1.
[4] A service-connected disability is an injury or illness that was incurred or aggravated during active military service. Compensation may also be paid for post-service disabilities that are considered related or secondary to disabilities occurring in service or presumed to be related to circumstances of military services, even if they arise after military service. To be eligible for compensation, the veteran must have been separated or discharged under conditions other than dishonorable. *See* https://www.benefits.va.gov/compensation/ (last visited Dec. 4, 2017).

- Have a household income that is below the VA's National Income or Geographical – Adjusted Thresholds.[5]

Only certain veterans are required to provide income information to the VA as part of the application process. Veterans who do not have a VA-service connected disability, do not receive a VA pension, or have a special eligibility are required to participate in the financial assessment. The gross household income amounts that are used to determine priority groups or eligibility for cost-free care are adjusted annually. These amounts can also vary by geographic based assessments. Unreimbursed medical expenses are deductible from the veteran's gross income, including medical-travel related expenses, health insurance premiums, and prescriptions. For 2016, the VA National Income Threshold for a veteran with two dependents for cost-free health care was $40,694 or less.[6]

When a veteran enrolls, the individual is assigned to one of eight priority groups that the VA uses to balance the demand for services with available resources. Priority groupings are based on need for services, level of disability, discharge status, and income.[7] The highest priority group are those veterans with service-related injuries with at least a 50 percent service-connected disability and/or the veteran has been determined unemployable.[8] Group 8 is the lowest priority group and includes those veterans whose gross household incomes are above the VA national income threshold and who agree to pay copayments.

Florida Veterans

The federal VA system serves more than 1.5 million Floridians, which is the third highest population of veterans in the country behind California and Texas.[9] Over half of the state's veterans are aged 65 and older, with the majority of those veterans having served during the Vietnam Era and with the Gulf Wars second, as noted in the chart below.

Florida's Veteran Population by Period of Service[10]	
Period of Service	**Number of Veterans 9/30/2015**
WWII	91,799
Korea	168,208
Vietnam	544,921
Gulf War	487,422
Total	1,292,350

[5] *Supra* note 1.
[6] U.S. Department of Veterans Affairs, *Annual Income Limits – Health Benefits, 2017 VA National and Priority Group 8 Relaxation Income Thresholds, Income Thresholds for Cost-Free Health Care, Medications and/Beneficiary Travel Eligibility, Based on Income Year 2016*, (last updated December 8, 2016) *available at* http://nationalincomelimits.vaftl.us/LegacyVAThresholds/Index?FiscalYear=2017 (last visited Dec. 4, 2017).
[7] *Supra* note 2.
[8] Id.
[9] U.S. Department of Veterans Affairs, *State Summaries – Florida* (2016), *available at* https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Florida.pdf , p. 2, (last visited Dec. 4, 2017).
[10] Id.

In Florida, 725,000 individuals were enrolled in the VHA and over 500,000 unique enrollees received treatment in Fiscal Year 2016. The VHA operates 8 VA inpatient facilities, 71 outpatient facilities, and 24 Vet Centers in the state.[11] For 2016, the VHA reported expending $5,053,073 for medical care in Florida.[12]

Besides health care benefits, over 300,000 Florida veterans also receive disability compensation payments.[13] For Fiscal Year 2016, the average number of service-connected disabilities per veteran nationally is reported as 4.91.[14]

Uninsured Florida Veterans

The most recent projections indicate that approximately 49,000 Florida veterans are uninsured or 7.4 percent of the state's veteran population, which is a 5.2 percent reduction over the state's 2013 uninsured rate of 12.5 percent.[15] Census figures released earlier this year showed that most veterans either had TRICARE[16] or VHA coverage alone or paired it with private coverage (716,228 enrollees) compared with a coupling with public coverage such as Medicare or Medicaid (610,462 enrollees).[17]

Nationally, uninsured rates among nonelderly veterans also fell from 9.6 percent in 2013 to 5.9 percent in 2015, a nearly 40 percent drop.[18] Similarly, there were also corresponding drops in the uninsured among veterans' spouses and dependent children. Florida had the second highest rate of decline among all states, for both those that did and did not expand Medicaid, and the largest drop in the number of uninsured among those states that did not expand Medicaid.[19]

A study by the RAND Corporation found that most care provided to non-elderly veterans is delivered outside of the VA system.[20] VA data show that while health care benefits are the

[11] Id at 1.
[12] Id.
[13] Id.
[14] U.S. Department of Veterans Affairs, Veterans Benefits Administration, *Annual Benefits Report Fiscal Year 2016-Compensation Section*, (Updated February 2017), https://www.benefits.va.gov/REPORTS/abr/ABR-Compensation-FY16-0613017.pdf (last visited Dec. 4, 2017).
[15] Jennifer Haley, et al, *Veterans Saw Broad Coverage Gains Between 2013 and 2015,* Robert Wood Johnson Foundation and Urban Institute, p. 5, https://www.urban.org/sites/default/files/publication/89756/2001230-veterans-saw-broad-coverage-gains-between-2013-and-2015.pdf (last visited Dec. 4, 2017).
[16] TRICARE is a military healthcare program for active duty personnel, military retirees, and their dependents, which is managed by the Defense Health Agency under the federal Department of Defense (DOD). TRICARE, formerly known as CHAMPUS, provides comprehensive health care services through military hospitals and clinics with civilian health care networks. The CHAMPVA is managed by DVA, which shares the cost of covered health care services with eligible beneficiaries. *See https://www.va.gov/COMMUNITYCARE/programs/dependents/champva/index.asp* (last visited Dec. 4, 2017).
[17] U.S. Census Bureau, *American Fact Finder, Private and Public Health Insurance Coverage by Type – 2016 American Community Survey 1-Year Estimates* (chart created Nov. 2, 2017) (on file with the Senate Committee on Health Policy).
[18] *Supra* note 15, at 3.
[19] Id at 5.
[20] Michael Dworksy, et al, *Veterans' Health Insurance Coverage Under the Affordable Health Care Act and Implications of Repeal for the Department of Veterans Affairs: Research Report,* RAND Corp., (2017), p. 28, *available at* https://www.rand.org/pubs/research_reports/RR1955.html (last visited Dec. 4, 2017).

largest veterans' benefit program,[21] most veterans are covered by non-VA health insurance even if they are enrolled in the VA. Implementation of the Affordable Care Act was followed by reduction in the number of veterans who lacked any form of health insurance and increases in the number of VA-covered veterans who were dually-enrolled in some non-VA source of insurance.[22]

Veterans' Health Care Delivery System

Nationally, the VA has 155 inpatient sites and over 1,000 outpatient sites with another 300 Vet Centers that provide counseling services, outreach and referral services to combat veterans and their families. Veterans can receive health care services at any VA health care facility in the country. Health care enrollment and utilization has increased with outpatient visits growing from 46.5 million visits in 2002 to 95.2 million visits in 2015.[23]

Health care is primarily delivered through 21 regional networks know as Veterans Integrated Service Networks or VISNs nationwide. For Florida, two networks cover the state with one responsible for 60 counties in the northern, central, and southern regions of the state[24] and the other network for the remaining seven counties in northwest Florida.[25]

Starting predominantly in 2014, news stories and VA federal Office of the Inspector General (OIG) reports accused the VHA of systemic failures and other management challenges.[26,27,28] Long wait times for primary care appointments, fraud in the appointment times scheduling system, and an overwhelmed health care system led to the federally-chartered *Special Medical Advisory Group (SMAG)* composed of medical experts to advise the Secretary of Veterans Affairs, through the Under Secretary of Health, on matters relating to health care delivery, research, education, training of health care staff, and shared issues facing VA and the Department of Defense on a federal legislative response.

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[21] U.S. Department of Veterans Affairs, *Unique Veterans Users Profiles, FY 2015* (December 2016), *available at* https://www.va.gov/vetdata/docs/SpecialReports/Profile_of_Unique_Veteran_Users_2015.pdf (last visited Dec. 4, 2017).
[22] *Supra* note 20, at 26.
[23] U.S. Department of Veterans Affairs, *Selected Veterans Health Administration Characteristics, FY 2001 to FY 2015*, https://va.gov/vetdata/Expenditures.asp (last visited Dec. 4, 2017).
[24] VISN 8 is the Sunshine Healthcare Network and covers 60 Florida counties, 19 rural counties in South Georgia, and Puerto Rico and the U.S. Virgin Islands. VISN 8 includes seven outpatient clinics of which six are located in Florida and one is located in Puerto Rico. For more information on VSN 8, see https://www.visn8.va.gov/VISN8/about/index.asp (last visited Dec. 4, 2017).
[25] VISN 16 is the South Central VA Health Care Network and serve veterans in Arkansas, Louisiana, Mississippi, and parts of Texas, Missouri, Alabama, Oklahoma, and Florida. VISN 16 has eight Veterans Affairs Medical Centers (VAMC) of which none are located in Florida, one outpatient clinic in Texas, and 68 outpatient sites or Vet Centers of which six are located in Florida.
[26] Rachel Landen, *Pattern of problems with Veterans Affairs healthcare system*, Modern Healthcare, May 7, 2014, http://www.modernhealthcare.com/article/20140507/NEWS/305079939, (last visited Dec. 4, 2017).
[27] Associated Press, Watchdog report details 'systemic' problems at VA facilities, Fox News, August 25, 2014, http://www.foxnews.com/politics/2014/08/26/no-proof-delays-in-care-caused-vets-to-die-va-says.html, (last visited Dec. 4, 2017).
[28] Department of Veterans Affairs, Office of Inspector General, *2014 Major Management Challenges* (October 1, 2014), *available at* https://www.oversight.gov/report/va/office-inspector-general-department-veterans-affairs-2014-major-management-challenges (last visited Dec. 4, 2017).

The VA's SMAG developed a Blueprint for Excellence with a goal of delivering both excellent care and an excellent experience of care to every veteran it served.[29] Five priorities were established under the Blueprint:

- Access: We will provide timely access to Veterans as determined by their clinical needs.
- Employee Engagement: We see a work environment where employees are valued, supported and encouraged to do their best for veterans.
- High Performance Network: We will ensure that Veterans receive the highest level of coordinated care within VA or from participating providers.
- Best Practices. We will use best clinical practices in research, education, and management.
- Trust in VA Care. We will be there for our Veterans when they need us.[30]

In its 2016 SMAG Progress Report, the VHA reported an increase in the number of sites offering same-day services since September 2016 from 52 sites to 166 sites and more than 3.1 million appointments had been scheduled nationally in the last two years.[31] More than 22,000 additional staff had been on-boarded at the VHA since the beginning of 2015 fiscal year through the end of 2016 fiscal year.[32]

Veterans Choice Program

Partially, in response to the issues raised in the multiple OIG audits, Congress directed the VA through the *Veterans Access, Choice, and Accountability Act of 2014 (VACCA) (P.L. 113-146)*, and specifically, the Veterans Choice Program (VCP), to furnish hospital care and medical services through alternative means when veterans could not access services in a timely manner. To be eligible, a veteran may optionally enroll if he or she faces an unacceptable burden in accessing a provider of more than 40 miles driving distance to the nearest VA medical facility and has been identified to have an appointment more than 30 days out from a preferred appointment date; faces other geographic challenges; encounters environmental challenges; or has a medical condition that impairs the veterans ability to travel.

When a veteran attempts to schedule an appointment at a VHA medical facility or meets the driving condition or one of the other special circumstances and cannot be seen within 30 days, the veteran is placed on the Veterans Choice List (VCL). Once the veteran is placed on this list, the veteran has the ability to opt into the program and receive care from the designated Third Party Administrator (TPA) managed provider network.

The legislation also mandated other changes such as requiring the use of electronic waiting lists (ECLs), making such waiting lists accessible so veterans can make informed choices about whether to receive care at such facilities, requiring VCP cards be issued to certain veterans, requiring non-VA health care providers to have the same credentials as VA health care providers, requiring the establishment of performance metrics, setting appointment access standards, requiring a number of reports, and publishing wait times of VA facilities publicly.

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[29] U.S. Department of Veterans Affairs, *SMAG Progress Report 2016,* p. 5, *available at* https://www.va.gov/health/smag_report/smag_progress_report_2016.asp, (last visited Dec. 4, 2017).
[30] Id.
[31] Id at 6.
[32] Id at 8.

The VCP was initially funded by Congress with $10 billion. The legislation would sunset upon either the exhaustion of the funds or three years from the Act's enactment, whichever occurred first.[33] Before either event could happen, the program's termination date was removed and additional funds were authorized in 2017.[34]

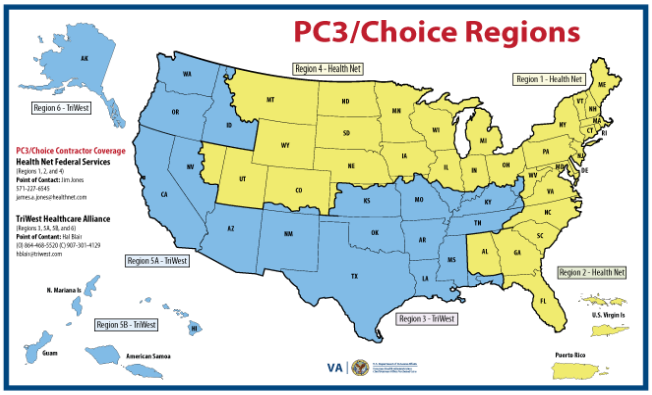
Patient Centered Community Care Program

Existing prior to VCP, if care was not readily available either because of time or geography, a veteran's health care facility could and still can use a Patient Centered Community Care Contract (PC3) to purchase care from a non-VA provider. More than 3.5 million authorizations for services under PC3 contracts have been made from September 1, 2015 through August 31, 2016, a 13 percent increase over the same period in 2014-2015.[35] In comparison, internal VA appointments for 2015-2016 were 58.3 million.[36]

Florida is covered by two different health network contracts: Health Net Federal Services and TriWest Healthcare Alliance.[37] A map of the regions covered by the contracts is shown below. The PC3 program does not provide coverage for all benefits. Coverage is limited only to primary care, limited emergency care, mental health care, inpatient and outpatient specialty care, and limited newborn care for enrolled female veterans following the birth of a child.[38] Services are managed nationally by one of two TPA managed provider networks based on where the veteran is located.

The Veterans "Choice" Programs

Collectively known as the Veterans Choice Programs, the VA provides veterans with options under the VCP, the PC3, and non-VA fee programs for pre-authorized medical care only. Millions of appointments had been provided under the programs and billions of dollars had been expended in health care funds with an additional $235 million spent on administrative costs to the health care networks over a several year time span.[39]



[33] Veterans Access, Choice, and Accountability Act of 2014, Pub. L No. 113-146, §101(p) (August 7, 2014), 128 STAT. 1763 (August 7, 2014).
[34] VA Choice and Quality Employment Act of 2017, P.L. 115-26, 131 STAT. 129-130 (April 19, 2017).
[35] *Supra* note 29, at 9.
[36] Id.
[37] U.S. Department of Veterans Affairs, *VHA Office of Community Care, Patient Centered Community Care (PC3),* (last updated May 11, 2017) *available at* https://www.va.gov/COMMUNITYCARE/programs/veterans/pccc/index.asp (last visited Dec. 4, 2017).
[38] Id.
[39] Testimony of Michael J. Missal, Inspector General of U.S. Department of Veterans Affairs before the Committee on Veterans' Affairs, U.S. House of Representatives, Hearing on "Shaping the Future: Consolidating and Improving VA Community Care," (March 7, 2017), p. 2, *available at* https://www.va.gov/oig/pubs/statements/VAOIG-Statement-20170307-missal.pdf (last visited Dec. 4, 2017).

The IG of the DVA reported on contacts received by its office from October 1, 2015 through January 31, 2017 and noted they fell into four general complaint categories:

- 48% had concerns about appointments and scheduling;
- 35% had concerns about referrals, authorizations, or consults;
- 12% had concerns about veteran and provider payments; and,
- 5% had concerns about program eligibility or enrollment.[40]

The IG reviewed appointment wait times, authorization practices, scheduling procedures, and timeliness of care of various offices and facilities. Several barriers to care were found, including 1.2 million appointments from November 1, 2014 through September 30, 2015 for veterans in the various VHA programs waiting over 30 days for care at VHA medical facilities.[41] In the October 2016 report, the IG published its review of the Phoenix VA Health System in which it had determined that more than 22,000 patients had 34,000 open consults. One patient waited in excess of 300 days for a consult.[42] The review of the Phoenix office included services delivered in both the traditional and non-traditional VA care settings.

In February 2016, another Inspector General report looked at timely care in Colorado Springs. Out of 450 consults and appointments, 288 veterans in Colorado Springs encountered wait times in excess of 30 days. Of those 288 who had wait times in excess of 30 days, none of those 288 veterans were added to the VCL or were not added in a timely manner, which would make them eligible to receive services under that program.[43]

Access to Care in Florida

News reports and other OIG reports indicate that the VA struggled to implement the new Choice programs from November 1, 2014 through September 30, 2015, including the special OIG Choice Implementation report requested by U.S. Senator Johnny Isaakson of Georgia and Chairman of the Senate Committee on Veterans' Affairs.[44] Within this audit, one Florida facility was included, the North Florida/South Georgia Veterans Health System. The audit noted the struggles of the VA to meet the expedited 90-day implementation timeline of the original 2014 legislation, inadequate provider networks once the program was implemented, third party liability concerns by veterans for non-payment of medical bills to providers, appointment wait times in excess of 30 days, and provider administrative burden issues.[45]

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[40] Id.

[41] Id at 3.

[42] Id at 4. The publication title of the report is *Review of Alleged Consult Mismanagement of the Phoenix VA Health Care System (PVAHCS)*, VA Office of Inspector General, Office of Audits and Evaluation, (October 4, 2016), Report 15-046720342, *available at* https://www.va.gov/oig/pubs/VAOIG-15-04672-342.pdf (last visited Dec. 4, 2017).

[43] U.S. Department of Veterans Affairs, VA Office of Inspector General Office of Audits and Evaluation, Veterans Health Administration, *Veterans Health Administration – Review of the Alleged Untimely Care at the Community Based Outpatient Clinic Colorado Springs, CO*, (February 4, 2016), Report 15-02472-46, *available at* https://www.va.gov/oig/pubs/VAOIG-15-02472-46.pdf (last visited Dec. 4, 2017).

[44] U.S. Department of Veterans' Affairs, VA Office of Inspector General Office of Audits and Evaluation, *Veterans Health Administration Review of the Implementation of the Veterans Choice Program*, (January 30, 2017), Report 15-04673-333, *available at* https://www.va.gov/oig/pubs/VAOIG-15-04673-333.pdf (last visited Dec. 4, 2017).

[45] Id at vi.

One of the examples included of TPA's inability to provide services was a veteran served by the Gainesville VA Center in Florida who called the TPA for appointment assistance with an Ear, Nose, and Throat specialist and was scheduled with a specialist in California.[46] The TPA staff did not have geographical awareness. Network inadequacy made it difficult for veterans to seek care outside of the VHA if they wanted to opt out to the VCP program. Approximately 13 percent returned to VHA without receiving any care, on an average of 48 days later.[47]

For purposes of determining sampling sizes, the audit report stratified the different medical systems included in the audit report. The North Florida/South Georgia Veterans Health System fell in the report's "High" stratum, which indicated that more than 20,000 veterans were on the VCL.[48] The next level, "Medium" had a range of 4,000 to 20,000 on the VCL.

An OIG review on tampering of the VCL at the James A. Haley Veterans' Hospital (JAHVH) in Tampa, Florida was conducted in 2015. The complainant in that instance alleged, among other issues, that not all veterans were added to the VCL when their scheduled appointment was greater than 30 days.[49] That allegation was substantiated, as was an allegation that staff inappropriately removed veterans from the VCL. Errors were corrected and staff was re-trained as a result of those audit findings.

In its response to the audit report, the Secretary of the DVA noted that the Choice programs have changed dramatically since implementation and have seen a growth rate in authorizations from October 2015 to March 2016 of 103 percent.[50] The DVA requested authorization to consolidate all of the Community Care Programs into a singular authority tied to Medicare reimbursement for like services to address issues related to provider network adequacy and administrative burdens on both the DVA and the provider.[51]

Florida Department of Veterans Affairs

In 1988, Florida citizens voted to create the Department of Veterans Affairs (department) by constitutional amendment. The department is responsible for advocating on behalf of Florida's veterans to improve their quality of life and to provide access to federally funded medical care for eligible veterans.

The department also manages one assisted living facility and six state veterans' nursing homes with an eighth in its final planning stages in St. Lucie County and planned ground breaking in the first half of 2018.[52] To be eligible for admission, a veteran must have had an honorable discharge, be a state resident prior to admission, and have received a certification of need of assisted living or skilled nursing care as determined by a VA physician.

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[46] Id at 4.
[47] Id at 7.
[48] Id at 22.
[49] U.S. Department of Veterans' Affairs, VA Office of Inspector General Office of Audits and Evaluation, *Veterans Health Administration Review of Alleged Patient Scheduling Issues at VA Medical Center Tampa, FL,* (February 5, 2016), Report 15-03026-101, *available at* https://www.va.gov/oig/pubs/VAOIG-15-03026-101.pdf (last visited Dec. 4, 2017).
[50] *Supra* note 44, at 25-26.
[51] Id at 33.
[52] Florida Department of Veterans Affairs, *State Veterans' Homes,* http://floridavets.org/locations/state-veterans-nursing-homes/ (last visited Dec. 4, 2017).

Other services are available to veterans in county services offices which may be co-located in VA Regional Offices in Bay Pines, each VA Medical Center and many of the VA Outpatient Clinics.

Florida Medicaid

The Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan approved by the federal Centers for Medicare and Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the AHCA and financed with federal and state funds. Approximately 4 million Floridians are currently enrolled in Medicaid, and the programs estimated expenditures for the 2017-2018 fiscal year are over $26 billion.[53]

Eligibility for Medicaid is based on a number of factors, including age, household or individual income, and assets. State eligibility payment guidelines are provided in s. 409.903, F.S., (Mandatory Payments for Eligible Persons) and s. 409.904, F.S., (Optional Payments for Eligible Persons). Minimum coverage thresholds are established in federal law for certain population groups, such as children.

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 program (SMMC). The SMMC, authorized under federal Medicaid waivers, is designed for the AHCA to issue invitations to negotiate[54] 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 October 2017, 3.2 million Medicaid recipients were enrolled in an SMMC plan while 716,260 were enrolled in Medicaid on a fee-for-service basis.[55]

[53] Social Services Estimating Conference, *Medicaid Caseloads and Expenditures – July 17, August 3, and August 9, 2017 – Executive Summary*, http://edr.state.fl.us/Content/conferences/medicaid/execsummary.pdf (last visited Dec. 4, 2017).
[54] 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.
[55] The Agency for Health Care Administration, *Florida Statewide Medicaid Monthly Enrollment Report* (October 2017), *available at* http://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited Dec. 4, 2017).

Medicaid enrollees are surveyed regularly regarding their satisfaction with their plan and experiences with health care. The 2016 MMA Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey results provided the following results for Medicaid:

CAHPS Survey on Consumers and Patient Experiences with Health Care - MMA[56]		
CAHPS Survey Item	**Adults**	**Parents**
Respondents who responded that their plan satisfaction rates 8, 9, or 10 out of 10	73%	84%
Respondents or rated their MMA Quality of Care an 8, 9, or 10 out of 10	75%	86%
Respondents who reported that it is usually or always easy to get needed care (vs. sometimes or never)	80%	82%
Respondents who reported that it is usually or always easy to get care quickly (vs. sometimes or never)	82%	89%
Respondents who reported that they are able to get help from customer service (vs. sometimes or never)	88%	86%

The SMMC program is authorized under an 1115 waiver, which may be modified through a state plan amendment. Amendments are submitted in Florida by the AHCA for review and approval by CMS.

III. Effect of Proposed Changes:

The bill creates the Florida Veterans Care program within the AHCA to provide Florida veterans and their families access to a quality alternative to the federal veterans' health care system. The program would allow Florida veterans and their families to voluntarily use the Medicaid managed care program or a program that is similar to the Medicaid managed care program that is described under part IV of chapter 409, in lieu of or in addition to the federal veterans' health care system.

The bill directs the AHCA and the Department of Veterans' Affairs to negotiate with the appropriate federal agencies to seek approval for a federal waiver or a state plan amendment to the Medicaid program, or any other appropriate federal authorization needed to receive federal funding for the program.

Eligibility for the program is determined by the federal Veterans Health Administration or the United States Department of Veterans Affairs. Those eligible may voluntarily enroll in the program and receive all the necessary benefits and services that meet or exceed those offered under Medicaid managed medical assistance and long-term care, including nursing and community-based services. Services and benefits would be delivered by those plans selected through a competitive bid process meeting the requirements of part IV of chapter 409, F.S.

[56] Beth Kidder, Agency for Health Care Administration, *Florida Medicaid*,(January 11, 2017). Presentation to Senate Committee on Health and Human Services Appropriations, slide 29, *available at* http://ahca.myflorida.com/medicaid/recent_presentations/Senate_Health_Human_Services_Appropriations_Sub_Med_101-MMA_2017-01-11.pdf (last visited Dec. 4, 2017)

The bill prohibits the use of state funds for the payment of medical or long-term care services or for administrative costs of the program. The bill provides that receipt of services under this program does not affect a person's eligibility for Medicaid. The bill restricts the AHCA and DVA from implementing this program without prior legislative approval.

The effective date of this bill is July 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:

For those health insurance plans, providers, and facilities that are participating in the current Florida SMMC, an influx of additional enrollees into the program from the VHA could have an impact on that particular entity's enrollment mix. Depending on how the program is implemented and blended with the existing SMMC, or if it is handled as a separate specialty plan within SMMC, health care providers could see additional patients with a different level of unmet need.

Providing an option for Florida's veterans under Medicaid MMA to meet their health care needs may have a positive impact on other community resources as veterans have their needs met through appropriate, and more effective health care methods.

The health care plans and facilities serving this population will need to continuously review and monitor the need for additional specialists given the medical needs of the VHA population.

C. Government Sector Impact:

While the legislation specifically prohibits expending funds for services or administration for the program, the AHCA has indicated a need for administrative funds to negotiate the federal waiver, state plan amendment, or authorization for federal funds for the program.

Additional resources will be needed to assist with research, engagement of subject matter experts, and dedication of other staff time to gain federal approval of the proposal. Negotiations will likely include several federal agencies, including some of which the AHCA has not previously sought waivers or other federal funding. The actual amount needed by either the AHCA or the department is not known.

The Veterans Care program cannot be implemented without prior legislative approval. It is expected that the AHCA and the department will submit to the Legislature a proposal that includes a timeline, expected costs, and a federal funding proposal following negotiations with the appropriate agencies. No funds for a veterans' health care program would be expended until a program has been negotiated by the AHCA and approved by the legislature, including how the program would be funded, both medical and administrative costs.

No state funds are expected to be expended for veterans' health care services, as all funds should be federally appropriated once a program has been negotiated, approved, and implemented. Currently, all veterans' health care services are federally funded. In the future, any fiscal impact to the state may be seen in administrative costs at the AHCA for the implementation of and ongoing programmatic oversight of the program. These costs may be reimbursable from the federal government. This provision would be part of the negotiations between the state and the federal government.

The Florida Department of Veterans Affairs reports the bill does not affect its expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 292.17 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Garcia

36-00682-18 2018440__

A bill to be entitled

An act relating to the Florida Veterans Care program; creating s. 292.17, F.S.; creating the program within the Agency for Health Care Administration; specifying the purpose of the program; authorizing the agency, in consultation with the Department of Veterans' Affairs, to negotiate with federal agencies in order to seek federal funding for the program; providing that eligible participants may enroll in the program to receive certain benefits; prohibiting the use of state funds to support the program; providing that the act does not affect a person's eligibility for the state Medicaid program; prohibiting the agency and the department from implementing the program without legislative approval; providing an effective date.

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

Section 1. Section 292.17, Florida Statutes, is created to read:

292.17 Florida Veterans Care program created; purpose and authorization.—The Florida Veterans Care program is created within the Agency for Health Care Administration. The purpose of the program is to leverage the structure and operations of the Medicaid managed care program established under part IV of chapter 409 to provide Florida veterans and their families with access to a quality alternative to the federal veterans' health care system. The agency, in consultation with the Department of Veterans' Affairs, is authorized to negotiate with applicable

36-00682-18 2018440__

federal agencies and to seek approval for a waiver, a state plan amendment, or other federal authorization for federal funding for the Florida Veterans Care program. Participants deemed eligible by the federal Veterans Health Administration or the United States Department of Veterans Affairs may voluntarily enroll in the Florida Veterans Care program to receive all necessary managed medical and long-term care services that meet or exceed the authorized benefits provided under ss. 409.973 and 409.98, respectively, including home and community-based services, from plans selected through the competitive bid process described under part IV of chapter 409. State funds may not be used to provide medical or long-term care services under the program or to administer the program. This section does not affect a person's eligibility for services under the state Medicaid program. Notwithstanding s. 292.05(7), the agency and the department may not implement this section without prior legislative approval.

Section 2. This act shall take effect July 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

December 6, 2017

The Honorable Rob Bradley
Chair, Appropriations
201 Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bradley,

Please have this letter serve as my formal request to have **SB 440: Florida Veterans Care Program** 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
Tim Sadberry
Alicia Weiss

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 440
Bill Number (if applicable)

Topic Veterans Affairs Program

Amendment Barcode (if applicable)

Name Alina Avalos

Job Title

Address 1603 N. Martin Luther King Jr. Blvd.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Legal Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 440
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Veterans Care Program

Name Jim BRAINERD

Job Title Attorney

Address 2814 Rabbit Hill Rd
Street
Tallahassee Fl 32308
City *State* *Zip*

Phone (850) 385 5944

Email BRAINERD law@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Detachment 472, Marine Corps League

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22
Meeting Date

SB 440
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Bob Asztalos

Job Title Chief Lobbyist

Address _____ Phone 850-284-1166
Street

_____ Email basztalos@flhca.org
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Health Care Assoc

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 460
INTRODUCER:	Senator Gainer and others
SUBJECT:	Postsecondary Fee Waivers
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.		Ryon	MS	**Favorable**
2.	Sikes	Elwell	AHE	**Recommend: Favorable**
3.	Sikes	Hansen	AP	**Favorable**

I. Summary:

SB 460 authorizes a Florida College System (FCS) institution to waive certain fees for a person who is an active duty member of the U.S. Armed Forces and using military tuition assistance provided by the U.S. Department of Defense.

The bill has no impact on state revenues or expenditures. However, FCS institutions that choose to implement the fee waiver will experience a loss of fee revenues from eligible students using military tuition assistance.

The bill takes effect on July 1, 2018.

II. Present Situation:

Military Tuition Assistance Program

The Military Tuition Assistance (MTA) program is a U.S. Department of Defense (DOD) education benefit awarded to active duty and certain National Guard and Reserve Component servicemembers. Eligible servicemembers may apply for financial assistance through their respective branch of service, which pays up to 100 percent of tuition expenses.[1] Servicemembers may use their MTA for:

- Vocational/technical programs;
- Undergraduate programs;
- Graduate programs;

[1] Tuition assistance pays for up to $250 per semester credit hour or $166 per quarter credit hour not to exceed $4,500 per fiscal year, October 1 through September 30. Course-specific fees such as laboratory fees or online course fees are considered tuition expenses and are covered by the MTA program. See Military One Source, *How to Use the Military Tuition Assistance Program* (Aug. 6, 2017), http://www.militaryonesource.mil/-/how-to-use-the-military-tuition-assistance-program (last visited Nov. 29, 2017).

- Independent study; and
- Distance-learning programs.[2]

MTA is available to servicemembers from all four service branches[3] and the U.S. Coast Guard. To be eligible, a servicemember must meet the minimum requirement of successfully completing basic training.[4] Enlisted servicemembers must have enough time remaining in service to complete the course for which he or she applied; whereas an officer using MTA must have at least two years of his or her service obligation remaining to use MTA.[5]

The academic or technical program undertaken by the servicemember must be offered by an accredited educational institution. Each educational institution is required to sign a memorandum of understanding (MOU) prior to receiving funds from the MTA program.[6] MTA funds are paid by the service branch directly to the educational institution. The MTA program was modified in 2014 and subsequently discontinued coverage of mandatory fees[7] charged in addition to tuition.[8] There are currently 156 institutions in Florida with an MOU on file with the DOD, including 27 of the 28 FCS institutions.[9]

Florida College System

The FCS is comprised of 28 institutions.[10] The FCS provides associate and baccalaureate degrees at a savings to the student and to the state over the cost of providing the degree at a state university.[11] Each FCS institution is governed by a local board of trustees (BOT).[12] The FCS BOT members are appointed by the Governor to staggered four-year terms, and confirmed by the Senate.[13] Each FCS BOT is responsible for cost-effective policy decisions regarding the FCS institution's mission, the implementation and maintenance of high-quality education programs within law and rules of the State Board of Education, the measurement of performance, the reporting of information, and the provision of input on state policy, budgeting, and education standards.[14]

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[2] Military One Source, *How to Use the Military Tuition Assistance Program* (Aug. 6, 2017), http://www.militaryonesource.mil/-/how-to-use-the-military-tuition-assistance-program (last visited Nov. 29, 2017).
[3] The four service branches include the Army, Air Force, Navy, and Marines.
[4] Department of Defense, *Instruction 1322.25*, 14 (July 7, 2014), http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132225p.pdf (last visited Nov. 30, 2017). Each military department is authorized to implement additional service-specific eligibility criteria and management controls.
[5] Supra note 2.
[6] Supra note 4, at 22.
[7] Fees include any charge not directly related to course instruction including, but not limited to, costs associated with room, board, distance learning, equipment, supplies, books/materials, exams, insurance, parking, transportation, admissions, registration, or fines. See supra note 4.
[8] Supra note 4.
[9] See DOD, *Voluntary Education Partnership MOU*, https://www.dodmou.com/Home (last visited Dec. 1, 2017).
[10] A full list of FCS institutions can be found in s. 1000.21(3), F.S.
[11] Section 1001.60(2)(a), F.S.
[12] Sections 1001.60(3), 1001.61(1), and 1004.65(1), F.S. FCS institutions are statutorily designated as political subdivisions of the state. Section 1004.67, F.S.
[13] Section 1001.61(2), F.S.
[14] Section 1001.64(1), F.S.

Each FCS BOT is required to establish tuition and out-of-state fees, which may vary no more than 10 percent below and 15 percent above the standard tuition rate and out-of-state fees determined by the Legislature in s. 1009.23(3), F.S.[15] An FCS BOT may also establish additional fees to support activities such as capital improvements, student activities and services, and technology.[16]

Fee Waivers

Each FCS institution is authorized in statute to waive fees for specified populations.[17] There currently is no fee waiver in place for active duty servicemembers utilizing the MTA program. However, FCS institutions are authorized in statute to provide for other military and veteran populations through waivers such as:

- A tuition waiver for recipients of the Purple Heart or another combat decoration superior in precedence;[18]
- An out-of-state fee waiver for veterans utilizing educational assistance from the U.S. Department of Veterans Affairs;[19] and
- An out-of-state fee waiver for active duty servicemembers residing or stationed outside the state.[20]

III. Effect of Proposed Changes:

The bill amends s. 1009.26, F.S., to authorize an FCS institution to waive certain fees for a person who is an active duty member of the U.S. Armed Forces and is using the MTA program provided by the U.S. Department of Defense. A FCS institution may waive any portion of the following fees:

- Student activity and service fee;
- Financial aid fee;
- Technology fee;
- Capital improvement fee; and
- Any other fee authorized in s. 1009.23, F.S.

The bill provides that a student who receives such a fee waiver may be reported for state funding purposes. However, FCS student enrollment is not the basis for the FCS annual appropriation.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[15] Section 1009.23(4), F.S.
[16] Id.
[17] *See* s. 1009.26, F.S.
[18] See s. 1009.26(8), F.S.
[19] See s. 1009.26(13), F.S.
[20] See s. 1009.26(14), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill has no impact on state revenues. However, an FCS institution, at its own discretion, may waive certain fees for active duty members of the U.S. Armed Forces using the MTA program.

B. Private Sector Impact:

Active duty members of the U.S. Armed Forces using the MTA program will benefit from a decrease in education costs at an FCS institution that chooses to implement the fee waiver. The savings are indeterminate at this time, as it will depend on the institution and the fees that are waived.[21]

C. Government Sector Impact:

The bill has no impact on state expenditures. However, FCS institutions that choose to implement the fee waiver will experience a loss of fee revenues from eligible students using MTA. However, in waiving the fees, FCS institutions may receive additional tuition revenue due to increased enrollment of active duty members of the U.S. Armed Forces using MTA.[22]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1009.26 of the Florida Statutes.

[21] Florida Department of Education, *Senate Bill 460 Agency Analysis* (Oct. 26, 2017) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[22] Id.

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 Gainer

2-00397-18 2018460__

A bill to be entitled

An act relating to postsecondary fee waivers; amending s. 1009.26, F.S.; authorizing a Florida College System institution to waive any portion of certain postsecondary fees for active duty members of the Armed Forces of the United States who use military tuition assistance; specifying that the student who receives the fee waiver may be reported for state funding purposes; providing an effective date.

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

Section 1. Subsection (15) is added to section 1009.26, Florida Statutes, to read:

1009.26 Fee waivers.—

(15) A Florida College System institution may waive any portion of the student activity and service fee, the financial aid fee, the technology fee, the capital improvement fee, and any other fees authorized in s. 1009.23 for a person who is an active duty member of the Armed Forces of the United States and is using military tuition assistance provided by the United States Department of Defense. A student who receives a fee waiver under this subsection may be reported for state funding purposes.

Section 2. This act shall take effect July 1, 2018.

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

January 17, 2018

Re: SB 460

Dear Chair Bradley,

I am respectfully requesting Senate Bill 460, a bill related to Postsecondary Fee Waivers, be placed on the agenda for the next meeting of the Appropriations Committee.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

Senator George Gainer
District 2

Cc. Mike Hansen, Tim Sadberry, John Shettle, Joe McVaney, Alicia Weiss, Lance Clemmons

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)

02/22/2018
Meeting Date

460
Bill Number (if applicable)

Topic HB ~~[illegible]~~ 460

Amendment Barcode (if applicable)

Name Jack Capra

Job Title Gov. Relations - NW FL State College

Address 3932 Bilson Dr.
Street

Phone (904) 534-2893

Milton, FL
City *State*

Zip

Email jrcapra@Hotmail.com

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

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

Representing NW FL State College

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 632
INTRODUCER:	Transportation Committee and Senators Montford and Powell
SUBJECT:	Vessel Registration
DATE:	February 21, 2018 REVISED: 02/08/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	**Fav/CS**
2.	Wells	Hrdlicka	ATD	**Recommend: Favorable**
3.	Wells	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 632 authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to accept applications for vessel registration by electronic or telephonic means, issue electronic vessel registrations in addition to paper registrations, and collect email addresses and use email for providing vessel registration renewal notices in lieu of mailing the notices. The bill also allows a vessel operator to present the electronic certificate of vessel registration on an electronic device upon inspection of the vessel. The bill provides that presentation of the electronic certificate does not constitute consent for inspection of any other information on the device, and the person who presents the device assumes liability for any damage to the device.

The DHSMV may incur additional costs for initial implementation; however, the DHSMV may experience reduced mail costs in the future.

The bill takes effect October 1, 2018.

II. Present Situation:

The term "vessel" includes every description of watercraft, barge, or airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.[1] A vessel operated, used, or stored on the waters of this state must be registered with the DHSMV as

[1] Section 327.02(46), F.S.

a commercial[2] or recreational[3] vessel within 30 days after the purchase of the vessel, unless the vessel is:

- Operated, used, and stored exclusively on private lakes and ponds;
- Owned by the U.S. Government;
- Used exclusively as a ship's lifeboat; or
- Non-motor-powered and less than 16 feet in length or is a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length.[4]

Vessel Registrations

A vessel registration must be available for inspection on the vessel for which it is issued whenever the vessel is in operation. State law requires the registration to be "pocket-sized."[5] It is a noncriminal infraction, punishable as a $50 civil citation, for a person operating a vessel required to be registered to be unable to present the vessel's certificate of registration upon inspection of the vessel by law enforcement.[6]

As of October 2017, there were 853,107 active vessel registrations in Florida.[7] The Fish and Wildlife Conservation Commission (FWC) conducted 174,947 vessel and resource inspections in 2016, but the number of inspections conducted by other law enforcement agency personnel is unknown.[8]

Federal Requirements

Federal law also requires a person who is operating a vessel that is required to be registered with the state to have a "certificate of number" (the certificate of vessel registration) for that vessel onboard the vessel.[9] Such certificate must be approximately 2.5 by 3.5 inches.[10] A person operating such vessel shall present the certificate to any federal, state, or local law enforcement officer for inspection in such a manner that it can be handed to the person upon request.[11]

Electronic Registrations

Currently, the DHSMV is authorized to accept motor vehicle registration applications by electronic or telephonic means, as well as collect email addresses and use email in lieu of the USPS for the purpose of providing renewal notices.[12] Similarly, s. 328.80, F.S., authorizes the FWC to accept vessel registration applications by electronic or telephonic means. However,

[2] Section 327.02(8), F.S., defines the term "commercial vessel."
[3] Section 327.02(40), F.S., defines the term "recreational vessel."
[4] Sections 328.48(2) and 328.46, F.S.
[5] Section 328.48(4), F.S.
[6] Section 327.73(1)(b), F.S.
[7] DHSMV, *2018 Agency Legislative Bill Analysis – SB 632 – Vessel Registration* (Dec. 5, 2017) (on file with the Senate Committee on Transportation).
[8] FWC, *2018 Agency Legislative Bill Analysis – HB 247 – Vessel Registration* (Nov. 14, 2017) (on file with the Senate Committee on Transportation).
[9] 33 C.F.R. s. 173.21.
[10] 33 C.F.R. s. 174.25.
[11] 33 C.F.R. ss. 173.23 and 173.25.
[12] Section 320.95, F.S.

DHSMV is the state department responsible for accepting such applications and issuing certificates of vessel registration.

III. Effect of Proposed Changes:

Section 1 amends s. 328.80, F.S., to authorize the DHSMV to accept vessel registration applications by electronic or telephonic means, issue electronic certificates of vessel registrations in addition to paper registrations, and collect email addresses and use email in lieu of mailing vessel registration renewal notices.

Section 2 amends s. 328.48, F.S., to allow a vessel operator to present the vessel's electronic certificate of registration on an electronic device in lieu of a paper certificate when the vessel is being inspected. The bill provides that such presentation does not constitute consent for inspection of any information on the device other than the displayed certificate, and the person who presents the device assumes liability for any resulting damage to the device.

According to the FWC, Florida is the first state to propose a statutory change to allow an electronic certificate of vessel registration; therefore, it is unclear how the bill would affect vessel inspections conducted by United States Coast Guard (USCG) personnel and audits by the USCG of state compliance with federal requirements.[13]

Section 3 provides that the bill takes effect October 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 bill does not appear to have a fiscal impact on the private sector.

[13] FWC bill analysis, *supra* note 8.

C. Government Sector Impact:

The DHSMV may incur additional costs for initial implementation; however, the DHSMV may experience reduced mail costs in the future.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Email addresses collected by the DHSMV pursuant to the bill will not be exempt from inspection or copying under Florida's public records laws. Currently, s. 119.0712(2)(c), F.S., provides public records exemptions for email addresses collected by the DHSMV pursuant to ss. 319.40, 320.95(2), and 322.08(9), F.S.[14]

SB 1920 has been filed and if it becomes a law it will provide an exemption for electronic mail addresses of vessel registrants collected by the DHSMV.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 328.80 and 328.48.

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 December 5, 2017:
The CS amends:

- Section 1 of the bill, providing that DHSMV may issue an electronic certificate of vessel registration *in addition to* printing a paper registration, instead of the electronic certificate being issued *in lieu of* a paper registration;
- Section 2, providing that the person who presents the device displaying the electronic certificate of vessel registration assumes the liability for any resulting damage to the device; and
- The effective date, which is changed from July 1, 2018, to October 1, 2018.

B. Amendments:

None.

[14] Such email addresses are collected by the DHSMV for issuing motor vehicle certificates of title, motor vehicle registration renewals, and for U.S. Veterans who provide their email address with the DHSMV for veteran outreach on federal, state, and local benefits and services available to veterans.

By the Committee on Transportation; and Senator Montford

596-01810-18 2018632c1

A bill to be entitled

An act relating to vessel registration; amending s. 328.80, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to issue an electronic certificate of registration for a vessel, to collect electronic mail addresses, and to use electronic mail for certain purposes; amending s. 328.48, F.S.; authorizing a vessel operator to present such electronic certificate for inspection under certain circumstances; providing construction; providing that the person displaying the device assumes the liability for any resulting damage to the device; providing an effective date.

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

Section 1. Section 328.80, Florida Statutes, is amended to read:

328.80 Transactions by electronic or telephonic means.—

(1) The Department of Highway Safety and Motor Vehicles may ~~commission is authorized to~~ accept any application provided for under this chapter by electronic or telephonic means.

(2) The Department of Highway Safety and Motor Vehicles may issue an electronic certificate of registration in addition to printing a paper registration.

(3) The Department of Highway Safety and Motor Vehicles may collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service for the purpose of providing renewal notices.

Section 2. Subsection (4) of section 328.48, Florida Statutes, is amended to read:

328.48 Vessel registration, application, certificate, number, decal, duplicate certificate.—

(4) Each certificate of registration issued shall state among other items the numbers awarded to the vessel, the hull identification number, the name and address of the owner, and a description of the vessel, except that certificates of registration for vessels constructed or assembled by the owner registered for the first time shall state all the foregoing information except the hull identification number. The numbers shall be placed on each side of the forward half of the vessel in such position as to provide clear legibility for identification, except, if the vessel is an airboat, the numbers may be placed on each side of the rudder. The numbers awarded to the vessel shall read from left to right and shall be in block characters of good proportion not less than 3 inches in height. The numbers shall be of a solid color which will contrast with the color of the background and shall be so maintained as to be clearly visible and legible; i.e., dark numbers on a light background or light numbers on a dark background. The certificate of registration shall be pocket-sized and shall be available for inspection on the vessel for which issued whenever such vessel is in operation. If the certificate of registration is not available for inspection on the vessel or is damaged or otherwise illegible, the operator may present for inspection an electronic device displaying an electronic certificate issued pursuant to s. 328.80. Such presentation does not constitute consent for inspection of any information on the device other

than the displayed certificate. The person who presents the device to the officer assumes the liability for any resulting damage to the device.

Section 3. This act shall take effect October 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Senate Committee on Appropriations

Subject: Committee Agenda Request

Date: February 8, 2018

I respectfully request that SB 632 Vessel Registration be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Bill Montford

Senator Bill Montford
Florida Senate, District 3

File signed original with committee office

S-020 (03/2004)

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 8, 2018

I respectfully request that **Senate Bill #764**, relating to Dental Student Loan Repayment , be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 648
INTRODUCER:	Senators Baxley and Campbell
SUBJECT:	Employment Services for Persons with Disabilities
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Favorable**
2.	Sanders	Betta	AGG	**Recommend: Favorable**
3.	Sanders	Hansen	AP	**Favorable**

I. Summary:

SB 648 provides that participants in adult or youth work experience programs operated by the Division of Blind Services and the Division of Vocational Rehabilitation, within the Department of Education, are considered state employees for workers' compensation purposes.

The Department of Financial Services (DFS) expects to incur costs of $166,000 annually relating to workers' compensation insurance coverage for blind and vocational training participants. In addition, the Division of Risk Management (DRM) will experience an increase in litigation, primarily involving claims for benefits.[1] The DFS indicates the workload and other costs associated with the increased litigation can be absorbed within existing resources.[2]

The bill is effective July 1, 2018.

II. Present Situation:

Division of Blind Services

The Division of Blind Services (DBS) is housed within the Department of Education (DOE).[3] The purpose of the DBS is to ensure the greatest possible efficiency and effectiveness of services to individuals who are blind.[4] It is the intent of the Legislature to establish a coordinated program of services that are available throughout Florida to such individuals.[5] The program must be

[1] The Department of Financial Services, *Senate Bill 648 Fiscal Analysis* (November 7, 2017) (on file with the Senate Appropriations Subcommittee on General Government).
[2] Email from BG Murphy, Legislative Affairs Director, The Department of Financial Services, to Michelle Sanders, Legislative Analyst, Florida Senate Appropriations Subcommittee on General Government (Jan. 3, 2018) (on file with the Senate Appropriations Subcommittee on General Government).
[3] Section 20.15(3)(e), F.S.
[4] Section 413.011(3), F.S.
[5] Section 413.011(2), F.S.

designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.[6] The DBS's program of services include blind babies program, children's program, transition services, independent living program, vocational rehabilitative program, employer services, business enterprises program, rehabilitation center for the blind and visually impaired, and braille and talking books library.[7]

The Rehabilitative Council for the Blind[8] (RCB) is an advisory council[9] responsible for assisting the DBS in the planning and development of statewide vocational rehabilitation programs and services pursuant to the Rehabilitative Act of 1973,[10] as amended, to recommend improvements to such programs and services, and to perform specified functions.

Division of Vocational Rehabilitation

The Division of Vocational Rehabilitation (division) located within the DOE[11] is designated as the administrative unit[12] for the purposes of complying with the Rehabilitation Act of 1973,[13] as amended. Under Florida law, an individual with a disability[14] is eligible for vocational rehabilitative (VR) services if the person requires VR services to prepare for, engage in, or retain gainful employment.[15] The division is responsible for determining eligibility of an individual for VR services.[16] The division is also responsible for maintaining an internal system of quality assurance and monitoring compliance with state and federal laws, rules, and regulations.[17]

The Florida Rehabilitation Council (council) is responsible for assisting the division in the planning and development of statewide rehabilitation programs and services, recommending improvements to such programs and services, and performing specified functions.[18] The council is responsible for performing functions such as developing and reviewing state goals and priorities in accordance with federal law and evaluating VR program effectiveness.[19]

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[6] *Id.*
[7] *See* Florida Division of Blind Services, *About Blind Services*, http://dbs.myflorida.com/Information/index.html (last visited Jan. 2, 2018).
[8] Section 413.011(8), F.S. Members of the council are appointed by the Governor with the majority being blind or visually impaired. The council membership must include at least 13 members. Also, *see* Florida Division of Blind Services, *Rehabilitation Council*, http://dbs.myflorida.com/Rehab-Council/index.html (last visited Jan. 2, 2018).
[9] Section 20.03(7), F.S., defines the term "advisory council" as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional area of state government and to provide recommendations and policy alternatives.
[10] 29 U.S.C. s. 701(b).
[11] Section 20.15(3)(d), F.S.
[12] Section 413.202, F.S.
[13] *See supra* note 8.
[14] Section 413.20(7), F.S, defines "disability" as a physical or mental impairment that constitutes or results in a substantial impediment to employment.
[15] Section 413.30(1), F.S.
[16] Section 413.30(4), F.S.
[17] Section 413.207(1), F.S.
[18] Section 413.405, F.S. Members of the council are appointed by the Governor. The council membership must include at least 15 members but no more than 25 at a time.
[19] Section 413.405(9)(b), F.S.

Worker's Compensation

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for giving up the right to sue the employer for negligence. In Florida, workers' compensation is governed by ch. 440, F.S., the "Workers' Compensation Law." The law prescribes coverage requirements, medical and indemnity benefits, the rights and responsibilities of employers, injured employees, medical providers, and carriers, as well as procedures for dispute resolution.

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[22] or death.[23] Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.[24]

State Risk Management Program

The Division of Risk Management (DRM)[25] located within the DFS is responsible for ensuring that state agencies and universities participating in the state's self-insurance program receive quality coverage for workers' compensation, general liability, federal civil rights, auto liability, and property insurance at reasonable rates. The DRM's operations and the state's insurance coverage are funded by annual agency assessments, which are deposited into the State Risk Management Trust Fund. Agency premiums are based on loss experience, exposure, and a prorated share of the DRM's operating budget. Projected costs are derived from actuarial studies of the DRM's cash flow needs for claims and program expenses.[26]

The DRM is comprised of three Bureaus: Risk Financing and Loss Prevention, State Employee Workers' Compensation Claims, and State Liability and Property Claims. The Bureau of Risk Financing and Loss Prevention provides administrative support to the DRM, including the cash management for the DRM's annual budget, calculation of casualty and property premiums for the state's agencies and universities, monitoring the DRM's contracts, and providing data management and IT support. The Bureau of State Employee Workers' Compensation Claims is responsible for the administration of all workers' compensation claims filed by state and university employees and volunteers who are injured on the job. The Bureau of State Liability and Property Claims is responsible for the investigation and resolution of liability and property claims involving or against state agencies and universities.[27]

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[20] Section 440.09(1), F.S.
[21] Section 440.13, F.S.
[22] Section 440.15, F.S.
[23] Section 440.16, F.S.
[24] Division of Workers' Compensation, *Coverage Requirements*, https://www.myfloridacfo.com/division/wc/Employer/coverage.htm (last visited on Jan. 2, 2018).
[25] Section 20.121(2)(h), F.S.
[26] *See* Division of Risk Management, Department of Financial Services, Fiscal Year 2016 Annual Report, https://www.myfloridacfo.com/Division/Risk/documents/2015-2016Report.pdf (last visited on Jan. 2, 2018).
[27] *Id*.

The State Risk Management Trust Fund has a projected deficit of $18.8 million based upon the December 21, 2017 Self-Insurance Estimating Conference.[28] For estimating conference purposes, deficits are assumed to be dealt with during session to begin the following year with a zero balance.

III. Effect of Proposed Changes:

Section 1 creates s. 413.015, F.S., to require participants in an adult or youth work experience activity administered under the Division of Blind Services be deemed an employee of the state for purposes of workers' compensation coverage.

Section 2 creates s. 413.209, F.S., to require participants in an adult or youth work experience activity administered under the Division of Vocational Rehabilitation be deemed an employee of the state for purposes of workers' compensation coverage.

Section 3 provides the bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A private sector entity who employs training participants may experience cost savings as a result of not having to provide workers' compensation coverage for those participants.

[28] *See* December 21, 2017, Self-Insurance Estimating Conference. http://edr.state.fl.us/Content/conferences/riskmanagement/riskmanagementresults.pdf

C. Government Sector Impact:

According to the DFS, the DRM expects to incur additional claim costs for covering blind and vocational training participants.[29] The DRM currently covers participants for medical benefits only who are in the Department of Economic Opportunity (DEO) training programs. Based on claim costs for DEO training programs, DFS expects that annual medical claim costs of approximately $128,000 would be incurred for covering blind and vocational training participants. This dollar amount is based on five years of claim experience in the DEO program, does not include ultimate developed costs, and is based on DOE's estimate of 966 additional participants for these programs.

DFS states that such costs do not include indemnity payments. Unlike DEO participants, the participants in the blind and vocational programs are eligible for indemnity payments. Based on the DRM's aggregate claim data, approximately eight percent of claims could result in indemnity payments.

Although injury severity will influence the duration of indemnity payments, DFS anticipates that adding 966 training participants will result in 23 additional claims per year. Based on the DRM's aggregate claim data, eight percent (two) of the anticipated claims could result in indemnity payments. The National Council on Compensation Insurance estimates the average Florida indemnity cost per indemnity claim is $19,000. The DRM estimates $38,000 ($19,000 x 2) in indemnity payments will arise yearly for the life of claims. However, indemnity payments could greatly exceed $19,000 for the life of the claim if a training participant is severely injured and the injury results in the receipt of permanent total benefits.[30]

The DFS anticipates the DRM will experience an increase in litigation, primarily involving claims for benefits.[31] The DFS indicates this increase can be absorbed within existing resources[32] appropriated by the Legislature. The projected deficit is not affected since the anticipated cost can be absorbed within existing appropriations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[29] 2018 Agency Legislative Bill Analysis from the Department of Financial Services, November 7, 2017, on file in the office of the Senate Committee on Governmental Oversight and Accountability.
[30] The Department of Financial Services, *Senate Bill 648 Fiscal Analysis* (November 7, 2017) (on file with the Senate Appropriations Subcommittee on General Government).
[31] *Id* at p. 2.
[32] Email from BG Murphy, Legislative Affairs Director, The Department of Financial Services, to Michelle Sanders, Legislative Analyst, Florida Senate Appropriations Subcommittee on General Government (Jan. 3, 2018) (on file with the Senate Appropriations Subcommittee on General Government).

VIII. Statutes Affected:

This bill creates sections 413.015 and 413.209 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Baxley

12-00491A-18 2018648__

A bill to be entitled

An act relating to employment services for persons with disabilities; creating ss. 413.015 and 413.209, F.S.; specifying that participants in certain disabled persons' work experience activities are considered state employees for workers' compensation purposes; providing an effective date.

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

Section 1. Section 413.015, Florida Statutes, is created to read:

413.015 Workers' compensation coverage for program participants.—A participant in an adult or youth work experience activity administered under this part shall be deemed an employee of the state for purposes of workers' compensation coverage.

Section 2. Section 413.209, Florida Statutes, is created to read:

413.209 Workers' compensation coverage for program participants.—A participant in an adult or youth work experience activity administered under this part shall be deemed an employee of the state for purposes of workers' compensation coverage.

Section 3. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Agriculture
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

January 10, 2018

The Honorable Chairman Rob Bradley
414 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Bradley,

I respectfully request that you place SB 648 Employment Services for Persons with Disabilities on your next available agenda.

This bill provides that participants in adult or youth work experience programs operated by the Division of Blind Services and the Division of Vocational Rehabilitation are considered employees of the state for purposes or worker's compensation coverage.

This is a win win for both employers and for persons with disabilities.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate 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)

2/22/18
Meeting Date

SB 648
Bill Number (if applicable)

Topic Emp. of People with Disabilities

Amendment Barcode (if applicable)

Name Suzanne Sewell

Job Title President & CEO

Address 2475 Apalachee Pkwy
Street

Tallahassee, FL 32308
City *State* *Zip*

Phone 850-942-3500

Email ssewell@fhcaare.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL. Assoc. of Rehabilitation Facilities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-2018
Meeting Date

1048
Bill Number (if applicable)

Topic Employment Services

Amendment Barcode (if applicable)

Name Natalie King

Job Title VP/COO

Address 235 W Brandon Blvd #640
Street

Phone 813 924 8218

Brandon FL 33511
City *State* *Zip*

Email natalie@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Diversity Initiative

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

FEB 22, 2018
Meeting Date

648
Bill Number (if applicable)

Topic Employment Services for Persons w/ Disabilities

Amendment Barcode (if applicable)

Name Dixie SANSOM

Job Title Lobbyist

Address P. O Box
Street

Phone 321-543-7195

Cocoa FL 32923-0098
City *State* *Zip*

Email DixieSansom@Aol.com

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

Representing The Arc of Florida

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 648
Bill Number (if applicable)

N/A
Amendment Barcode (if applicable)

Topic SB 648

Name Robert Doyle

Job Title Director, Division of Blind Services

Address 325 W. Gaines Street
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 850-245-0331

Email Robert.Doyle@DBS.Fldoe.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Division of Blind 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

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 648
Bill Number (if applicable)

N/A
Amendment Barcode (if applicable)

Topic SB 648

Name Allison Flanagan

Job Title Director, Vocational Rehabilitation

Address 325 W. Gaines Street
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 850-245-0308

Email Allison.Flanagan@VR.fldoe.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Vocational Rehabilitation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 648
Bill Number (if applicable)

N/A
Amendment Barcode (if applicable)

Topic SB 648

Name Alexander Anderson

Job Title Deputy Director, Governmental Relations

Address 325 W. Gaines Street
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 850-245-0780

Email Alexander.Anderson@fldoe.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Education

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 654 (362096)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Pre-K-12 Education) and Senator Perry
SUBJECT:	Early Childhood Music Education Incentive Pilot Program
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Olenick	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 654 extends the scheduled expiration of the Early Childhood Music Education Incentive Pilot Program from June 30, 2020, to June 30, 2021.

The pilot program is contingent upon a legislative appropriation. SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, appropriates $300,000 in nonrecurring funds from the General Revenue Fund to the Department of Education to implement the pilot program.

This bill takes effect July 1, 2018

II. Present Situation:

The legislature established the Early Childhood Music Education Incentive Pilot Program (pilot program) in 2017,[1] for three years, to assist certain school districts in implementing comprehensive music education programs in kindergarten through grade 2, beginning with the 2017-2018 school year.[2]

For a school district to be eligible for participation in the pilot program, the district school superintendent must certify to the Commissioner of Education (commissioner) that each

[1] Section 69, ch. 2017-116, L.O.F.
[2] Section 1003.481(1), F.S.

elementary school within the district has established a comprehensive music education program that:[3]

- Includes all students enrolled at the school in kindergarten through grade 2.
- 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 the law.[4]
- Complies with the Department of Education's standards for early childhood music education programs for students in kindergarten through grade 2.

The commissioner must select school districts for participation in the pilot program, subject to legislative appropriation, based on the school district's proximity to the University of Florida and needs-based criteria established by the State Board of Education.[5] 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.[6]

The University of Florida's College of Education is required to evaluate the effectiveness of the pilot program.[7] The State Board of Education may adopt rules to administer the pilot program.[8]

The pilot program is scheduled to expire on June 30, 2020.[9]

The pilot program has not been implemented by the Department of Education.[10]

III. Effect of Proposed Changes:

The bill extends the scheduled expiration of the Early Childhood Music Education Incentive Pilot Program from June 30, 2020, to June 30, 2021.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[3] Section 1003.481(2)(a)-(e), F.S.
[4] The maximum number of students assigned to each teacher who is teaching core-curriculum courses in public school classrooms for prekindergarten through grade 3 may not exceed 18 students. Section 1003.03(1)(a), F.S.
[5] Section 1003.481(3)(a), F.S.
[6] *Id.*
[7] Section 1003.481(4), F.S.
[8] Section 1003.481(5), F.S.
[9] Section 1003.481(6), F.S.
[10] Telephone interview with staff, Florida Department of Education (Jan 10. 2018). In 2017, the Legislature appropriated $250,000 for the Early Childhood Music Education Incentive Pilot Program, which was vetoed by the Governor. Specific Appropriation 108, s. 2, ch. 2017-70, L.O.F.

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 pilot program is contingent upon a legislative appropriation. SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, appropriates $300,000 in nonrecurring funds from the General Revenue Fund to the Department of Education to implement the pilot program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.481 of the Florida Statutes.

This bill creates one undesignated section of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on PreK-12 Education on February 8, 2018:
The committee substitute removes the $300,000 appropriation provided to the Department of Education to implement the pilot program.

B. Amendments:

None.

362096

576-03003-18

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Pre-K - 12 Education)

A bill to be entitled

An act relating to the Early Childhood Music Education Incentive Pilot Program; amending s. 1003.481, F.S.; extending the scheduled expiration of the pilot program; providing an effective date.

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

Section 1. Section 1003.481, Florida Statutes, is amended to read:

1003.481 Early Childhood Music Education Incentive Pilot Program.—

(1) ~~Beginning with the 2017-2018 school year,~~ The Early Childhood Music Education Incentive Pilot Program is created within the Department of Education ~~for a period of 3 school years~~. The purpose of the pilot program is to assist selected school districts in implementing comprehensive music education programs for students in kindergarten through grade 2.

(2) ~~In order for~~ A school district is ~~to be~~ eligible for participation in the pilot program if~~,~~ the superintendent ~~must~~ certifies ~~certify~~ to the Commissioner of Education, in a format prescribed by the department, that each elementary school within the district has established a comprehensive music education program that:

(a) Includes all students at the school enrolled in kindergarten through grade 2.

(b) Is staffed by certified music educators.

362096

576-03003-18

(c) Provides music instruction for at least 30 consecutive minutes 2 days a week.

(d) Complies with class size requirements under s. 1003.03.

(e) Complies with the department's standards for early childhood music education programs for students in kindergarten through grade 2.

(3)(a) The commissioner shall select school districts for participation in the pilot program, subject to legislative appropriation, based on the school district's proximity to the University of Florida and needs-based criteria established by the State Board of Education. Selected school districts shall annually receive $150 per full-time equivalent student in kindergarten through grade 2 who is enrolled in a comprehensive music education program.

(b) To maintain eligibility for participation in the pilot program, a selected school district must annually certify to the commissioner, in a format prescribed by the department, that each elementary school within the district provides a comprehensive music education program that meets the requirements of subsection (2). If a selected school district fails to provide the annual certification for a fiscal year, the school district must return all funds received through the pilot program for that fiscal year.

(4) The University of Florida's College of Education shall evaluate the effectiveness of the pilot program by measuring student academic performance and the success of the program. The evaluation must include, but is not limited to, a quantitative analysis of student achievement and a qualitative evaluation of students enrolled in the comprehensive music education programs.

362096

576-03003-18

(5) The State Board of Education may adopt rules to administer this section.

(6) This section expires June 30, 2021 ~~2020~~.

Section 2. This act shall take effect July 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/SB 654
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Pre-K-12 Education) and Senator Perry
SUBJECT:	Early Childhood Music Education Incentive Pilot Program
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Olenick	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 654 extends the scheduled expiration of the Early Childhood Music Education Incentive Pilot Program from June 30, 2020, to June 30, 2021.

The pilot program is contingent upon a legislative appropriation. SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, appropriates $300,000 in nonrecurring funds from the General Revenue Fund to the Department of Education to implement the pilot program.

This bill takes effect July 1, 2018

II. Present Situation:

The legislature established the Early Childhood Music Education Incentive Pilot Program (pilot program) in 2017,[1] for three years, to assist certain school districts in implementing comprehensive music education programs in kindergarten through grade 2, beginning with the 2017-2018 school year.[2]

For a school district to be eligible for participation in the pilot program, the district school superintendent must certify to the Commissioner of Education (commissioner) that each

[1] Section 69, ch. 2017-116, L.O.F.
[2] Section 1003.481(1), F.S.

elementary school within the district has established a comprehensive music education program that:[3]

- Includes all students enrolled at the school in kindergarten through grade 2.
- 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 the law.[4]
- Complies with the Department of Education's standards for early childhood music education programs for students in kindergarten through grade 2.

The commissioner must select school districts for participation in the pilot program, subject to legislative appropriation, based on the school district's proximity to the University of Florida and needs-based criteria established by the State Board of Education.[5] 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.[6]

The University of Florida's College of Education is required to evaluate the effectiveness of the pilot program.[7] The State Board of Education may adopt rules to administer the pilot program.[8]

The pilot program is scheduled to expire on June 30, 2020.[9]

The pilot program has not been implemented by the Department of Education.[10]

III. Effect of Proposed Changes:

The bill extends the scheduled expiration of the Early Childhood Music Education Incentive Pilot Program from June 30, 2020, to June 30, 2021.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[3] Section 1003.481(2)(a)-(e), F.S.
[4] The maximum number of students assigned to each teacher who is teaching core-curriculum courses in public school classrooms for prekindergarten through grade 3 may not exceed 18 students. Section 1003.03(1)(a), F.S.
[5] Section 1003.481(3)(a), F.S.
[6] *Id.*
[7] Section 1003.481(4), F.S.
[8] Section 1003.481(5), F.S.
[9] Section 1003.481(6), F.S.
[10] Telephone interview with staff, Florida Department of Education (Jan 10. 2018). In 2017, the Legislature appropriated $250,000 for the Early Childhood Music Education Incentive Pilot Program, which was vetoed by the Governor. Specific Appropriation 108, s. 2, ch. 2017-70, L.O.F.

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 pilot program is contingent upon a legislative appropriation. SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, appropriates $300,000 in nonrecurring funds from the General Revenue Fund to the Department of Education to implement the pilot program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.481 of the Florida Statutes.

This bill creates one undesignated section of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute removes the $300,000 appropriation provided to the Department of Education to implement the pilot program.

B. Amendments:

None.

By Senator Perry

8-00334-18 2018654__

A bill to be entitled

An act relating to the Early Childhood Music Education Incentive Pilot Program; amending s. 1003.481, F.S.; extending the scheduled expiration of the pilot program; providing an appropriation; providing an effective date.

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

Section 1. Section 1003.481, Florida Statutes, is amended to read:

1003.481 Early Childhood Music Education Incentive Pilot Program.—

(1) ~~Beginning with the 2017-2018 school year,~~ The Early Childhood Music Education Incentive Pilot Program is created within the Department of Education ~~for a period of 3 school years~~. The purpose of the pilot program is to assist selected school districts in implementing comprehensive music education programs for students in kindergarten through grade 2.

(2) ~~In order for~~ A school district is ~~to be~~ eligible for participation in the pilot program if~~,~~ the superintendent ~~must~~ certifies ~~certify~~ to the Commissioner of Education, in a format prescribed by the department, that each elementary school within the district has established a comprehensive music education program that:

(a) Includes all students at the school enrolled in kindergarten through grade 2.

(b) Is staffed by certified music educators.

(c) Provides music instruction for at least 30 consecutive minutes 2 days a week.

(d) Complies with class size requirements under s. 1003.03.

(e) Complies with the department's standards for early childhood music education programs for students in kindergarten through grade 2.

(3)(a) The commissioner shall select school districts for participation in the pilot program, subject to legislative appropriation, based on the school district's proximity to the University of Florida and needs-based criteria established by the State Board of Education. Selected school districts shall annually receive $150 per full-time equivalent student in kindergarten through grade 2 who is enrolled in a comprehensive music education program.

(b) To maintain eligibility for participation in the pilot program, a selected school district must annually certify to the commissioner, in a format prescribed by the department, that each elementary school within the district provides a comprehensive music education program that meets the requirements of subsection (2). If a selected school district fails to provide the annual certification for a fiscal year, the school district must return all funds received through the pilot program for that fiscal year.

(4) The University of Florida's College of Education shall evaluate the effectiveness of the pilot program by measuring student academic performance and the success of the program. The evaluation must include, but is not limited to, a quantitative analysis of student achievement and a qualitative evaluation of students enrolled in the comprehensive music education programs.

(5) The State Board of Education may adopt rules to

administer this section.

(6) This section expires June 30, 2021 ~~2020~~.

Section 2. For the 2018-2019 fiscal year, $300,000 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Education to implement this act.

Section 3. This act shall take effect July 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:	PCS/SB 694 (960376)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senators Brandes and Bracy
SUBJECT:	Mandatory Sentences
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Favorable**
2.	Stallard	Cibula	JU	**Favorable**
3.	Forbes	Sadberry	ACJ	**Recommend: Fav/CS**
4.	Forbes	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 694 authorizes a court to impose a sentence for a drug trafficking offense less than the mandatory minimum term of imprisonment and mandatory fine applicable to that offense if the court finds, in relation to that offense, that the offender did not:

- Engage in a continuing criminal enterprise;
- Use or threaten violence or use a weapon during the commission of the crime; or
- Cause a death or serious bodily injury.

The bill is expected to reduce the need for prison beds by a significant amount. See Section V. Fiscal Impact Statement.

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 schedules. 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. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

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., can depend 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., which includes many synthetic controlled substances, is a third degree felony.[2] However, if that substance is sold within 1,000 feet of a K-12 school or other designated facility or location, the violation is a second-degree felony.[3] With three exceptions,[4] s. 893.13, F.S., does *not* provide for mandatory minimum terms of imprisonment.

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly

[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] 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(3)(e) and 775.083(1)(c), F.S.
[3] 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. Sections 775.082(3)(d) and 775.083(1)(b), F.S.
[4] Exceptions: s. 893.13(1)(c)1., F.S. (selling, etc., certain Schedule I and II controlled substances within 1,000 feet of a K-12 school, park, community center, or publicly owned recreational facility subject to 3-year mandatory minimum); s. 893.13(1)(g)1., F.S. (manufacturing methamphetamine or phencyclidine in a structure or conveyance where any child under 16 is present subject to 5-year mandatory minimum); and s. 893.13(1)(g)2., F.S. (manufacturing methamphetamine or phencyclidine causes a child under 16 to suffer great bodily harm subject to 10-year mandatory minimum).

being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances. And the controlled substances involved in the trafficking statute must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies[5] and are subject to a mandatory minimum term[6] and a mandatory fine, which is determined by the weight or quantity of the substance.[7] For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of $50,000.[8] Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of $100,000.[9]

Criminal Punishment Code

The Criminal Punishment Code[10] (Code) is Florida's "primary sentencing policy."[11] Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[12] Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[13] Absent mitigation,[14] the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.[15]

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[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. Sections 775.082(3)(b) and 775.083(1)(b), F.S.

[6] There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.

[7] *See* s. 893.135, F.S.

[8] Section 893.135(1)(b)1.a., F.S.

[9] Section 893.135(1)(b)1.b., F.S.

[10] Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

[11] *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* Executive Summary (Offenses Committed On or After October 1, 1998), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on Feb. 14, 2018).

[12] Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

[13] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

[14] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

[15] If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

Mandatory Minimum Sentences and Departures

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."[16] As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have "complete discretion" in the charging decision.[17] The exercise of this discretion may determine whether or not a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. A prosecutor could determine in a particular case that mandatory minimum sentencing is inappropriate or too severe and avoid or ameliorate such sentencing. For example, the prosecutor could offer a plea to a violation of s. 893.13, F.S., or attempted drug trafficking, neither of which carries a mandatory minimum term. A prosecutor could also offer a plea to a drug trafficking violation that carries a 3-year mandatory minimum term, even though the defendant could be prosecuted for a drug trafficking violation that carries a greater mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.[18]

There are few circumstances in which a court is statutorily authorized to depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is determined to be a youthful offender.[19] In determining youthful offender status, the defendant must be given the opportunity to present facts to the court.[20] A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash), upon the defendant's motion if the court "finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice."[21]

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[16] Fla. R. Crim. P. 3.704(d)(26).
[17] "Under Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986) (citing FLA. CONST. art. II, s. 3) (other citations omitted).
[18] Sections 790.163(2), 790.164(2), 893.135(4), and 921.0024(1)(b), F.S. However, lower-level dealers or peripheral actors may have little, if any, information beneficial to prosecutors. Inmate population data reported in a 2009 Senate interim report indicated that the average sentence of inmates with a lower-level trafficking offense was above the mandatory minimum term, while the average sentence of inmates with a higher-level trafficking offense was below the mandatory minimum term. *A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers*, Interim Report 2010-109 (Oct. 2009), p. 7, Committee on Criminal Justice, The Florida Senate, http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf (last visited on Feb. 14, 2018).
[19] Section 958.04, F.S.
[20] Section 958.0407, F.S.
[21] Section 316.027(2)(g), F.S.

III. Effect of Proposed Changes:

The bill authorizes a court to impose a sentence for a drug trafficking offense less than the mandatory minimum term of imprisonment and mandatory fine applicable to that offense if the court finds, in relation to that offense, that the offender did not:

- Engage in a continuing criminal enterprise;[22]
- Use or threaten violence or use a weapon during the commission of the crime; or
- Cause a death or serious bodily injury.

The bill applies to all drug trafficking acts (possession, sale, manufacture, delivery, and importation) and to most, if not all, drug trafficking mandatory minimum terms of imprisonment (ranging from 3 years to life).[23]

The drug-trafficking statute prohibits a person from knowingly selling, delivering, importing, manufacturing, or possessing specified large quantities of the following controlled substances:

- Cannabis or cannabis plants;[24]
- Cocaine;[25]
- Various opiates or opioids, such as opium, morphine, heroin, hydromorphone, codeine, hydrocodone, oxycodone, fentanyl, and carfentanil and other fentanyl derivatives;[26]
- Phencyclidine;[27]
- Methaqualone;[28]
- Amphetamine or methamphetamine;[29]
- Flunitrazepam;[30]
- Gamma-hydroxybutyric acid (GHB);[31]

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[22] Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

[23] The drug-trafficking statute imposes a mandatory life sentence for trafficking in especially large amounts of certain substances. However, these mandatory life sentence are never described as a "mandatory minimum" sentences like the rest of the mandatory minimum sentences imposed by the statute. Nonetheless, the mandatory life sentence that is required for certain offenses seems to be a mandatory minimum sentence, and thus a sentence to which the bill would apply.

[24] Section 893.135(1)(a), F.S.

[25] Section 893.135(1)(b), F.S.

[26] Section 893.135(1)(c), F.S.

[27] Section 893.135(1)(d), F.S. Phencylidine "is a hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans." "Phencyclidine," PubChem, U.S. National Library of Medicine, https://pubchem.ncbi.nlm.nih.gov/compound/phencyclidine (last visited on Feb. 14, 2018).

[28] Section 893.135(1)(e), F.S. Methaqualone "is a quinazoline derivative with hypnotic and sedative properties." "Methaqualone," PubChem, U.S. National Library of Medicine, https://pubchem.ncbi.nlm.nih.gov/compound/6292 (last visited on Feb. 14, 2018).

[29] Section 893.135(1)(f), F.S.

[30] Section 893.135(1)(g), F.S. "Flunitrazepam, trade name Rohypnol, is a central nervous system depressant in a class of drugs called benzodiazepines." "Flunitrazepam (Rohypnol)," Center for Substance Abuse Research, http://www.cesar.umd.edu/cesar/drugs/rohypnol.asp (last visited on Feb. 14, 2018).

[31] Section 893.135(1)(h), F.S. "Gamma-hydroxybutyric acid (GHB) is a naturally occurring analog of gamma-aminobutyric acid (GABA) that has been used in research and clinical medicine for many years. GHB was used clinically as an anesthetic in the 1960s but was withdrawn due to side effects that included seizures and coma." Kapoor P., Revati Deshmukh R., and Kukreja I., "GHB Acid: A rage or reprive" (abstract) (Oct.–Dec. 2013) 4(4): 173, *Journal of Advanced Pharmaceutical*

- Gamma-butyrolactone (GBL);[32]
- 1,4-Butanediol;[33]
- Specified phenethylamines and cathinones, substituted[34] phenethylamines, and substituted cathinones;[35]
- Lysergic acid diethylamide (LSD);[36]
- Specified synthetic cannabinoids;[37] and
- N-benzyl phenethylamines.[38]

A court that is authorized to deviate below the mandatory minimum sentences set forth in the drug-trafficking statute is nonetheless generally constrained by the minimum sentence produced by this state's minimum sentence calculation statutes.[39] And the minimum sentence produced by this calculation may be lower or higher than the mandatory minimum set forth in the drug-trafficking statute.

The felony sentencing statute takes into account a host of factors to determine the minimum sentence that a court may impose on a felon. These factors include crimes for which the felon is being sentenced, prior offenses, and any injury suffered by the felon's victim. Each of these items are assigned number values that increase as their severity increases—the more severe the offense and the more severe the injury to a victim, the more points are assessed. These numbers are then factored into a multi-step formula. The number produced by this formula determines the minimum sentence that the court may impose on the felon before it.

A court that is authorized to deviate below the mandatory minimum sentences set forth in the drug-trafficking statute is nonetheless generally constrained by the minimum sentence produced by this state's minimum felony sentence calculation statutes. And the minimum sentence produced by these calculations may be lower or higher than the applicable mandatory minimum set forth in the drug-trafficking statute.

Technology and Research, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3853692/ (last visited on Feb. 14, 2018). "The primary effects of GHB use are those of a CNS [central nervous system] depressant[.]" *Id*.

[32] Section 893.135(1)(i), F.S. "Analogues that are often substituted for GHB include GBL (gamma butyrolactone) and 1,4 BD (also called just "BD"), which is 1,4-butanediol." "Drug Fact Sheet/GHB" (undated), U.S. Drug Enforcement Administration (on file with the Senate Committee on Criminal Justice).

[33] Section 893.135(1)(j), F.S.

[34] "The term 'substituted' is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure." Staff Analysis (CS/CS/CS/SB 150) (April 27, 2017), p. 11, n. 58, The Florida Senate, http://www.flsenate.gov/Session/Bill/2017/150/Analyses/2017s00150.ap.PDF (last visited on Feb. 14, 2018).

[35] Section 893.135(1)(k), F.S. "Phenethylamines" is a broad category of "psychoactive substances." 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 on Jan. 29, 2018). "Cathinone … is a monoamine alkaloid found in the shrub Catha edulis (Khat)[,]" and is "[c]losely related to ephedrine, cathine and other amphetamines[.]" "Cathinone," PubChem, U.S. National Library of Medicine, https://pubchem.ncbi.nlm.nih.gov/compound/Cathinone#section=Top (last visited on Feb. 14, 2018).

[36] Section 893.135(1)(l), F.S.

[37] Section 893.135(1)(m), F.S. "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." "Synthetic Cannabinoids Drug Information," Redwood Toxicology Laboratory, https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last visited on Feb. 14, 2018).

[38] Section 893.135(1)(n), F.S.

[39] *See* ss. 921.0022-921.0024, F.S. However, there are a number of circumstances in which a court may sentence a felon to a lesser sentence than is produced by the sentence calculation statutes. *See* ss. 921.0024-921.0027, F.S.

The effective date of the bill is July 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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds).[40]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not explicitly state whether it applies to mandatory sentences of life imprisonment set forth in the drug-trafficking statute. The bill specifically refers to "mandatory minimum" sentences imposed under the drug-trafficking statute. The statute never uses the words "mandatory minimum" sentence to refer to sentences or life imprisonment. The Legislature may wish to amend the bill to clarify its intent.

[40] 2018 Conference Results (through February 12, 2018), Criminal Justice Impact Conference, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls (last visited on Feb. 14, 2018).

VIII. Statutes Affected:

This bill substantially amends section 893.135 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.)

Recommend CS by Appropriations Subcommittee on Criminal and Civil Justice on February 14, 2018:
The committee substitute authorizes a court to impose a sentence for a drug trafficking offense other than the mandatory minimum term of imprisonment and mandatory fine applicable to that offense if the court finds, in relation to that offense, that the offender did not commit specified acts. The original bill did not authorize a departure from a drug trafficking mandatory fine.

B. Amendments:

None.

960376

576-03257-18

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

A bill to be entitled

An act relating to mandatory sentences; amending s. 893.135, F.S.; authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record; providing an effective date.

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

Section 1. Present subsections (6) and (7) of section 893.135, Florida Statutes, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(6) Notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory minimum term of imprisonment and mandatory fine if the court finds on the record that all of the following circumstances exist:

(a) The person did not engage in a continuing criminal enterprise as defined in s. 893.20(1).

(b) The person did not use or threaten violence or use a weapon during the commission of the crime.

(c) The person did not cause a death or serious bodily injury.

960376

576-03257-18

Section 2. This act shall take effect July 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/SB 694
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senators Brandes and Bracy
SUBJECT:	Mandatory Sentences
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Favorable**
2.	Stallard	Cibula	JU	**Favorable**
3.	Forbes	Sadberry	ACJ	**Recommend: Fav/CS**
4.	Forbes	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 694 authorizes a court to impose a sentence for a drug trafficking offense less than the mandatory minimum term of imprisonment and mandatory fine applicable to that offense if the court finds, in relation to that offense, that the offender did not:

- Engage in a continuing criminal enterprise;
- Use or threaten violence or use a weapon during the commission of the crime; or
- Cause a death or serious bodily injury.

The bill is expected to reduce the need for prison beds by a significant amount. See Section V. Fiscal Impact Statement.

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 schedules. 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. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

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., can depend 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., which includes many synthetic controlled substances, is a third degree felony.[2] However, if that substance is sold within 1,000 feet of a K-12 school or other designated facility or location, the violation is a second-degree felony.[3] With three exceptions,[4] s. 893.13, F.S., does *not* provide for mandatory minimum terms of imprisonment.

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly

[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] 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(3)(e) and 775.083(1)(c), F.S.
[3] 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. Sections 775.082(3)(d) and 775.083(1)(b), F.S.
[4] Exceptions: s. 893.13(1)(c)1., F.S. (selling, etc., certain Schedule I and II controlled substances within 1,000 feet of a K-12 school, park, community center, or publicly owned recreational facility subject to 3-year mandatory minimum); s. 893.13(1)(g)1., F.S. (manufacturing methamphetamine or phencyclidine in a structure or conveyance where any child under 16 is present subject to 5-year mandatory minimum); and s. 893.13(1)(g)2., F.S. (manufacturing methamphetamine or phencyclidine causes a child under 16 to suffer great bodily harm subject to 10-year mandatory minimum).

being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances. Moreover, the controlled substances involved in the trafficking statute must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies[5] and are subject to a mandatory minimum term[6] and a mandatory fine, which is determined by the weight or quantity of the substance.[7] For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of $50,000.[8] Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of $100,000.[9]

Criminal Punishment Code

The Criminal Punishment Code[10] (Code) is Florida's "primary sentencing policy."[11] Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[12] Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[13] Absent mitigation,[14] the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.[15]

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[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. Sections 775.082(3)(b) and 775.083(1)(b), F.S.

[6] There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.

[7] *See* s. 893.135, F.S.

[8] Section 893.135(1)(b)1.a., F.S.

[9] Section 893.135(1)(b)1.b., F.S.

[10] Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

[11] *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* Executive Summary (Offenses Committed On or After October 1, 1998), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on Feb. 14, 2018).

[12] Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

[13] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

[14] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

[15] If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

Mandatory Minimum Sentences and Departures

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."[16] As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have "complete discretion" in the charging decision.[17] The exercise of this discretion may determine whether or not a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. A prosecutor could determine in a particular case that mandatory minimum sentencing is inappropriate or too severe and avoid or ameliorate such sentencing. For example, the prosecutor could offer a plea to a violation of s. 893.13, F.S., or attempted drug trafficking, neither of which carries a mandatory minimum term. A prosecutor could also offer a plea to a drug trafficking violation that carries a 3-year mandatory minimum term, even though the defendant could be prosecuted for a drug trafficking violation that carries a greater mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.[18]

There are few circumstances in which a court is statutorily authorized to depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is determined to be a youthful offender.[19] In determining youthful offender status, the defendant must be given the opportunity to present facts to the court.[20] A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash), upon the defendant's motion if the court "finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice."[21]

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[16] Fla. R. Crim. P. 3.704(d)(26).
[17] "Under Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986) (citing FLA. CONST. art. II, s. 3) (other citations omitted).
[18] Sections 790.163(2), 790.164(2), 893.135(4), and 921.0024(1)(b), F.S. However, lower-level dealers or peripheral actors may have little, if any, information beneficial to prosecutors. Inmate population data reported in a 2009 Senate interim report indicated that the average sentence of inmates with a lower-level trafficking offense was above the mandatory minimum term, while the average sentence of inmates with a higher-level trafficking offense was below the mandatory minimum term. *A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers*, Interim Report 2010-109 (Oct. 2009), p. 7, Committee on Criminal Justice, The Florida Senate, http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf (last visited on Feb. 14, 2018).
[19] Section 958.04, F.S.
[20] Section 958.0407, F.S.
[21] Section 316.027(2)(g), F.S.

III. Effect of Proposed Changes:

The bill authorizes a court to impose a sentence for a drug trafficking offense less than the mandatory minimum term of imprisonment and mandatory fine applicable to that offense if the court finds, in relation to that offense, that the offender did not:

- Engage in a continuing criminal enterprise;[22]
- Use or threaten violence or use a weapon during the commission of the crime; or
- Cause a death or serious bodily injury.

The bill applies to all drug trafficking acts (possession, sale, manufacture, delivery, and importation) and to most, if not all, drug trafficking mandatory minimum terms of imprisonment (ranging from 3 years to life).[23]

The drug-trafficking statute prohibits a person from knowingly selling, delivering, importing, manufacturing, or possessing specified large quantities of the following controlled substances:

- Cannabis or cannabis plants;[24]
- Cocaine;[25]
- Various opiates or opioids, such as opium, morphine, heroin, hydromorphone, codeine, hydrocodone, oxycodone, fentanyl, and carfentanil and other fentanyl derivatives;[26]
- Phencyclidine;[27]
- Methaqualone;[28]
- Amphetamine or methamphetamine;[29]
- Flunitrazepam;[30]
- Gamma-hydroxybutyric acid (GHB);[31]

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[22] Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

[23] The drug-trafficking statute imposes a mandatory life sentence for trafficking in especially large amounts of certain substances. However, these mandatory life sentence are never described as a "mandatory minimum" sentences like the rest of the mandatory minimum sentences imposed by the statute. Nonetheless, the mandatory life sentence that is required for certain offenses seems to be a mandatory minimum sentence, and thus a sentence to which the bill would apply.

[24] Section 893.135(1)(a), F.S.

[25] Section 893.135(1)(b), F.S.

[26] Section 893.135(1)(c), F.S.

[27] Section 893.135(1)(d), F.S. Phencylidine "is a hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans." "Phencyclidine," PubChem, U.S. National Library of Medicine, https://pubchem.ncbi.nlm.nih.gov/compound/phencyclidine (last visited on Feb. 14, 2018).

[28] Section 893.135(1)(e), F.S. Methaqualone "is a quinazoline derivative with hypnotic and sedative properties." "Methaqualone," PubChem, U.S. National Library of Medicine, https://pubchem.ncbi.nlm.nih.gov/compound/6292 (last visited on Feb. 14, 2018).

[29] Section 893.135(1)(f), F.S.

[30] Section 893.135(1)(g), F.S. "Flunitrazepam, trade name Rohypnol, is a central nervous system depressant in a class of drugs called benzodiazepines." "Flunitrazepam (Rohypnol)," Center for Substance Abuse Research, http://www.cesar.umd.edu/cesar/drugs/rohypnol.asp (last visited on Feb. 14, 2018).

[31] Section 893.135(1)(h), F.S. "Gamma-hydroxybutyric acid (GHB) is a naturally occurring analog of gamma-aminobutyric acid (GABA) that has been used in research and clinical medicine for many years. GHB was used clinically as an anesthetic in the 1960s but was withdrawn due to side effects that included seizures and coma." Kapoor P., Revati Deshmukh R., and Kukreja I., "GHB Acid: A rage or reprive" (abstract) (Oct.–Dec. 2013) 4(4): 173, *Journal of Advanced Pharmaceutical*

- Gamma-butyrolactone (GBL);[32]
- 1,4-Butanediol;[33]
- Specified phenethylamines and cathinones, substituted[34] phenethylamines, and substituted cathinones;[35]
- Lysergic acid diethylamide (LSD);[36]
- Specified synthetic cannabinoids;[37] and
- N-benzyl phenethylamines.[38]

A court that is authorized to deviate below the mandatory minimum sentences set forth in the drug-trafficking statute is nonetheless generally constrained by the minimum sentence produced by this state's minimum sentence calculation statutes.[39] The minimum sentence produced by this calculation may be lower or higher than the mandatory minimum set forth in the drug-trafficking statute.

The felony sentencing statute takes into account a host of factors to determine the minimum sentence that a court may impose on a felon. These factors include crimes for which the felon is being sentenced, prior offenses, and any injury suffered by the felon's victim. Each of these items are assigned number values that increase as their severity increases—the more severe the offense and the more severe the injury to a victim, the more points are assessed. These numbers are then factored into a multi-step formula. The number produced by this formula determines the minimum sentence that the court may impose on the felon before it.

The effective date of the bill is July 1, 2018.

Technology and Research, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3853692/ (last visited on Feb. 14, 2018). "The primary effects of GHB use are those of a CNS [central nervous system] depressant[.]" *Id*.

[32] Section 893.135(1)(i), F.S. "Analogues that are often substituted for GHB include GBL (gamma butyrolactone) and 1,4 BD (also called just "BD"), which is 1,4-butanediol." "Drug Fact Sheet/GHB" (undated), U.S. Drug Enforcement Administration (on file with the Senate Committee on Criminal Justice).

[33] Section 893.135(1)(j), F.S.

[34] "The term 'substituted' is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure." Staff Analysis (CS/CS/CS/SB 150) (April 27, 2017), p. 11, n. 58, The Florida Senate, http://www.flsenate.gov/Session/Bill/2017/150/Analyses/2017s00150.ap.PDF (last visited on Feb. 14, 2018).

[35] Section 893.135(1)(k), F.S. "Phenethylamines" is a broad category of "psychoactive substances." 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 on Jan. 29, 2018). "Cathinone … is a monoamine alkaloid found in the shrub Catha edulis (Khat)[,]" and is "[c]losely related to ephedrine, cathine and other amphetamines[.]" "Cathinone," PubChem, U.S. National Library of Medicine, https://pubchem.ncbi.nlm.nih.gov/compound/Cathinone#section=Top (last visited on Feb. 14, 2018).

[36] Section 893.135(1)(l), F.S.

[37] Section 893.135(1)(m), F.S. "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." "Synthetic Cannabinoids Drug Information," Redwood Toxicology Laboratory, https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last visited on Feb. 14, 2018).

[38] Section 893.135(1)(n), F.S.

[39] *See* ss. 921.0022-921.0024, F.S. However, there are a number of circumstances in which a court may sentence a felon to a lesser sentence than is produced by the sentence calculation statutes. *See* ss. 921.0024-921.0027, F.S.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds).[40]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not explicitly state whether it applies to mandatory sentences of life imprisonment set forth in the drug-trafficking statute. The bill specifically refers to "mandatory minimum" sentences imposed under the drug-trafficking statute. The statute never uses the words "mandatory minimum" sentence to refer to sentences or life imprisonment. The Legislature may wish to amend the bill to clarify its intent.

VIII. Statutes Affected:

This bill substantially amends section 893.135 of the Florida Statutes.

[40] 2018 Conference Results (through February 12, 2018), Criminal Justice Impact Conference, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls (last visited on Feb. 14, 2018).

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute authorizes a court to impose a sentence for a drug trafficking offense other than the mandatory minimum term of imprisonment and mandatory fine applicable to that offense if the court finds, in relation to that offense, that the offender did not commit specified acts. The original bill did not authorize a departure from a drug trafficking mandatory fine.

B. Amendments:

None.

By Senator Brandes

24-00431A-18 2018694__

A bill to be entitled

An act relating to mandatory sentences; amending s. 893.135, F.S.; authorizing a court to issue a sentence shorter than a mandatory minimum term of imprisonment for a person convicted of trafficking if the court makes certain findings on the record; providing an effective date.

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

Section 1. Present subsections (6) and (7) of section 893.135, Florida Statutes, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(6) Notwithstanding any mandatory minimum term of imprisonment under this section, the court may sentence a person who has been convicted of an offense under this section to a term of imprisonment less than the mandatory minimum if the court finds on the record that all of the following circumstances exist:

(a) The person did not engage in a continuing criminal enterprise as defined in s. 893.20(1).

(b) The person did not use or threaten violence or use a weapon during the commission of the crime.

(c) The person did not cause a death or serious bodily injury.

Section 2. This act shall take effect July 1, 2018.

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

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 15, 2018

I respectfully request that **Senate Bill #694**, relating to **Mandatory Sentences**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

694
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Albert Balido

Job Title _____

Address 201 N. Pkwy Ste #100
Street
Tall. FL 32301
City *State* *Zip*

Phone 8502577440

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Campaign for Criminal Justice Reform

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/2018
Meeting Date

694
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Criminal Justice

Name Sal Nuzzo

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Email snuzzo@jamesmadison.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

694
Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

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Street

Phone

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

694
Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Chelsa Murphy.

Job Title State Director

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TLH FL 32303
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 694
Bill Number (if applicable)

Topic MANDATORY SENTENCES

Amendment Barcode (if applicable)

Name CHRISTIAN MINOR

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA JUVENILE JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

694
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Sentencing

Name Greg Newburn

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Gainesville *City* FL *State* 32614 *Zip*

Email gnewburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Families Against Mandatory Minimums

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 694
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Mandatory Sentences

Name Leah Courtney

Job Title Communications Coordinator

Address _____
Street

_____
City *State* *Zip*

Phone 850 212 5057

Email courtney@floridataxwatch

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida TaxWatch

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

694
Bill Number (if applicable)

Topic Mandatory Minimums

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

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Email jorge@flapartners.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FACDL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 710 (471064)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Book
SUBJECT:	Prescription Drug Donation Program
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	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 710 creates the Prescription Drug Donation Repository Program (Program) within the Department of Health (DOH) to facilitate the donation and distribution of prescription drugs and supplies to eligible patients in the state. The Program:

- Permits Florida residents with valid prescriptions who are either indigent, uninsured, or underinsured to receive donated prescription drugs and supplies under the Program.
- Limits entities that may donate prescription drugs to those that can ensure the drugs have been maintained entirely by licensed or permitted professionals and not by patients.
- Limits dispensing of prescription drugs under the Program to persons who are licensed, registered, or otherwise permitted by state law.
- Establishes eligibility criteria for prescription drugs donated to the Program.
- Provides procedures for inventorying, storing, dispensing, recalling, and destroying prescription drugs under the Program.
- Provides recordkeeping and reporting requirements for participating facilities.
- Requires DOH to maintain and publish on its website registries of all participating facilities and available donated drugs and supplies.
- Creates a direct-support organization (DSO) to provide funding for the Program.
- Requires DOH to adopt rules necessary to implement the Program.

The bill amends s. 252.36(5), F.S., to allow the Governor to waive the patient eligibility requirements of the Program during a declared state of emergency.

The DOH will experience an increase in workload to administer the Program; however, these costs should be absorbed through funding collected by the DSO in support of the Program.

The bill is effective July 1, 2018.

II. Present Situation:

State Prescription Drug Donation and Reuse Programs

State prescription drug donation and reuse programs have been in effect for two decades beginning with a pilot program in Georgia in 1997.[1] Such drug donation and reuse programs permit unused prescription or non-prescription drugs to be donated and re-dispensed to patients within certain federal guidelines. More than 38 states have passed laws authorizing such programs; however, many are not currently operational.[2] Georgia's program started with a prescription drug reuse program only in long-term care facilities and has been expanded to a collection and donation program that accepts prescription and non-prescription drugs.[3]

Pharmaceutical donation programs and reuse programs involve the voluntary collection of donated, unused prescription and non-prescription drugs from patients. States vary in the types of drugs and supplies that are accepted, the number and types of sites that are considered eligible locations where patients or donors may deposit donations, participant eligibility requirements, and the dispensing fees for the donated drugs. Generally, the drugs are not controlled substances. Some programs, such as Florida's, are limited to only cancer treatment drugs. Twelve other states besides Florida - Colorado, Kentucky, Michigan, Minnesota, Montana, Nebraska, Nevada, Ohio, Pennsylvania, Utah, Washington, and Wisconsin - have prescription drug donation and reuse programs limited to only cancer treatment drugs.

Pharmacies, charitable clinics, and hospitals are locations where such donations are accepted. In Florida's Cancer Drug Donation Program,[4] only Class II hospital pharmacies that elect or volunteer to participate in the program are eligible to accept donations of cancer drugs from designated individuals or entities.[5]

Individuals may be required to meet certain eligibility requirements beyond a cancer diagnosis to participate in the donation program such as proof of state residency (Minnesota), lack of access to other insurance coverage, or Medicaid ineligibility (Florida). Dispensing fees are set based on a maximum relative threshold above the Medicaid dispensing fee or capped at an absolute dollar amount that typically ranges from $10 to $15.

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[1] National Conference of State Legislatures, *State Prescription Drug Return, Reuse and Recycling Laws* (March 31, 2017), http://www.ncsl.org/research/health/state-prescription-drug-return-reuse-and-recycling.aspx (last visited Nov. 28, 2017).
[2] *Supra* note 1.
[3] GA. CODE ANN. § 31-8-301-304 (2017).
[4] Section 499.029, F.S.
[5] *See* s. 465.019, F.S. Class II institutional pharmacies are those institutional pharmacies that employ the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to the patients of that institution, for use on the premises of that institution.

The statutory provisions of many pharmaceutical donation programs have several common requirements:

- No controlled substances are accepted as donations;
- No adulterated or misbranded medications are allowed;
- All pharmaceuticals must be checked by a pharmacist prior to being dispensed;
- Pharmaceuticals must not be expired and most pharmaceuticals must have at least six months or longer before expiration;
- All pharmaceuticals must be unopened and in original, sealed, tamper-evident packaging; and
- Liability protection is assured for both donors and recipients.[6]

Most states permit the donation of any non-controlled substance to a designated medical facility, clinic, or pharmacy that has elected to participate in the program. Twenty states have operational repository programs – either cancer drug programs or broader collection programs – including states such as Iowa, which has served over 70,000 patients and re-distributed $15 million in donated supplies since 2007.[7] The Iowa program is limited to residents with incomes at or below 200 percent of the federal poverty level (FPL), or $49,200 for a family of four under the current guidelines, who are uninsured or underinsured, and are eligible to receive the donated medications and supplies.[8] The Iowa program accepts donations from any organization or individual in the country with the medication provided in its sealed or original, tamper-resistant packaging. Any pharmacy or medical facility with authorization to dispense under Iowa administrative rules may then re-dispense the donated medication or supplies.[9]

Wyoming has also had a long-running Medication Donation Program. The state's program filled over 150,000 prescriptions since its inception in 2007 and provided more than $2.4 million worth of donated prescriptions in 2016.[10] Assistance under the program is time-limited and recipients must have incomes under 200 percent of the FPL, and be without prescription insurance or Medicaid coverage. A dispensing site may also charge a recipient up to $10 per prescription to cover dispensing fees. Controlled substances are not covered in the program.[11]

Florida Cancer Drug Donation Program

The Florida Cancer Drug Donation Program (CDDP) was created in 2006[12] and is administratively housed within the DBPR. The CDDP allows eligible donors to donate cancer drugs and related supplies to participating facilities that may dispense the donations to eligible cancer patients. Eligible donors include patients, patient representatives, health care facilities,

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[6] *Supra* note 1.
[7] *Supra* note 1.
[8] Iowa Department of Public Health, *SafeNetRx Program*, https://idph.iowa.gov/ohds/rural-health-primary-care/repository, (last visited Nov. 28, 2017).
[9] *Id.*
[10] Wyoming Department of Health, *Wyoming Medication Donation Program*, https://health.wyo.gov/healthcarefin/medicationdonation/ (last visited Nov. 28, 2017).
[11] *Id.*
[12] Chapter 2006-310, Laws of Fla. (creating s. 499.029, effective July 1, 2006). It was originally created within the Department of Health, but was part of a programmatic transfer by the 2010 Legislature to DBPR effective October 1, 2011.

nursing home facilities, hospices, or hospitals with a closed drug delivery system; or pharmacies, drug manufacturers, medical device manufacturers, or suppliers or wholesalers of drugs or supplies.[13]

Eligible participating facilities that may collect donations are limited to only those Florida hospital pharmacies with a Class II institutional pharmacy permit.[14] These pharmacies participate on a voluntary basis and must agree to accept, inspect, and dispense the donated drugs to the eligible patients in accordance with the statute. The DBPR is required to establish and maintain a participant facility registry for the CDDP. The law provides the content for the registry and a requirement for a website posting. Currently, 14 hospital pharmacies participate in the CDDP.[15]

Florida's recipient eligibility requirements limit participation to Florida residents who:

- Have been diagnosed with cancer; and
- Are ineligible for the Medicaid program, or any other prescription drug program funded in whole or in part by the federal government, or do not have third party insurance unless the benefits have been exhausted or a certain cancer drug is not covered.[16]

Donated drugs may only be prescribed by a licensed practitioner and dispensed by a licensed pharmacist to an eligible patient.[17] Dispensed drugs and supplies under the CDDP are not eligible for reimbursement by third parties, either public or private. However, the facility may charge the recipient of the donated drug a handling fee of no more than 300 percent of the Medicaid dispensing fee or no more than $15, whichever is less, for each cancer drug that is dispensed.[18]

The DBPR, Division of Drugs, Devices, and Cosmetics, maintains a list of available donated medications on its website; however, no cancer medications are currently reported on the list.[19] As of November 2017, the DBPR does not require the participating facilities to report the medications that are available for inclusion on the CDDP website or the number of donated drugs that have been administered.[20] A facility is required to maintain its data for three years.[21]

The CDDP will only accept drugs if:

- The drug expires at least six months after the date of donation and the drug's tamper-resistant packaging is intact;
- The drug is in its original, unopened, sealed, tamper-evident unit dose packaging with lot number and expiration date, if so packaged; and
- The drug is not a substance listed on Schedule II, III, IV, or V of s. 893.03, F.S.[22]

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[13] Section 499.029(3)(c), F.S.
[14] Section 499.029(2)(e), F.S.
[15] Florida Department of Business and Professional Regulation, *Cancer Drug Donation Program Participation Report*, http://www.myfloridalicense.com/dbpr/ddc/documents/ParicipatingHospital.pdf (last visited Nov. 28, 2017).
[16] Rule 61N-1.026(1), F.A.C.
[17] Section 499.029(5), F.S.
[18] Section 409.029(7)(b), F.S. and Rule 61N-1.026(5), F.A.C.
[19] Florida Department of Business and Professional Regulation, *Medication Supply Availability List*.
[20] Email correspondence from Colton Madill, Department of Business and Professional Regulation (Nov. 29, 2017) (on file with the Senate Committee on Health Policy).
[21] *Id.*
[22] Rule 61N-1.026(6), F.A.C.

Under the act, a donor or a participant in the program who acts with reasonable care in donating, accepting, distributing, or dispensing prescription drugs or supplies is immune from civil or criminal liability or professional disciplinary action for any kind of injury, death, or loss relating to such activities.[23]

Regulation of Pharmacy

The DBPR is the state agency charged with the regulation and licensure of businesses and professionals.[24] Under the provisions of chapter 499, F.S., the Division of Drugs, Devices, and Cosmetics safeguards the health, safety, and welfare of the state's citizens from injury due to the use of adulterated, contaminated, and misbranded drugs, drug ingredients and cosmetics. The Division oversees: the CDDP; issuance and regulation of licensure and permits for drug manufacturers, wholesalers, and distributers; controlled substance reporting requirements for certain wholesale distributors; issuance and regulation of other permits and licenses; and the Drug Wholesale Distributor Advisory Council.[25]

The Florida Drug and Cosmetic Act (Act) is codified as ss. 499.001 – 499.081, F.S. The Act provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the Federal Food, Drug, and Cosmetic Act and that portion of the Federal Trade Commission Act which expressly prohibits the false advertisement of drugs, devices, and cosmetics. The Act provides definitions for what is considered a device, drug, and, specifically, a prescription drug.[26]

Chapter 465, F.S., governs the regulation of the practice of pharmacy by the Board of Pharmacy in the Department of Health. Section 465.019(2)(b), F.S., provides requirements for institutional pharmacies. "Class II institutional pharmacies" are those institutional pharmacies that employ the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to patients of that institution for use on the premises of that institution.

Section 465.015(2)(c), F.S., makes it unlawful for a pharmacist to sell or dispense drugs without first being furnished a prescription. Section 465.016(1)(l), F.S., prohibits a pharmacist from placing into stock any part of any prescription compounded or dispensed which is returned by the patient. Additionally, the Board of Pharmacy has adopted an administrative rule that prohibits a pharmacist from placing into the stock of any pharmacy any part of any prescription compounded or dispensed, which is returned by a patient, except as specified in the Board of Pharmacy rules.[27] There is an exception for a closed drug delivery system in which unit dose or

[23] Section 409.029(11), F.S.
[24] Section 20.165, F.S.
[25] Department of Business and Professional Regulation, *Division of Drugs, Devices, and Cosmetics*, http://www.myfloridalicense.com/dbpr/ddc/index.html (last visited Nov. 29, 2017).
[26] A "prescription drug" under s. 499.003(40) is defined as a "prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active ingredients subject to, defined by, or described by, s. 503(b) of the federal act or s. 465.003(8), s. 499.007(13), subsection (31), or subsection (47), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.
[27] Rule 64B16-28.118(2), F.A.C.

customized patient medication packages are dispensed to in-patients. The unused medication may be returned to the pharmacy for re-dispensing only if each unit dose or customized patient medication package is individually sealed and if each unit dose or the unit dose system – or the customized patient medication package container or the customized patient medication package unit of which it is clearly a part – is labeled with the name of the drug, dosage strength, manufacturer's control number, and expiration date, if any. In the case of controlled substances, such drugs may only be returned as permitted under federal law.[28] A "closed drug delivery system" means a system in which control of the unit-dose medication is maintained by the facility rather than by the individual patient. A "unit dose system" means a system in which all the individually sealed unit doses are physically connected as a unit.[29]

For nursing facility residents, s. 400.141(1)(d), F.S., requires a pharmacist licensed in Florida that is under contract with a nursing home to repackage a resident's bulk prescription medication that has been packaged by another pharmacist into a unit-dose system compatible with the system used by the nursing facility, if requested by the facility. In order to be eligible for the repacking service, the resident or the resident's spouse's prescription medication benefits must be covered through a former employer as part of his or her retirement benefits, a qualified pension plan as specified in s. 4972 of the Internal Revenue Code, a federal retirement program as specified under 5 C.F.R. part 831, or a long-term care policy as defined under specified state law. A pharmacist who correctly repackages and relabels the medication, and the nursing home who correctly administers the repackaged medication, cannot be held liable in any civil or administrative action arising from the repackaging. The pharmacist may charge a reasonable fee for costs of the repackaging.

A nursing home typically has a Class I institutional permit. This permit authorizes the nursing home to have patient-specific medications that have already been dispensed to the resident. Prescription drugs may not be dispensed in a Class I pharmacy.[30]

Federal Law and Regulations

The federal Controlled Substances Act (CSA) was enacted by Congress in 1970 and codified as 21 U.S.C. §801, et seq. The CSA regulates the manufacture and distribution of controlled substances in the United States. The federal Drug Enforcement Agency (DEA) is responsible for the enforcement of the CSA.

The CSA categorizes drugs into five "schedules" based on their potential for abuse and safety or dependence liability.[31] The CSA provides for specific dispensing requirements for controlled

[28] Rule 64B16-28-118(2), F.A.C.
[29] Rule 64B16-28-118(1), F.A.C.
[30] Section 465.019(2)(a), F.S.
[31] U.S. Department of Justice, Diversion Control Division, *Controlled Substance Security Manual*, https://www.deadiversion.usdoj.gov/pubs/manuals/sec/app_law.htm (last visited Nov. 28, 2017). Drugs classified as Schedule I are those that are considered to have no medical use in the United States and have a high abuse potential and include drugs such as heroin, LSD, and marijuana. Schedule II substances have a high abuse potential with severe psychological or physical dependency, but have accepted medical use. Examples of Schedule II drugs include opium, morphine, codeine, and oxycodone. Schedule III drugs have an abuse potential and dependency liability less than Schedule II with an accepted medical use. Schedule III drugs may also contain limited quantities of certain narcotic and non-narcotic drugs. Schedule IV drugs have an abuse potential and dependency liability less than those drugs in Schedule III and have an

substances, including written prescriptions, retention requirements, and refill restrictions, depending on the drug's schedule.[32] Prescriptions must also meet specific labeling and packaging requirements. For Schedule II, III, and IV drugs, the label must clearly contain a warning that it is a crime to transfer the drug to any person other than the patient.[33]

The CSA permits the delivery of controlled substances by an "ultimate user,"[34] who has lawfully obtained the drug, to a designated covered entity for disposal and destruction such as through a prescription drug take-back program.[35] An authorized covered entity is defined in federal law as:

- A specified law enforcement agency;
- A manufacturer, distributor, or reverse distributor of prescription medications;
- A retail pharmacy;
- A registered narcotic treatment program;
- A hospital or clinic with an onsite pharmacy;
- An eligible long-term care facility; or
- Any other entity authorized by the DEA to dispose of prescription medications.[36]

The last National Prescription Take Back Day sponsored by the DEA resulted in more than 912,305 pounds of expired, unused, and unwanted prescription drugs returned at 5,300 sites on November 7, 2017.[37] The goal of the take-back program is to prevent the diversion of unwanted drugs to misuse and abuse and to avoid the potential safety hazard of drugs flushed down the toilet.[38]

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organization (DSOs) are statutorily created non-profit organizations[39] authorized to carry out specific tasks in support of public entities or public causes.[40] 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.[41]

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accepted medical use and include drugs such as Valium, Xanax, and Darvon. The drugs in the fifth and final schedule, Schedule V, have an abuse potential less than those listed in Schedule IV, have an accepted medical use, and are often available without a prescription, including some for antitussive and antidiarrheal purposes.

[32] 21 U.S.C. §829 and 21 CFR §§1306.21 and 1306.22.

[33] 21 U.S.C. §825.

[34] An "ultimate user" is defined under 21 U.S.C. 802(27), as the person who has lawfully obtained, and who possesses, a controlled substance for his own use or the use of a member of his household or for an animal owned by him or by a member of his household.

[35] 21 U.S.C. 822a.

[36] *Id.*

[37] Drug Enforcement Administration, *Drug Enforcement Administration collects record number of unused pills as part of its 14th Prescription Drug Take Back Day* (November 7, 2017), https://www.dea.gov/divisions/hq/2017/hq110717.shtml (last visited Nov. 28, 2017).

[38] *Id.*

[39] Chapter 617, F.S.

[40] *E.g.*, ss. 1009.983 and 413.0111, F.S.

[41] *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.[42] Specifically, the law requires each CSO and DSO to annually submit the following information to the appropriate agency by August 1:[43]

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's ethics code; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.[44]

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.[45] If the organization maintains a website, the agency's website must provide a link to the organization's website.[46] 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.[47] 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.[48]

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information submitted by each CSO or DSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the CSO or DSO.[49]

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.[50]

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.[51] An independent certified public accountant in accordance with rules adopted by the Auditor General must

[42] Section 3, ch. 2014-96, L.O.F
[43] Section 20.058(1), F.S.
[44] 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.
[45] Section 20.058(2), F.S.
[46] *Id.*
[47] Section 20.058(4), F.S.
[48] *Id.*
[49] *Id.* at (3).
[50] *Id.* at (5).
[51] 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.

conduct the audit. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.[52] 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.[53]

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.[54] 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.[55]

Governor's Executive Powers

During a declared state of emergency, the Governor has extensive authority to act as he or she deems necessary. Section 252.36(1), F.S., provides, in part, that "in the event of an emergency beyond local control, the Governor…may assume" or delegate "direct operational control over all or any part of the emergency management functions within this state…" In addition, the Governor may "issue executive orders, proclamations, and rules" which "shall have the force and effect of law." Subsection (5) specifically authorizes the Governor to use all resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency.

The Governor is also directed to "take such action and give such direction to state and local law enforcement officers," and state health officials as may be "reasonable and necessary" to secure compliance with the State Emergency Management Act and the Florida Hazardous Materials Emergency Response and Community Right-To-Know Act in ch. 252, F.S.

A declared State of Emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.

III. Effect of Proposed Changes:

Section 1 creates s. 465.1902, F.S., to establish the Prescription Drug Donation Repository Program (Program) within the Department of Health (DOH). The purpose of the program is to authorize and facilitate the donation and distribution of prescription drugs and supplies to eligible patients through a system of local and centralized repositories. The DOH may contract with a third party to implement and administer the Program.

The bill authorizes the following individuals or entities to donate prescription drugs and supplies:

- Nursing home facilities with closed drug delivery systems.
- Hospices that have maintained control of a patient's prescription drug.

[52] Section 215.981(1), F.S.
[53] Section 11.45(3), F.S.
[54] 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.
[55] Section 112.3251, F.S.

- Hospitals with closed drug delivery systems.
- Pharmacies.
- Drug manufacturers or wholesale distributors.
- Medical device manufacturers or suppliers.
- Prescribing individuals who receive prescription drugs or supplies directly from a drug manufacturer, wholesale distributor, or pharmacy.

The bill authorizes prescription drugs to be donated at the discretion of the centralized repository or a local repository if the drug:

- Is approved for medical use in the United States;
- Does not include a substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, F.S.;
- Is in its original sealed and tamper-evident packaging, and does not have any physical signs of tampering or adulteration;
- Requires storage at normal room temperature per the manufacturer or the United States Pharmacopeia, and has been stored according to these requirements;
- Packaging contains a lot number and expiration date of the drug, and will not expire within three months after the donation is made;
- Is not eligible for return to the Medicaid program for restocking; and
- Is not subject to a Federal Food and Drug Administration Risk Evaluation and Mitigation Strategy with Elements to Assure Safe Use.

The bill requires prescription drugs or supplies be donated at a repository and prohibits the use of a drop box and donation to a specific patient. Repositories must destroy any donated drug not eligible for dispensing and make a record of the destruction on a form developed by DOH.

The bill requires a licensed pharmacist employed by, or under contract with, a repository to inspect all donated prescription drugs and supplies to determine whether they are eligible for donation under the Program, have been adulterated or misbranded, and are safe and suitable for dispensing. The pharmacist must sign an inspection record affirming the eligibility of the prescription drug or supply, and attach the form to the inventory record. The pharmacist is not required to re-inspect the prescription drug if the inspected drugs are redistributed to another repository under the Program.

The bill requires repositories to store all donated prescription drugs and supplies in a secure storage area, separate from non-donated inventory, and under the environmental conditions required by the manufacturer or the U.S. Pharmacopeia. Repositories must quarantine donated drugs and supplies from dispensing inventory until they have been inspected and approved for dispensing by the pharmacist.

The bill requires local repositories to maintain an inventory of all donated prescription drugs and supplies they receive, and to notify the centralized repository within five days of receipt. The centralized repository maintains an inventory of all prescription drugs and supplies donated to the Program, including donations made at local repositories. The centralized repository may redistribute drugs and supplies to facilitate dispensing as needed throughout the state.

The bill makes participation in the Program voluntary and requires an eligible entity to notify the DOH of its intent to participate before accepting or dispensing any prescription drugs or supplies under the Program. The DOH shall establish in rule a form for such notification, to include, at a minimum:

- The name, street address, website, and telephone number of the local repository, and any state-issued license or registration number issued to the local repository, including the name of the issuing agency;
- The name and telephone number of the pharmacist employed by or under contract with the local repository responsible for the inspection of donated prescription drugs and supplies; and
- A statement signed and dated by the responsible pharmacist affirming that the local repository meets the eligibility requirements.

An eligible patient wishing to receive drugs or supplies under the Program may contact a local repository, and submit an intake collection form. This form, to be created by DOH in rule, shall include, at a minimum:

- The name, street address, and telephone number of the eligible patient;
- The specific basis for eligibility, which must be indigent, uninsured, or underinsured, as defined in the Program;[56] and
- A statement signed and dated by the eligible patient affirming that he or she meets the eligibility requirements of the Program.

The bill requires local repositories to collect an executed intake form from each eligible patient receiving drugs or supplies under the Program. Upon receiving a duly executed intake form, the local repository shall issue the eligible patient an identification card that is valid for up to one year. Local repositories must send a summary of the intake collection form data to the centralized repository within five days of receipt.

The bill permits licensed pharmacists and those health care practitioners already authorized by law to dispense prescription drugs and supplies in Florida to do so under the Program. Prior to dispensing a prescription drug or supply to an eligible patient, the dispenser must:

- Verify that the patient is eligible to receive donations under the Program, either through a Program identification card or a duly executed intake collection form; and
- Inspect the donated prescription drug or supply to confirm it is still eligible for dispensing under the Program.

The bill prohibits repositories from reselling drugs, submitting claims, or otherwise seeking reimbursement from any public or private third-party payor for donated drugs or supplies dispensed under the Program. However, the dispensing facility may charge a nominal handling fee, to be determined by the DOH in rule.

In the event of a prescription drug recall, the bill requires a local or centralized repository to:

[56] The bill defines "indigent" as persons with an income below 200 percent of the federal poverty level, "uninsured" as persons who have no third-party insurance and are not eligible under Medicaid or any other federal program, and "underinsured" as persons who have third-party insurance or are eligible under Medicaid or other federal program, but have exhausted these benefits or do not have prescription drug coverage for the drug prescribed.

- Have an established protocol to notify recipients of the drug;
- Destroy all of the recalled prescription drugs in the repository; and
- Complete a destruction information form for all donated prescription drugs that were destroyed.

The bill requires local repositories to maintain records of all prescription drugs and supplies accepted, donated, dispensed, distributed, or destroyed under the Program. Local repositories must submit these records quarterly to the centralized repository for data collection and the centralized repository submits these records and the collected data in annual reports to the DOH.

The bill requires the DOH to maintain a registry on its website of all available drugs and supplies, including the name, strength, available quantity, and expiration date of each drug and supply, as well as the contact information for the repositories where it is available. The DOH is required to maintain a registry on its website of all participating local repositories, to include each repository's name, address, website, and telephone number.

The bill grants immunity from civil or criminal liability, and professional disciplinary actions, to a donor or participant relating to activities under the Program. Additionally, a pharmaceutical manufacturer who exercises reasonable care is not liable for any claim or injury arising from the transfer of prescription drugs under the Program.

The bill requires the dispenser to provide written notification to the patient, or his or her legal representative, before dispensing a prescription drug that the drug was donated to the Program, the dispenser is not liable for any injury, death, or loss related to the dispensing of the drug, and the requirement of a nominal handling fee.

The bill authorizes the DOH to establish a direct-support organization (DSO) to provide assistance, funding, and promotional support for the activities authorized for the Program. The DSO is repealed on October 1, 2023, unless reviewed and saved from repeal by the Legislature.

The bill provides rulemaking authority to the DOH to administer the Program and establish the DSO.

Section 2 amends s. 252.36(5), F.S., to allow the Governor to waive the patient eligibility requirements of the Program during a declared state of emergency.

Section 3 provides an effective date of July 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:

Participation in the program is voluntary. Those hospitals and nursing homes volunteering to participate in the program may incur costs associated with collecting, storing, and re-dispensing of donated prescription drugs. Those same hospitals and nursing homes may enjoy cost savings to the extent their patients may be receiving needed health care services on a more timely basis. Without such donations, some patients could return as sicker, more costly patients at a later date.

Hospitals and facilities participating in the program are permitted to recoup some costs through a small handling fee. Current state regulations permit a handling fee of up to 300 percent of the Medicaid dispensing fee or $15, whichever is less, for each cancer drug or supply dispensed.[57]

C. Government Sector Impact:

The DOH will experience a significant increase in workload to administer the program. The DSO established under the bill is responsible for collecting the necessary funds for the DOH to administer the program effectively. The DOH will need to submit a legislative budget request for the Legislature to appropriate an indeterminate, yet significant, amount of general revenue funds to support the Program if the DSO is unsuccessful in collecting the required resources.

Public facilities that elect to participate in the program will face similar costs associated with collecting, storing, and dispensing the prescription drugs. Likewise, these public facilities may enjoy additional savings through the participation of the uninsured or underinsured from their communities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[57] Rule 61N-1.026(5), F.A.C.

VIII. Statutes Affected:

This bill substantially amends section 252.36 of the Florida Statutes.

This bill creates section 465.1902 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 February 14, 2018:
The committee substitute:

- Eliminates the expansion of the Cancer Drug Donation Program and creates the Prescription Drug Donation Repository Program (Program) within the Department of Health (DOH) to facilitate the donation and distribution of prescription drugs and supplies to eligible patients in the state.
- Establishes eligibility criteria to donate, dispense, and receive prescription drugs under the program.
- Provides inspection and storage requirements for donated prescription drugs.
- Authorizes the Governor to waive the patient eligibility requirements of the Program during a declared state of emergency.

CS by Health Policy on December 5, 2017:
The CS amends the term "prescription drug" to exclude the donation of drugs to the program which fall under Schedules II through V of s. 803.03, F.S.

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 the Prescription Drug Donation Repository Program; creating s. 465.1902, F.S.; providing a short title; creating the Prescription Drug Donation Repository Program within the Department of Health; providing purpose; authorizing the department to contract with a third party to implement and administer the program; providing definitions; specifying entities that are eligible donors; providing criteria for eligible donations; prohibiting donations to specific patients; providing that certain prescription drugs eligible for return to stock must be credited to Medicaid under specified conditions and are not program eligible; prohibiting the donation of certain drugs pursuant to federal restrictions; authorizing repositories to refuse to accept donations of prescription drugs or supplies; providing inspection, inventory, and storage requirements for centralized and local repositories; requiring inspection of donated prescription drugs and supplies by a licensed pharmacist; requiring a local repository to notify the centralized repository within a specified timeframe after receiving a donation of prescription drugs or supplies; authorizing a centralized repository to redistribute prescription drugs or supplies; requiring local repositories to notify the department regarding participation in the

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program; providing conditions for dispensing donated prescription drugs and supplies to eligible patients; requiring repositories to establish a protocol for notifying recipients of a prescription drug recall; providing for destruction of donated prescription drugs in the event of a drug recall; providing recordkeeping requirements; requiring the department to maintain and publish a registry of participating local repositories and available donated prescription drugs and supplies; specifying certain notice to patients; providing immunity from civil and criminal liability for participants under certain circumstances; authorizing the department to establish a direct-support organization to provide assistance funding and promotional support for program activities; specifying direct-support organization purposes and objectives; prohibiting such direct-support organization from lobbying and specifying that such direct-support organization is not a lobbying firm; specifying that the direct-support organization mush operate under contract with the department; specifying required contract terms; providing for the direct-support organization board of directors; specifying the membership of such board; specifying requirements relating to a direct-support organization's use of department property; specifying requirements for the deposit of funds by the direct-support organization; providing for audits of a direct-support organization; specifying a repeal,

unless reviewed and saved from repeal by the Legislature on a specified date; requiring the department to adopt rules; amending s. 252.36, F.S.; authorizing the Governor to waive the patient eligibility requirements of s. 465.1902, F.S., during a declared state of emergency; providing an effective date.

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

Section 1. Section 465.1902, Florida Statutes, is created to read:

465.1902 Prescription Drug Donation Repository Program.—

(1) SHORT TITLE.—This section may be cited as the "Prescription Drug Donation Repository Program Act."

(2) PRESCRIPTION DRUG DONATION REPOSITORY PROGRAM.—The Prescription Drug Donation Repository Program is created within the Department of Health for the purpose of authorizing and facilitating the donation of prescription drugs and supplies to eligible patients. The department may contract with a third party to implement and administer the program.

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

(a) "Centralized repository" means a distributor permitted pursuant to chapter 499 which is approved by the department or the contractor to accept, inspect, inventory, and distribute donated drugs and supplies under this section.

(b) "Closed drug delivery system" means a system in which the actual control of the unit-dose medication package is maintained by the facility rather than by the individual

patient.

(c) "Contractor" means the third-party vendor approved by the department to implement and administer the program.

(d) "Controlled substance" means any substance listed under Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03.

(e) "Department" means Department of Health.

(f) "Direct-support organization" means an entity that is established pursuant to s. 20.058 and is:

1. A Florida corporation not for profit incorporated under chapter 617, exempted from filing fees, and approved by the Department of State.

2. Organized and operated to conduct programs and activities; raise funds and request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, and invest, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures or provide funding to or for the direct or indirect benefit of the program.

(g) "Dispenser" means a dispensing health care practitioner or pharmacist licensed to dispense medicinal drugs in the state.

(h) "Donor" means an entity that meets the requirements of subsection (4).

(i) "Eligible patient" means a Florida resident who is indigent, uninsured, or underinsured and has a valid prescription for a prescription drug or supply that is eligible for dispensing under the program.

(j) "Free clinic" means a clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of

charge to all low-income recipients.

(k) "Health care practitioner" or "practitioner" means a practitioner licensed under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, chapter 465, or chapter 466.

(l) "Indigent" means a person with an income that is below 200 percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services.

(m) "Local repository" means a health care practitioner's office, a pharmacy, a hospital with a closed drug delivery system, a nursing home facility with a closed drug delivery system, a free clinic, or a nonprofit health clinic that is licensed or permitted to dispense medicinal drugs in the state.

(n) "Nonprofit health clinic" means a nonprofit legal entity that provides medical care to patients who are indigent, uninsured, or underinsured, including, but not limited to, a federally qualified health center as defined in 42 U.S.C. s. 1396d(l)(2)(B) and a rural health clinic as defined in 42 U.S.C. s. 1396d(l)(1).

(o) "Nursing home facility" has the same meaning as in s. 400.021(12).

(p) "Prescriber" means a prescribing physician, prescribing practitioner, or other health care practitioner authorized by the laws of this state to prescribe medicinal drugs.

(q) "Prescription drug" has the same meaning as defined in s. 465.003(8), but does not include controlled substances or cancer drugs donated under s. 499.029.

(r) "Program" means the Prescription Drug Donation Repository Program created by this section.

(s) "Supplies" means any supply used in the administration of a prescription drug.

(t) "Tamper-evident packaging" means a package that has one or more indicators or barriers to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred.

(u) "Underinsured" means a person who has third-party insurance or is eligible to receive prescription drugs or supplies through the Medicaid program or any other prescription drug program funded in whole or in part by the Federal Government, but has exhausted these benefits or does not have prescription drug coverage for the drug prescribed.

(v) "Uninsured" means a person who has no third-party insurance and is not eligible to receive prescription drugs or supplies through the Medicaid program or any other prescription drug program funded in whole or in part by the Federal Government.

(4) DONOR ELIGIBILITY.—The program may only accept a donation of a prescription drug or supply from:

(a) Nursing home facilities with closed drug delivery systems.

(b) Hospices that have maintained control of a patient's prescription drug.

(c) Hospitals with closed drug delivery systems.

(d) Pharmacies.

(e) Drug manufacturers or wholesale distributors.

(f) Medical device manufacturers or suppliers.

(g) Prescribers who receive prescription drugs or supplies directly from a drug manufacturer, wholesale distributor, or

pharmacy.

(5) PRESCRIPTION DRUGS AND SUPPLIES ELIGIBLE FOR DONATION.—

(a) All prescription drugs and supplies that have been approved for medical use in the United States and meet the criteria for donation established by this section may be accepted for donation under the program.

(b) The centralized repository or a local repository may accept a prescription drug only if:

1. The drug is in its original sealed and tamper-evident packaging. Single-unit-dose drugs may be accepted if the single-unit-dose packaging is unopened.

2. The drug requires storage at normal room temperature per the manufacturer or the United States Pharmacopeia.

3. The drug has been stored according to manufacturer or United States Pharmacopeia storage requirements.

4. The drug does not have any physical signs of tampering or adulteration and there is no reason to believe that the drug is adulterated.

5. The packaging does not have any physical signs of tampering, misbranding, deterioration, compromised integrity, or adulteration.

6. The packaging contains the lot number and expiration date of the drug. If the lot number is not retrievable, all specified medications must be destroyed in the event of a recall.

7. The drug has an expiration date that is more than 3 months after the date that the drug was donated.

(c) The central repository or a local repository may only accept supplies that are in their original, unopened, sealed

packaging and have not been adulterated or misbranded.

(d) Prescription drugs and supplies may be donated on the premises of the centralized repository or a local repository to a person designated by the repository. A drop box may not be used to accept donations.

(e) Prescription drugs or supplies may not be donated to a specific patient.

(f) Prescription drugs billed to and paid for by Medicaid in long-term care facilities which are eligible for return to stock under federal Medicaid regulations must be credited to Medicaid and are not eligible for donation under the program.

(g) Prescription drugs that are subject to a Federal Food and Drug Administration Risk Evaluation and Mitigation Strategy with Elements to Assure Safe Use are not eligible for donation under the program.

(h) Nothing in this section requires the central repository or a local repository to accept a donation of a prescription drug or supplies.

(6) INSPECTION AND STORAGE.—

(a) A licensed pharmacist employed by or under contract with the centralized repository or a local repository shall inspect donated prescription drugs and supplies to determine whether the donated prescription drugs or supplies:

1. Are eligible for donation under the program;

2. Have been adulterated or misbranded; and

3. Are safe and suitable for dispensing.

(b) The pharmacist who inspects the donated prescription drugs or supplies shall sign an inspection record on a form prescribed by the department and adopted in rule verifying that

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the criteria of paragraph (a) have been met and attach such record to the copy of the inventory record. If a local repository receives drugs and supplies from the centralized repository, the local repository is not required to reinspect the drugs and supplies.

(c) The centralized repository and local repositories shall store donated prescription drugs and supplies in a secure storage area under the environmental conditions specified by the manufacturer or United States Pharmacopeia for the prescription drugs or supplies being stored. Donated prescription drugs and supplies may not be stored with nondonated inventory. A local repository shall quarantine any donated prescription drugs or supplies from all dispensing stock until the donated prescription drugs or supplies are inspected and approved for dispensing under the program.

(d) A local repository shall maintain an inventory of all donated prescription drugs or supplies it receives. Such inventory shall be recorded on a form prescribed by the department and adopted in rule.

(e) A local repository shall notify the centralized repository within 5 days after receipt of any donation of prescription drugs or supplies to the program. The notification shall be on a form prescribed by the department and adopted by rule.

(f) The centralized repository shall maintain an inventory of all prescription drugs and supplies donated to the program.

(g) The centralized repository may redistribute prescription drugs and supplies to facilitate dispensing to either the centralized repository or to a local repository, as

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needed.

(7) LOCAL REPOSITORY NOTICE OF PARTICIPATION.—

(a) A local repository must notify the department of its intent to participate in the program before accepting or dispensing any prescription drugs or supplies pursuant to this section. The notification shall be on a form prescribed by the department and adopted by rule and must, at a minimum, include:

1. The name, street address, website, and telephone number of the local repository and any state-issued license or registration number issued to the local repository, including the name of the issuing agency.

2. The name and telephone number of the pharmacist employed by or under contract with the local repository who is responsible for the inspection of donated prescription drugs and supplies.

3. A statement signed and dated by the responsible pharmacist affirming that the local repository meets the eligibility requirements of this section.

(b) A local repository may withdraw from participation in the program at any time by providing written notice to the department or contractor on a form prescribed by the department and adopted by rule. The department shall adopt rules addressing the disposition of any prescription drugs in the possession of the local repository.

(8) DISPENSING.—

(a) Each eligible patient without a program identification card must submit an intake collection form to a local repository before receiving prescription drugs or supplies under the program. The form shall be prescribed by the department and

adopted by rule and, at a minimum, must include:

1. The name, street address, and telephone number of the eligible patient.

2. The basis for eligibility, which must specify that the patient is indigent, uninsured, or underinsured.

3. A statement signed and dated by the eligible patient affirming that he or she meets the eligibility requirements of this section.

(b) A local repository shall collect a signed and dated intake collection form from each eligible patient receiving prescription drugs or supplies under the program. The local repository must issue a program identification card upon receipt of a duly executed intake collection form. The program identification card is valid for 1 year after issuance and must be in a form prescribed by the department and adopted in rule.

(c) A local repository must send a summary of the intake collection form data to the centralized pharmacy within 5 days after receipt of a duly executed intake collection form.

(d) A dispenser may only dispense a donated prescription drug or supplies, if available, to an eligible patient with a program identification card or a duly executed intake collection form.

(e) A dispenser shall inspect the donated prescription drugs or supplies prior to dispensing such drugs or supplies.

(f) A dispenser may provide dispensing and consulting services to an eligible patient.

(g) Donated prescription drugs and supplies may not be sold or resold under this program.

(h) A dispenser of donated prescription drugs or supplies

may not submit a claim or otherwise seek reimbursement from any public or private third-party payor for donated prescription drugs or supplies dispensed to any patient under this program. However, a repository may charge a nominal handling fee, established by department rule, for the preparation and dispensing of prescription drugs or supplies under the program.

(i) A local repository that receives donated prescription drugs or supplies may, with authorization from the centralized repository, distribute the prescription drugs or supplies to another local repository.

(9) RECALL AND DESTRUCTION OF PRESCRIPTION DRUGS AND SUPPLIES.—

(a) The centralized repository and a local repository shall be responsible for drug recalls and shall have an established protocol to notify recipients in the event of a prescription drug recall.

(b) Local repositories shall destroy all of the recalled or expired prescription drugs or prescription drugs that are not suitable for dispensing in the repository and complete a destruction information form for all donated prescription drugs destroyed, in accordance with rules adopted by the department.

(10) RECORDKEEPING.—

(a) Local repositories shall maintain records of prescription drugs and supplies that were accepted, donated, dispensed, distributed, or destroyed under the program.

(b) All records required to be maintained as a part of the program shall be maintained in accordance with any applicable practice acts. Local repositories shall submit these records quarterly to the centralized repository for data collection, and

the centralized repository shall submit these records and the collected data in annual reports to the department.

(11) REGISTRIES AND FORMS.—

(a) The department shall establish and maintain registries of all local repositories and available drugs and supplies under the program. The registry of local repositories must include the repository's name, address, website, and telephone number. The registry of available drugs and supplies must include the name, strength, available quantity, and expiration date of the drug or supply and the name and contact information of the repositories where such drug or supply is available. The department shall publish the registries on its website.

(b) The department shall publish all forms required by this section on its website.

(12) IMMUNITY.—

(a) Any donor of prescription drugs or supplies, or any participant in the program, who exercises reasonable care in donating, accepting, distributing, or dispensing prescription drugs or supplies under the program, and the rules adopted pursuant thereto, is immune from civil or criminal liability and from professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(b) A pharmaceutical manufacturer who exercises reasonable care is not liable for any claim or injury arising from the transfer of any prescription drug under this section, including but not limited to, liability for failure to transfer or communicate product or consumer information regarding the transferred drug, including the expiration date of the

transferred drug.

(13) NOTICE TO PATIENTS.-Before dispensing a prescription drug that has been donated under this program, the dispenser must provide written notification to the patient, or to his or her legal representative, receipt of which must be acknowledged in writing, that:

(a) The prescription drug was donated to the program;

(b) The donors and participants in the program are granted certain immunities as described in subsection (12); and

(c) The patient may not be required to pay for the prescription drug, except for a nominal handling fee which may not exceed the amount established by department rule.

(14) DIRECT-SUPPORT ORGANIZATION.-The department may establish a direct-support organization to provide assistance, funding, and promotional support for the activities authorized for the program.

(a) *Purposes and objectives*.-The purposes and objectives of the direct-support organization of the program must be consistent with the goals of the department, in the best interest of the state, and in accordance with the adopted goals and mission of the department.

(b) *Prohibition against lobbying*.-The direct-support organization is not considered a lobbying firm within the meaning of s. 11.045. All expenditures of the direct-support organization must be used for the program. No expenditures of the direct-support organization may be used for the purpose of lobbying as defined in s. 11.045.

(c) *Contract*.—The direct-support organization shall operate under a written contract with the department. The contract must

provide for a submission by the direct-support organization to the department, by each August 1, and posting on the direct-support organization's and department's websites, the following information:

1. The articles of incorporation and bylaws of the direct-support organization as approved by the department.

2. An annual budget for the approval of the department.

3. The code of ethics of the direct-support organization.

4. The statutory authority or executive order that created the direct-support organization.

5. A brief description of the direct-support organization's mission and any results obtained by the direct-support organization.

6. A brief description of the direct-support organization's plans for the next 3 fiscal years.

7. A copy of the direct-support organization's most recent federal Internal Revenue Service Return Organization Exempt from Income Tax form (Form 990).

8. Certification by the department that the direct-support organization is complying with the terms of the contract and operating in a manner consistent with the goals and purposes of the department and the best interest of the program and the state. Such certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

9. The reversion, without penalty, of moneys and property held in trust by the direct-support organization for the benefit of the program to the state if the department ceases to exist; or reversion to the department if the direct-support

organization is no longer approved to operate or ceases to exist.

10. The fiscal year of the direct-support organization, which must begin on July 1 of each year and end on June 30 of the following year.

11. The disclosure of material provisions of the contract, and the distinction between the department and the direct-support organization, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.

12. All prescription drugs solicited by the direct-support organization to be distributed to the centralized repository or a local repository. The direct-support organization may not possess any prescription drugs on behalf of the program.

(d) *Board of directors.*—The State Surgeon General shall appoint a board of directors of the direct-support organization. The board of directors shall consist of at least 5 members, but not more than 15 members, who serve at the pleasure of the State Surgeon General. The board members must elect a chair from among its members. Board members must serve without compensation but may be entitled to reimbursement of travel and per diem expenses in accordance with s. 112.061, if funds are available for this purpose.

(e) *Use of property.*—The department may allow, without charge, appropriate use of fixed property, facilities, and personnel services of the department by the direct-support organization, subject to this subsection. For the purposes of this paragraph, the term "personnel services" includes full-time or part-time personnel, as well as payroll processing services.

1. The department may prescribe any condition with which the direct-support organization must comply in order to use fixed property or facilities of the department.

2. The department may not permit the use of any fixed property or facilities of the department by the direct-support organization if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

3. The department shall adopt rules prescribing the procedures by which the direct-support organization is governed and any conditions with which a direct-support organization must comply to use property or facilities of the department.

(f) *Deposit of funds.*—Any moneys may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the contract with the department.

(g) *Use of funds.*-Funds designated for the direct-support organization must be used for the enhancement of the projects of the program and used in a manner consistent with that purpose. Any administrative costs of running and promoting the purposes of the corporation or program must be paid by private funds.

(h) *Audit.*—The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

(i) *Repeal.*—This subsection shall stand repealed on October 1, 2023, unless reviewed and saved from repeal by the Legislature.

(15) RULEMAKING.—The department shall adopt rules necessary to implement the requirements of this section. When applicable, the rules may provide for the use of electronic forms,

recordkeeping, and meeting by teleconference.

Section 2. Paragraph (o) is added to subsection (5) of section 252.36, Florida Statutes, to read:

252.36 Emergency management powers of the Governor.—

(5) In addition to any other powers conferred upon the Governor by law, she or he may:

(o) Waive the patient eligibility requirements of s. 465.1902.

Section 3. This act shall take effect July 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 710
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Book
SUBJECT:	Prescription Drug Donation Program
DATE:	February 27, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	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 710 creates the Prescription Drug Donation Repository Program (Program) within the Department of Health (DOH) to facilitate the donation and distribution of prescription drugs and supplies to eligible patients in the state. The Program:

- Permits Florida residents with valid prescriptions who are either indigent, uninsured, or underinsured to receive donated prescription drugs and supplies under the Program.
- Limits entities that may donate prescription drugs to those that can ensure the drugs have been maintained entirely by licensed or permitted professionals and not by patients.
- Limits dispensing of prescription drugs under the Program to persons who are licensed, registered, or otherwise permitted by state law.
- Establishes eligibility criteria for prescription drugs donated to the Program.
- Provides procedures for inventorying, storing, dispensing, recalling, and destroying prescription drugs under the Program.
- Provides recordkeeping and reporting requirements for participating facilities.
- Requires DOH to maintain and publish on its website registries of all participating facilities and available donated drugs and supplies.
- Creates a direct-support organization (DSO) to provide funding for the Program.
- Requires DOH to adopt rules necessary to implement the Program.

The bill amends s. 252.36(5), F.S., to allow the Governor to waive the patient eligibility requirements of the Program during a declared state of emergency.

The DOH will experience an increase in workload to administer the Program; however, these costs should be absorbed through funding collected by the DSO in support of the Program.

The bill is effective July 1, 2018.

II. Present Situation:

State Prescription Drug Donation and Reuse Programs

State prescription drug donation and reuse programs have been in effect for two decades beginning with a pilot program in Georgia in 1997.[1] Such drug donation and reuse programs permit unused prescription or non-prescription drugs to be donated and re-dispensed to patients within certain federal guidelines. More than 38 states have passed laws authorizing such programs; however, many are not currently operational.[2] Georgia's program started with a prescription drug reuse program only in long-term care facilities and has been expanded to a collection and donation program that accepts prescription and non-prescription drugs.[3]

Pharmaceutical donation programs and reuse programs involve the voluntary collection of donated, unused prescription and non-prescription drugs from patients. States vary in the types of drugs and supplies that are accepted, the number and types of sites that are considered eligible locations where patients or donors may deposit donations, participant eligibility requirements, and the dispensing fees for the donated drugs. Generally, the drugs are not controlled substances. Some programs, such as Florida's, are limited to only cancer treatment drugs. Twelve other states besides Florida - Colorado, Kentucky, Michigan, Minnesota, Montana, Nebraska, Nevada, Ohio, Pennsylvania, Utah, Washington, and Wisconsin - have prescription drug donation and reuse programs limited to only cancer treatment drugs.

Pharmacies, charitable clinics, and hospitals are locations where such donations are accepted. In Florida's Cancer Drug Donation Program,[4] only Class II hospital pharmacies that elect or volunteer to participate in the program are eligible to accept donations of cancer drugs from designated individuals or entities.[5]

Individuals may be required to meet certain eligibility requirements beyond a cancer diagnosis to participate in the donation program such as proof of state residency (Minnesota), lack of access to other insurance coverage, or Medicaid ineligibility (Florida). Dispensing fees are set based on a maximum relative threshold above the Medicaid dispensing fee or capped at an absolute dollar amount that typically ranges from $10 to $15.

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[1] National Conference of State Legislatures, *State Prescription Drug Return, Reuse and Recycling Laws* (March 31, 2017), http://www.ncsl.org/research/health/state-prescription-drug-return-reuse-and-recycling.aspx (last visited Nov. 28, 2017).
[2] *Supra* note 1.
[3] GA. CODE ANN. § 31-8-301-304 (2017).
[4] Section 499.029, F.S.
[5] *See* s. 465.019, F.S. Class II institutional pharmacies are those institutional pharmacies that employ the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to the patients of that institution, for use on the premises of that institution.

The statutory provisions of many pharmaceutical donation programs have several common requirements:

- No controlled substances are accepted as donations;
- No adulterated or misbranded medications are allowed;
- All pharmaceuticals must be checked by a pharmacist prior to being dispensed;
- Pharmaceuticals must not be expired and most pharmaceuticals must have at least six months or longer before expiration;
- All pharmaceuticals must be unopened and in original, sealed, tamper-evident packaging; and
- Liability protection is assured for both donors and recipients.[6]

Most states permit the donation of any non-controlled substance to a designated medical facility, clinic, or pharmacy that has elected to participate in the program. Twenty states have operational repository programs – either cancer drug programs or broader collection programs – including states such as Iowa, which has served over 70,000 patients and re-distributed $15 million in donated supplies since 2007.[7] The Iowa program is limited to residents with incomes at or below 200 percent of the federal poverty level (FPL), or $49,200 for a family of four under the current guidelines, who are uninsured or underinsured, and are eligible to receive the donated medications and supplies.[8] The Iowa program accepts donations from any organization or individual in the country with the medication provided in its sealed or original, tamper-resistant packaging. Any pharmacy or medical facility with authorization to dispense under Iowa administrative rules may then re-dispense the donated medication or supplies.[9]

Wyoming has also had a long-running Medication Donation Program. The state's program filled over 150,000 prescriptions since its inception in 2007 and provided more than $2.4 million worth of donated prescriptions in 2016.[10] Assistance under the program is time-limited and recipients must have incomes under 200 percent of the FPL, and be without prescription insurance or Medicaid coverage. A dispensing site may also charge a recipient up to $10 per prescription to cover dispensing fees. Controlled substances are not covered in the program.[11]

Florida Cancer Drug Donation Program

The Florida Cancer Drug Donation Program (CDDP) was created in 2006[12] and is administratively housed within the DBPR. The CDDP allows eligible donors to donate cancer drugs and related supplies to participating facilities that may dispense the donations to eligible cancer patients. Eligible donors include patients, patient representatives, health care facilities,

[6] *Supra* note 1.
[7] *Supra* note 1.
[8] Iowa Department of Public Health, *SafeNetRx Program*, https://idph.iowa.gov/ohds/rural-health-primary-care/repository, (last visited Nov. 28, 2017).
[9] *Id.*
[10] Wyoming Department of Health, *Wyoming Medication Donation Program*, https://health.wyo.gov/healthcarefin/medicationdonation/ (last visited Nov. 28, 2017).
[11] *Id.*
[12] Chapter 2006-310, Laws of Fla. (creating s. 499.029, effective July 1, 2006). It was originally created within the Department of Health, but was part of a programmatic transfer by the 2010 Legislature to DBPR effective October 1, 2011.

nursing home facilities, hospices, or hospitals with a closed drug delivery system; or pharmacies, drug manufacturers, medical device manufacturers, or suppliers or wholesalers of drugs or supplies.[13]

Eligible participating facilities that may collect donations are limited to only those Florida hospital pharmacies with a Class II institutional pharmacy permit.[14] These pharmacies participate on a voluntary basis and must agree to accept, inspect, and dispense the donated drugs to the eligible patients in accordance with the statute. The DBPR is required to establish and maintain a participant facility registry for the CDDP. The law provides the content for the registry and a requirement for a website posting. Currently, 14 hospital pharmacies participate in the CDDP.[15]

Florida's recipient eligibility requirements limit participation to Florida residents who:

- Have been diagnosed with cancer; and
- Are ineligible for the Medicaid program, or any other prescription drug program funded in whole or in part by the federal government, or do not have third party insurance unless the benefits have been exhausted or a certain cancer drug is not covered.[16]

Donated drugs may only be prescribed by a licensed practitioner and dispensed by a licensed pharmacist to an eligible patient.[17] Dispensed drugs and supplies under the CDDP are not eligible for reimbursement by third parties, either public or private. However, the facility may charge the recipient of the donated drug a handling fee of no more than 300 percent of the Medicaid dispensing fee or no more than $15, whichever is less, for each cancer drug that is dispensed.[18]

The DBPR, Division of Drugs, Devices, and Cosmetics, maintains a list of available donated medications on its website; however, no cancer medications are currently reported on the list.[19] As of November 2017, the DBPR does not require the participating facilities to report the medications that are available for inclusion on the CDDP website or the number of donated drugs that have been administered.[20] A facility is required to maintain its data for three years.[21]

The CDDP will only accept drugs if:

- The drug expires at least six months after the date of donation and the drug's tamper-resistant packaging is intact;
- The drug is in its original, unopened, sealed, tamper-evident unit dose packaging with lot number and expiration date, if so packaged; and
- The drug is not a substance listed on Schedule II, III, IV, or V of s. 893.03, F.S.[22]

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[13] Section 499.029(3)(c), F.S.
[14] Section 499.029(2)(e), F.S.
[15] Florida Department of Business and Professional Regulation, *Cancer Drug Donation Program Participation Report*, http://www.myfloridalicense.com/dbpr/ddc/documents/ParicipatingHospital.pdf (last visited Nov. 28, 2017).
[16] Rule 61N-1.026(1), F.A.C.
[17] Section 499.029(5), F.S.
[18] Section 409.029(7)(b), F.S. and Rule 61N-1.026(5), F.A.C.
[19] Florida Department of Business and Professional Regulation, *Medication Supply Availability List*.
[20] Email correspondence from Colton Madill, Department of Business and Professional Regulation (Nov. 29, 2017) (on file with the Senate Committee on Health Policy).
[21] *Id.*
[22] Rule 61N-1.026(6), F.A.C.

Under the act, a donor or a participant in the program who acts with reasonable care in donating, accepting, distributing, or dispensing prescription drugs or supplies is immune from civil or criminal liability or professional disciplinary action for any kind of injury, death, or loss relating to such activities.[23]

Regulation of Pharmacy

The DBPR is the state agency charged with the regulation and licensure of businesses and professionals.[24] Under the provisions of chapter 499, F.S., the Division of Drugs, Devices, and Cosmetics safeguards the health, safety, and welfare of the state's citizens from injury due to the use of adulterated, contaminated, and misbranded drugs, drug ingredients and cosmetics. The Division oversees: the CDDP; issuance and regulation of licensure and permits for drug manufacturers, wholesalers, and distributers; controlled substance reporting requirements for certain wholesale distributors; issuance and regulation of other permits and licenses; and the Drug Wholesale Distributor Advisory Council.[25]

The Florida Drug and Cosmetic Act (Act) is codified as ss. 499.001 – 499.081, F.S. The Act provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the Federal Food, Drug, and Cosmetic Act and that portion of the Federal Trade Commission Act which expressly prohibits the false advertisement of drugs, devices, and cosmetics. The Act provides definitions for what is considered a device, drug, and, specifically, a prescription drug.[26]

Chapter 465, F.S., governs the regulation of the practice of pharmacy by the Board of Pharmacy in the Department of Health. Section 465.019(2)(b), F.S., provides requirements for institutional pharmacies. "Class II institutional pharmacies" are those institutional pharmacies that employ the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to patients of that institution for use on the premises of that institution.

Section 465.015(2)(c), F.S., makes it unlawful for a pharmacist to sell or dispense drugs without first being furnished a prescription. Section 465.016(1)(l), F.S., prohibits a pharmacist from placing into stock any part of any prescription compounded or dispensed which is returned by the patient. Additionally, the Board of Pharmacy has adopted an administrative rule that prohibits a pharmacist from placing into the stock of any pharmacy any part of any prescription compounded or dispensed, which is returned by a patient, except as specified in the Board of Pharmacy rules.[27] There is an exception for a closed drug delivery system in which unit dose or

[23] Section 409.029(11), F.S.
[24] Section 20.165, F.S.
[25] Department of Business and Professional Regulation, *Division of Drugs, Devices, and Cosmetics*, http://www.myfloridalicense.com/dbpr/ddc/index.html (last visited Nov. 29, 2017).
[26] A "prescription drug" under s. 499.003(40) is defined as a "prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active ingredients subject to, defined by, or described by, s. 503(b) of the federal act or s. 465.003(8), s. 499.007(13), subsection (31), or subsection (47), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.
[27] Rule 64B16-28.118(2), F.A.C.

customized patient medication packages are dispensed to in-patients. The unused medication may be returned to the pharmacy for re-dispensing only if each unit dose or customized patient medication package is individually sealed and if each unit dose or the unit dose system – or the customized patient medication package container or the customized patient medication package unit of which it is clearly a part – is labeled with the name of the drug, dosage strength, manufacturer's control number, and expiration date, if any. In the case of controlled substances, such drugs may only be returned as permitted under federal law.[28] A "closed drug delivery system" means a system in which control of the unit-dose medication is maintained by the facility rather than by the individual patient. A "unit dose system" means a system in which all the individually sealed unit doses are physically connected as a unit.[29]

For nursing facility residents, s. 400.141(1)(d), F.S., requires a pharmacist licensed in Florida that is under contract with a nursing home to repackage a resident's bulk prescription medication that has been packaged by another pharmacist into a unit-dose system compatible with the system used by the nursing facility, if requested by the facility. In order to be eligible for the repacking service, the resident or the resident's spouse's prescription medication benefits must be covered through a former employer as part of his or her retirement benefits, a qualified pension plan as specified in s. 4972 of the Internal Revenue Code, a federal retirement program as specified under 5 C.F.R. part 831, or a long-term care policy as defined under specified state law. A pharmacist who correctly repackages and relabels the medication, and the nursing home who correctly administers the repackaged medication, cannot be held liable in any civil or administrative action arising from the repackaging. The pharmacist may charge a reasonable fee for costs of the repackaging.

A nursing home typically has a Class I institutional permit. This permit authorizes the nursing home to have patient-specific medications that have already been dispensed to the resident. Prescription drugs may not be dispensed in a Class I pharmacy.[30]

Federal Law and Regulations

The federal Controlled Substances Act (CSA) was enacted by Congress in 1970 and codified as 21 U.S.C. §801, et seq. The CSA regulates the manufacture and distribution of controlled substances in the United States. The federal Drug Enforcement Agency (DEA) is responsible for the enforcement of the CSA.

The CSA categorizes drugs into five "schedules" based on their potential for abuse and safety or dependence liability.[31] The CSA provides for specific dispensing requirements for controlled

[28] Rule 64B16-28-118(2), F.A.C.
[29] Rule 64B16-28-118(1), F.A.C.
[30] Section 465.019(2)(a), F.S.
[31] U.S. Department of Justice, Diversion Control Division, *Controlled Substance Security Manual*, https://www.deadiversion.usdoj.gov/pubs/manuals/sec/app_law.htm (last visited Nov. 28, 2017). Drugs classified as Schedule I are those that are considered to have no medical use in the United States and have a high abuse potential and include drugs such as heroin, LSD, and marijuana. Schedule II substances have a high abuse potential with severe psychological or physical dependency, but have accepted medical use. Examples of Schedule II drugs include opium, morphine, codeine, and oxycodone. Schedule III drugs have an abuse potential and dependency liability less than Schedule II with an accepted medical use. Schedule III drugs may also contain limited quantities of certain narcotic and non-narcotic drugs. Schedule IV drugs have an abuse potential and dependency liability less than those drugs in Schedule III and have an

substances, including written prescriptions, retention requirements, and refill restrictions, depending on the drug's schedule.[32] Prescriptions must also meet specific labeling and packaging requirements. For Schedule II, III, and IV drugs, the label must clearly contain a warning that it is a crime to transfer the drug to any person other than the patient.[33]

The CSA permits the delivery of controlled substances by an "ultimate user,"[34] who has lawfully obtained the drug, to a designated covered entity for disposal and destruction such as through a prescription drug take-back program.[35] An authorized covered entity is defined in federal law as:

- A specified law enforcement agency;
- A manufacturer, distributor, or reverse distributor of prescription medications;
- A retail pharmacy;
- A registered narcotic treatment program;
- A hospital or clinic with an onsite pharmacy;
- An eligible long-term care facility; or
- Any other entity authorized by the DEA to dispose of prescription medications.[36]

The last National Prescription Take Back Day sponsored by the DEA resulted in more than 912,305 pounds of expired, unused, and unwanted prescription drugs returned at 5,300 sites on November 7, 2017.[37] The goal of the take-back program is to prevent the diversion of unwanted drugs to misuse and abuse and to avoid the potential safety hazard of drugs flushed down the toilet.[38]

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organization (DSOs) are statutorily created non-profit organizations[39] authorized to carry out specific tasks in support of public entities or public causes.[40] 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.[41]

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accepted medical use and include drugs such as Valium, Xanax, and Darvon. The drugs in the fifth and final schedule, Schedule V, have an abuse potential less than those listed in Schedule IV, have an accepted medical use, and are often available without a prescription, including some for antitussive and antidiarrheal purposes.

[32] 21 U.S.C. §829 and 21 CFR §§1306.21 and 1306.22.

[33] 21 U.S.C. §825.

[34] An "ultimate user" is defined under 21 U.S.C. 802(27), as the person who has lawfully obtained, and who possesses, a controlled substance for his own use or the use of a member of his household or for an animal owned by him or by a member of his household.

[35] 21 U.S.C. 822a.

[36] *Id.*

[37] Drug Enforcement Administration, *Drug Enforcement Administration collects record number of unused pills as part of its 14th Prescription Drug Take Back Day* (November 7, 2017), https://www.dea.gov/divisions/hq/2017/hq110717.shtml (last visited Nov. 28, 2017).

[38] *Id.*

[39] Chapter 617, F.S.

[40] *E.g.*, ss. 1009.983 and 413.0111, F.S.

[41] *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.[42] Specifically, the law requires each CSO and DSO to annually submit the following information to the appropriate agency by August 1:[43]

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's ethics code; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.[44]

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.[45] If the organization maintains a website, the agency's website must provide a link to the organization's website.[46] 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.[47] 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.[48]

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information submitted by each CSO or DSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the CSO or DSO.[49]

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.[50]

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.[51] An independent certified public accountant in accordance with rules adopted by the Auditor General must

[42] Section 3, ch. 2014-96, L.O.F
[43] Section 20.058(1), F.S.
[44] 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.
[45] Section 20.058(2), F.S.
[46] *Id.*
[47] Section 20.058(4), F.S.
[48] *Id.*
[49] *Id.* at (3).
[50] *Id.* at (5).
[51] 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.

conduct the audit. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.[52] 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.[53]

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.[54] 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.[55]

Governor's Executive Powers

During a declared state of emergency, the Governor has extensive authority to act as he or she deems necessary. Section 252.36(1), F.S., provides, in part, that "in the event of an emergency beyond local control, the Governor…may assume" or delegate "direct operational control over all or any part of the emergency management functions within this state…" In addition, the Governor may "issue executive orders, proclamations, and rules" which "shall have the force and effect of law." Subsection (5) specifically authorizes the Governor to use all resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency.

The Governor is also directed to "take such action and give such direction to state and local law enforcement officers," and state health officials as may be "reasonable and necessary" to secure compliance with the State Emergency Management Act and the Florida Hazardous Materials Emergency Response and Community Right-To-Know Act in ch. 252, F.S.

A declared State of Emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.

III. Effect of Proposed Changes:

Section 1 creates s. 465.1902, F.S., to establish the Prescription Drug Donation Repository Program (Program) within the Department of Health (DOH). The purpose of the program is to authorize and facilitate the donation and distribution of prescription drugs and supplies to eligible patients through a system of local and centralized repositories. The DOH may contract with a third party to implement and administer the Program.

The bill authorizes the following individuals or entities to donate prescription drugs and supplies:

- Nursing home facilities with closed drug delivery systems.
- Hospices that have maintained control of a patient's prescription drug.

[52] Section 215.981(1), F.S.
[53] Section 11.45(3), F.S.
[54] 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.
[55] Section 112.3251, F.S.

- Hospitals with closed drug delivery systems.
- Pharmacies.
- Drug manufacturers or wholesale distributors.
- Medical device manufacturers or suppliers.
- Prescribing individuals who receive prescription drugs or supplies directly from a drug manufacturer, wholesale distributor, or pharmacy.

The bill authorizes prescription drugs to be donated at the discretion of the centralized repository or a local repository if the drug:

- Is approved for medical use in the United States;
- Does not include a substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, F.S.;
- Is in its original sealed and tamper-evident packaging, and does not have any physical signs of tampering or adulteration;
- Requires storage at normal room temperature per the manufacturer or the United States Pharmacopeia, and has been stored according to these requirements;
- Packaging contains a lot number and expiration date of the drug, and will not expire within three months after the donation is made;
- Is not eligible for return to the Medicaid program for restocking; and
- Is not subject to a Federal Food and Drug Administration Risk Evaluation and Mitigation Strategy with Elements to Assure Safe Use.

The bill requires prescription drugs or supplies be donated at a repository and prohibits the use of a drop box and donation to a specific patient. Repositories must destroy any donated drug not eligible for dispensing and make a record of the destruction on a form developed by DOH.

The bill requires a licensed pharmacist employed by, or under contract with, a repository to inspect all donated prescription drugs and supplies to determine whether they are eligible for donation under the Program, have been adulterated or misbranded, and are safe and suitable for dispensing. The pharmacist must sign an inspection record affirming the eligibility of the prescription drug or supply, and attach the form to the inventory record. The pharmacist is not required to re-inspect the prescription drug if the inspected drugs are redistributed to another repository under the Program.

The bill requires repositories to store all donated prescription drugs and supplies in a secure storage area, separate from non-donated inventory, and under the environmental conditions required by the manufacturer or the U.S. Pharmacopeia. Repositories must quarantine donated drugs and supplies from dispensing inventory until they have been inspected and approved for dispensing by the pharmacist.

The bill requires local repositories to maintain an inventory of all donated prescription drugs and supplies they receive, and to notify the centralized repository within five days of receipt. The centralized repository maintains an inventory of all prescription drugs and supplies donated to the Program, including donations made at local repositories. The centralized repository may redistribute drugs and supplies to facilitate dispensing as needed throughout the state.

The bill makes participation in the Program voluntary and requires an eligible entity to notify the DOH of its intent to participate before accepting or dispensing any prescription drugs or supplies under the Program. The DOH shall establish in rule a form for such notification, to include, at a minimum:

- The name, street address, website, and telephone number of the local repository, and any state-issued license or registration number issued to the local repository, including the name of the issuing agency;
- The name and telephone number of the pharmacist employed by or under contract with the local repository responsible for the inspection of donated prescription drugs and supplies; and
- A statement signed and dated by the responsible pharmacist affirming that the local repository meets the eligibility requirements.

An eligible patient wishing to receive drugs or supplies under the Program may contact a local repository, and submit an intake collection form. This form, to be created by DOH in rule, shall include, at a minimum:

- The name, street address, and telephone number of the eligible patient;
- The specific basis for eligibility, which must be indigent, uninsured, or underinsured, as defined in the Program;[56] and
- A statement signed and dated by the eligible patient affirming that he or she meets the eligibility requirements of the Program.

The bill requires local repositories to collect an executed intake form from each eligible patient receiving drugs or supplies under the Program. Upon receiving a duly executed intake form, the local repository shall issue the eligible patient an identification card that is valid for up to one year. Local repositories must send a summary of the intake collection form data to the centralized repository within five days of receipt.

The bill permits licensed pharmacists and those health care practitioners already authorized by law to dispense prescription drugs and supplies in Florida to do so under the Program. Prior to dispensing a prescription drug or supply to an eligible patient, the dispenser must:

- Verify that the patient is eligible to receive donations under the Program, either through a Program identification card or a duly executed intake collection form; and
- Inspect the donated prescription drug or supply to confirm it is still eligible for dispensing under the Program.

The bill prohibits repositories from reselling drugs, submitting claims, or otherwise seeking reimbursement from any public or private third-party payor for donated drugs or supplies dispensed under the Program. However, the dispensing facility may charge a nominal handling fee, to be determined by the DOH in rule.

In the event of a prescription drug recall, the bill requires a local or centralized repository to:

[56] The bill defines "indigent" as persons with an income below 200 percent of the federal poverty level, "uninsured" as persons who have no third-party insurance and are not eligible under Medicaid or any other federal program, and "underinsured" as persons who have third-party insurance or are eligible under Medicaid or other federal program, but have exhausted these benefits or do not have prescription drug coverage for the drug prescribed.

- Have an established protocol to notify recipients of the drug;
- Destroy all of the recalled prescription drugs in the repository; and
- Complete a destruction information form for all donated prescription drugs that were destroyed.

The bill requires local repositories to maintain records of all prescription drugs and supplies accepted, donated, dispensed, distributed, or destroyed under the Program. Local repositories must submit these records quarterly to the centralized repository for data collection and the centralized repository submits these records and the collected data in annual reports to the DOH.

The bill requires the DOH to maintain a registry on its website of all available drugs and supplies, including the name, strength, available quantity, and expiration date of each drug and supply, as well as the contact information for the repositories where it is available. The DOH is required to maintain a registry on its website of all participating local repositories, to include each repository's name, address, website, and telephone number.

The bill grants immunity from civil or criminal liability, and professional disciplinary actions, to a donor or participant relating to activities under the Program. Additionally, a pharmaceutical manufacturer who exercises reasonable care is not liable for any claim or injury arising from the transfer of prescription drugs under the Program.

The bill requires the dispenser to provide written notification to the patient, or his or her legal representative, before dispensing a prescription drug that the drug was donated to the Program, the dispenser is not liable for any injury, death, or loss related to the dispensing of the drug, and the requirement of a nominal handling fee.

The bill authorizes the DOH to establish a direct-support organization (DSO) to provide assistance, funding, and promotional support for the activities authorized for the Program. The DSO is repealed on October 1, 2023, unless reviewed and saved from repeal by the Legislature.

The bill provides rulemaking authority to the DOH to administer the Program and establish the DSO.

Section 2 amends s. 252.36(5), F.S., to allow the Governor to waive the patient eligibility requirements of the Program during a declared state of emergency.

Section 3 provides an effective date of July 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:

Participation in the program is voluntary. Those hospitals and nursing homes volunteering to participate in the program may incur costs associated with collecting, storing, and re-dispensing of donated prescription drugs. Those same hospitals and nursing homes may enjoy cost savings to the extent their patients may be receiving needed health care services on a more timely basis. Without such donations, some patients could return as sicker, more costly patients at a later date.

Hospitals and facilities participating in the program are permitted to recoup some costs through a small handling fee. Current state regulations permit a handling fee of up to 300 percent of the Medicaid dispensing fee or $15, whichever is less, for each cancer drug or supply dispensed.[57]

C. Government Sector Impact:

The DOH will experience a significant increase in workload to administer the program. The DSO established under the bill is responsible for collecting the necessary funds for the DOH to administer the program effectively. The DOH will need to submit a legislative budget request for the Legislature to appropriate an indeterminate, yet significant, amount of general revenue funds to support the Program if the DSO is unsuccessful in collecting the required resources.

Public facilities that elect to participate in the program will face similar costs associated with collecting, storing, and dispensing the prescription drugs. Likewise, these public facilities may enjoy additional savings through the participation of the uninsured or underinsured from their communities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[57] Rule 61N-1.026(5), F.A.C.

VIII. Statutes Affected:

This bill substantially amends section 252.36 of the Florida Statutes.

This bill creates section 465.1902 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 27, 2018:
The committee substitute:

- Eliminates the expansion of the Cancer Drug Donation Program and creates the Prescription Drug Donation Repository Program (Program) within the Department of Health (DOH) to facilitate the donation and distribution of prescription drugs and supplies to eligible patients in the state.
- Establishes eligibility criteria to donate, dispense, and receive prescription drugs under the program.
- Provides inspection and storage requirements for donated prescription drugs.
- Authorizes the Governor to waive the patient eligibility requirements of the Program during a declared state of emergency.

CS by Health Policy on December 5, 2017:
The CS amends the term "prescription drug" to exclude the donation of drugs to the program which fall under Schedules II through V of s. 803.03, F.S.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Book

588-01792-18 2018710c1

A bill to be entitled

An act relating to the Prescription Drug Donation Program; amending s. 499.029, F.S.; renaming the Cancer Drug Donation Program as the Prescription Drug Donation Program; authorizing the donation of prescription drugs, including cancer drugs, and supplies to eligible patients; revising definitions; authorizing nursing home facilities to participate in the program; providing an effective date.

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

Section 1. Section 499.029, Florida Statutes, is amended to read:

499.029 Prescription ~~Cancer~~ Drug Donation Program.—

(1) This section may be cited as the "Prescription ~~Cancer~~ Drug Donation Program Act."

(2) There is created a Prescription ~~Cancer~~ Drug Donation Program within the department for the purpose of authorizing and facilitating the donation of prescription ~~cancer~~ drugs and supplies to eligible patients.

(3) As used in this section:

(a) "Cancer drug" means a prescription drug that has been approved under s. 505 of the Federal Food, Drug, and Cosmetic Act and is used to treat cancer or its side effects or is used to treat the side effects of a prescription drug used to treat cancer or its side effects. The term ~~"Cancer drug"~~ does not include a substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03.

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(b) "Closed drug delivery system" means a system in which the actual control of the unit-dose medication package is maintained by the facility rather than by the individual patient.

(c) "Donor" means a patient or patient representative who donates prescription ~~cancer~~ drugs or supplies needed to administer prescription ~~cancer~~ drugs that have been maintained within a closed drug delivery system; health care facilities, nursing home facilities ~~homes~~, hospices, or hospitals with closed drug delivery systems; or pharmacies, drug manufacturers, medical device manufacturers or suppliers, or wholesalers of drugs or supplies, in accordance with this section. The term ~~"Donor"~~ includes a physician licensed under chapter 458 or chapter 459 who receives prescription ~~cancer~~ drugs or supplies directly from a drug manufacturer, wholesale distributor, or pharmacy.

(d) "Eligible patient" means a person who the department determines is eligible to receive prescription ~~cancer~~ drugs from the program.

(e) "Participant facility" means a hospital that operates a class II institutional ~~hospital~~ pharmacy or a nursing home facility licensed under part II of chapter 400 with a closed drug delivery system that has elected to participate in the program and that accepts donated prescription ~~cancer~~ drugs and supplies under the rules adopted by the department for the program.

(f) "Prescribing practitioner" means a physician licensed under chapter 458 or chapter 459 or any other medical professional with authority under state law to prescribe

prescription drugs ~~cancer medication~~.

(g) "Prescription drug" has the same meaning as provided in s. 499.003, and includes cancer drugs. The term does not include a substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03.

(h)~~(g)~~ "Program" means the Prescription ~~Cancer~~ Drug Donation Program created by this section.

(i)~~(h)~~ "Supplies" means any supplies used in the administration of a prescription ~~cancer~~ drug.

(4) Any donor may donate prescription ~~cancer~~ drugs or supplies to a participant facility that elects to participate in the program and meets criteria established by the department for such participation. Prescription ~~Cancer~~ drugs or supplies may not be donated to a specific ~~cancer~~ patient, and donated drugs or supplies may not be resold by the program. Prescription ~~Cancer~~ drugs billed to and paid for by Medicaid in long-term care facilities that are eligible for return to stock under federal Medicaid regulations shall be credited to Medicaid and are not eligible for donation under the program. A participant facility may provide dispensing and consulting services to individuals who are not patients of the hospital or nursing home facility.

(5) The prescription ~~cancer~~ drugs or supplies donated to the program may be prescribed only by a prescribing practitioner for use by an eligible patient and may be dispensed only by a pharmacist.

(6)(a) A prescription ~~cancer~~ drug may only be accepted or dispensed under the program if the drug is in its original, unopened, sealed container, or in a tamper-evident unit-dose

packaging, except that a prescription ~~cancer~~ drug packaged in single-unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened with tamper-resistant packaging intact.

(b) A prescription ~~cancer~~ drug may not be accepted or dispensed under the program if the drug bears an expiration date that is less than 6 months after the date the drug was donated or if the drug appears to have been tampered with or mislabeled as determined in paragraph (c).

(c) Prior to being dispensed to an eligible patient, the prescription ~~cancer~~ drug or supplies donated under the program shall be inspected by a pharmacist to determine that the drug and supplies do not appear to have been tampered with or mislabeled.

(d) A dispenser of donated prescription ~~cancer~~ drugs or supplies may not submit a claim or otherwise seek reimbursement from any public or private third-party payor for donated prescription ~~cancer~~ drugs or supplies dispensed to any patient under the program, and a public or private third-party payor is not required to provide reimbursement to a dispenser for donated prescription ~~cancer~~ drugs or supplies dispensed to any patient under the program.

(7)(a) A donation of prescription ~~cancer~~ drugs or supplies shall be made only at a participant facility. A participant facility may decline to accept a donation. A participant facility that accepts donated prescription ~~cancer~~ drugs or supplies under the program shall comply with all applicable provisions of state and federal law relating to the storage and dispensing of the donated prescription ~~cancer~~ drugs or supplies.

(b) A participant facility that voluntarily takes part in the program may charge a handling fee sufficient to cover the cost of preparation and dispensing of prescription ~~cancer~~ drugs or supplies under the program. The fee shall be established in rules adopted by the department.

(8) The department, upon the recommendation of the Board of Pharmacy, shall adopt rules to carry out the provisions of this section. ~~Initial rules under this section shall be adopted no later than 90 days after the effective date of this act.~~ The rules shall include, but not be limited to:

(a) Eligibility criteria, including a method to determine priority of eligible patients under the program.

(b) Standards and procedures for participant facilities that accept, store, distribute, or dispense donated prescription ~~cancer~~ drugs or supplies.

(c) Necessary forms for administration of the program, including, but not limited to, forms for use by entities that donate, accept, distribute, or dispense prescription ~~cancer~~ drugs or supplies under the program.

(d) The maximum handling fee that may be charged by a participant facility that accepts and distributes or dispenses donated prescription ~~cancer~~ drugs or supplies.

(e) Categories of prescription ~~cancer~~ drugs and supplies that the program will accept for dispensing; however, the department may exclude any drug based on its therapeutic effectiveness or high potential for abuse or diversion.

(f) Maintenance and distribution of the participant facility registry established in subsection (10).

(9) A person who is eligible to receive prescription ~~cancer~~

drugs or supplies under the state Medicaid program or under any other prescription drug program funded in whole or in part by the state, by any other prescription drug program funded in whole or in part by the Federal Government, or by any other prescription drug program offered by a third-party insurer, unless benefits have been exhausted, or a certain prescription ~~cancer~~ drug or supply is not covered by the prescription drug program, is ineligible to participate in the program created under this section.

(10) The department shall establish and maintain a participant facility registry for the program. The participant facility registry shall include the participant facility's name, address, and telephone number. The department shall make the participant facility registry available on the department's website to any donor wishing to donate prescription ~~cancer~~ drugs or supplies to the program. The department's website shall also contain links to prescription ~~cancer~~ drug manufacturers that offer drug assistance programs or free medication.

(11) Any donor of prescription ~~cancer~~ drugs or supplies, or any participant in the program, who exercises reasonable care in donating, accepting, distributing, or dispensing prescription ~~cancer~~ drugs or supplies under the program and the rules adopted under this section shall be immune from civil or criminal liability and from professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(12) A pharmaceutical manufacturer is not liable for any claim or injury arising from the transfer of any prescription ~~cancer~~ drug under this section, including, but not limited to,

liability for failure to transfer or communicate product or consumer information regarding the transferred drug, as well as the expiration date of the transferred drug.

(13) If any conflict exists between the provisions in this section and the provisions in this chapter or chapter 465, the provisions in this section shall control the operation of the Prescription ~~Cancer~~ Drug Donation Program.

Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on the Environment and Natural Resources, *Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Environmental Preservation and Conservation
Health Policy
Rules

SENATOR LAUREN BOOK
Democratic Leader Pro Tempore
32nd District

February 19, 2018

Chair Rob Bradley
Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Bradley,

I respectfully request that you place CS/SB 710, relating to Prescription Drug Donation Program, on the agenda of the Committee on Appropriations at your earliest convenience.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Senator Lauren Book
Senate District 32

cc: Mike Hansen, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
❒ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 740
INTRODUCER:	Appropriations Committee; Agriculture Committee; and Senator Stargel
SUBJECT:	Department of Agriculture and Consumer Services
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Fav/CS**
2.	Blizzard	Betta	AEN	**Recommend: Favorable**
3.	Blizzard	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 740 addresses various issues related to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). Specifically, the bill:

- Allows certain lands classified as agricultural for tax purposes to continue to be classified as such for five years after being damaged by a natural disaster. The assessment applies retroactively to lands damaged by a natural disaster that occurred on or after July 1, 2017;
- Provides that screened enclosed structures used in horticulture production for pest exclusion, when consistent with state or federal eradication or compliance agreements, have no separately assessable value for purposes of ad valorem taxation;
- Shifts the issuance of a local oyster harvesting license for Apalachicola Bay from the department to the City of Apalachicola;
- Removes the electronic payment mandate for pesticide registration payments;
- Codifies the State Agricultural Response Team within the department and assigns it certain duties;
- Prohibits comingling charitable and non-charitable funds collected through solicitation or sponsor sales and requires organizations to keep detailed records;
- Prohibits ringless direct-to-voicemail solicitation telephone calls under Florida's Do Not Call (DNC) statute and adds the opportunity for businesses to add their telephone numbers to the DNC list;
- Revises department sampling and analysis requirements for antifreeze;
- Allows for the lawful seizure of "skimming devices" by department inspectors;

- Revises application requirements and fees for brake fluid brands;
- Transfers responsibility for liquefied petroleum gas (LPG) insurance issues to the Commissioner of Agriculture instead of the Governor of Florida;
- Consolidates and reduces the number of LPG categories and expands the license period from one to three years;
- Eliminates the original and renewal LPG fee structure and replaces it with a new revenue neutral fee structure;
- Updates the dollar threshold for required reporting of LPG accidents from $1,000 to $3,000;
- Requires an LPG dealer to give a five day notice before discontinuing service or rendering a consumer's LPG equipment inoperable;
- Aligns provisions of the state livestock law with the federal Packers and Stockyards Act and makes failure to render payment for livestock to a seller an unfair or deceptive act;
- Extends the expiration date for seven weights, measures, and standards sections from July 1, 2020 to July 1, 2025;
- Defines the Commissioner of Agriculture's authority to waive fees during emergencies;
- Updates the Florida Seed Law in response to technological and federal regulatory changes;
- Authorizes the department to cover the cost of the initial Commercial Driver's License (CDL) examination fee for those Florida Forest Service employees whose positions entail operating CDL-requiring equipment; and
- Creates the "Government Impostor and Deceptive Advertisements Act" to prevent Florida consumers and businesses from being scammed by companies selling free government forms or mimicking government services.

The bill modifies several agricultural and consumer service activities resulting in a negative fiscal impact in the General Inspection Trust Fund. However, the trust fund can sustain the revenue reductions associated with the modifications. The department anticipates a reduction in expenditures associated with the transfer of the oyster harvesting license program to the City of Apalachicola that will offset a portion of the revenue reductions in the General Inspection Trust Fund. See Section V.

The Revenue Estimating Conference estimates the reduction in the assessment on screened enclosed structures used in horticulture production will reduce local ad valorem taxes by $1.9 million on a recurring basis beginning in Fiscal Year 2018-2019.

II. Present Situation:

The mission of the Department of Agriculture and Consumer Services (department) is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

The bill modifies several agricultural and consumer service activities under the department's jurisdiction.

Assessment of Agricultural Lands (Section 1)

Present Situation

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. The property appraiser annually determines the "just value" of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."

The Florida Constitution limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.[1] The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[2] 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. Agricultural land is one example of property that is assessed based on its current use rather than its fair market value.[3]

Currently, certain structures that are attached physically to the land are considered to be a part of the average yields per acre and have no separately assessable contributory (taxable) value.[4] These structures include:

- Irrigation systems, including pumps and motors;
- Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms; and
- Structures or improvements used in horticultural production for frost or freeze protection, which are consistent with the interim measures or best management practices adopted by the department.[5]

Effect of Proposed Changes

The bill amends s. 193.461(7), F.S., to allow agricultural lands that incur damage as a result of a natural disaster for which a state of emergency is declared, and which results in the halting of agricultural production, must continue to be classified as agricultural lands for five years following termination of the emergency declaration. However, if such lands are diverted from agricultural use to nonagricultural use during or after the five-year recovery period, such lands must be assessed at fair market value using the factors for deriving just valuation in s. 193.011, F.S. This provision applies retroactively to natural disasters that occurred on or after July 1, 2017.

[1] *See* FLA. CONST. art. VII, s. 4
[2] Section 193.011(2), F.S.
[3] FLA. CONST. art. VII, s. 4(a)
[4] Section 193.461(6)(c), F.S.
[5] Section 193.461(6)(c), F.S.

The bill also amends s. 193.461(6)(c), F.S., to provide that screened enclosed structures used in horticultural production for protection from pests and diseases or to comply with state or federal eradication or compliance agreements are considered a part of the average yields per acre and have no separately assessable value.

State Agricultural Response Team (Section 2)

Present Situation

Section 252.35, F.S., requires the Division of Emergency Management to prepare a statewide comprehensive emergency management plan (CEMP). The state CEMP is the master operations document in responding to all emergencies, and all catastrophic, major, and minor disasters.

The department facilitated the development of the State Agricultural Response Team (SART), along with other partners, with a mission dedicated to strengthening a coordinated incident response for the animal and agricultural sectors in the State of Florida. The SART's strategic imperatives are to:

- Support a multi-agency coordination group for state-level response activities for animal and agriculture issues;
- Develop and support an Incident Management Team with equipment and training;
- Develop and support response resources such as the Mobile Animal Response Equipment Units, College of Veterinary Medicine Veterinary Emergency Treatment Service, and Florida Veterinary Corps with funding and or training; and
- Develop and support county and regional outreach, training and information coordination in order to enhance local and regional response capabilities.

Currently, the SART is not expressly identified or addressed in statute.

Effect of Proposed Changes

The bill creates s. 252.3569, F.S., to establish the SART within the department. The bill provides that the duties and responsibilities of the SART include, but are not limited, to:

- Oversight of the emergency management functions with all agencies and organizations involved with the state's response activities related to animal, agricultural and vector issues;
- The development, training, and support of county agricultural response teams;
- Staffing the Emergency Support Function 17 at the State Emergency Operations Center; and
- Staffing activated local emergency operations centers as necessary.

This section of the bill codifies existing practice.

Emergency Transportation/Weight Loads (Section 3)

Present Situation

Section 316.565, F.S., currently authorizes the Governor to declare an emergency when a breakdown occurs in the normal public transportation facilities necessary in moving perishable food crops grown in this state. The Florida Department of Transportation (FDOT) may establish weight loads during such emergency for hauling perishable foods over the highways from the fields or packinghouses to the nearest available public transportation facility as circumstances

demand. The FDOT is required to designate special highway routes, *excluding* the interstate highway system, to facilitate the trucking and render any other assistance needed to expedite moving the perishables.

Effect of Proposed Changes

The bill amends s. 316.565, F.S., to replace the term "perishable food crops" with "agricultural products." This allows the Governor to declare an emergency when a breakdown occurs in the normal public transportation facilities necessary in moving agricultural products produced in the state.

The bill authorizes the FDOT to issue, and any law enforcement office authorized to enforce the traffic laws must accept, electronic verification of permits during such emergency. Permits issued under this directive are valid for up to 60 days; however, the validity of the permit may not exceed the period of the declared state of emergency or any extension thereof.

The legislative intent is also revised to supersede any existing laws when necessary to protect and save agricultural products, rather than to protect and save any perishable food crops grown in the state.

Apalachicola Bay Oyster Harvesting Licenses (Section 4)

Present Situation

Current law sets forth requirements for the Apalachicola Bay oyster harvesting license (license).[6] The license is administered by the department and is required for persons who harvest commercial quantities of oysters from Apalachicola Bay.

Proceeds from license fees are deposited in the General Inspection Trust Fund and, less reasonable administrative costs, used or distributed by the department for the following purposes in Apalachicola Bay:

- Relaying and transplanting live oysters.
- Shell planting to construct or rehabilitate oyster bars.
- Education programs for licensed oyster harvesters on oyster biology, aquaculture, boating and water safety, sanitation, resource conservation, small business management, marketing, and other relevant subjects.
- Research directed toward the enhancement of oyster production in the bay and the water management needs of the bay.

Effect of Proposed Changes

The bill transfers the license administrative responsibilities from the department to the City of Apalachicola. Specifically, the bill requires the City of Apalachicola to issue the license, and collect, deposit, and distribute the license fees. The bill requires the proceeds to be deposited into a trust account instead of the General Inspection Trust Fund, less reasonable administrative costs, used or distributed by the City of Apalachicola for the purposes listed in current law. However, instead of using the funds for the purpose of relaying and transplanting live oysters, the bill

[6] s. 379.361(5), F.S.

requires the City of Apalachicola to use or distribute the funds for an Apalachicola Bay oyster shell-recycling program.

Pesticide Registration Fees (Section 5)

Currently, payments of all pesticide registration fees are submitted electronically by using the department's website.[7] The bill removes the electronic submission requirement of payments allowing for alternate payment methods.

Solicitation of Funds (Sections 6 & 7)

Present Situation

Organizations that intend to solicit donations in Florida are required to register with the department pursuant to the Solicitation of Contributions Act (SCA).[8] The SCA contains basic registration, financial disclosure, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the department's registration requirements.[9]

Current law does not prohibit comingling or contain recordkeeping requirements, regarding charitable and non-charitable funds. According to the department, investigations of alleging misuse of charitably solicited funds are often made more challenging by the need to decouple charitable and non-charitable monies in the accounting records.[10]

Effect of Proposed Changes

The bill prohibits the comingling of contributions with noncharitable funds by charitable organizations and sponsors. The bill requires that each charitable organization, sponsor, professional fundraising consultant, and professional solicitor that collects or takes control or possession of contributions made for a charitable purpose keep accurate records and must not comingle contributions with noncharitable funds as specified in s. 496.415(19), F.S.

Water Vending Machines (Section 8)

Present Situation

Water vending machine applicants must submit forms to the department "in writing," thus prohibiting the use of digital applications. Additionally, the department issues serialized permit ID decals to approved vending machine owners.

Effect of Proposed Changes

The bill removes the requirements that an application for a water vending machine operating permit be made "in writing", and that the operating permit number be placed on each water

[7] s. 487.041(1)(i), F.S.
[8] ch. 496, F.S.
[9] ch. 496.406(1), F.S.
[10] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 Senate Bill 740.

vending machine. These changes allow for the electronic submission of water vending-machine application forms and the issuance of non-serialized decals.

Telephone Solicitation (Sections 9 & 10)

Present Situation

The federal Telephone Consumer Protection Act imposes restrictions on unsolicited advertisement to a telephone.[11] The state mirrors this provision statutorily and requires the department to maintain the state's Do Not Call list, also known as the "no sales solicitation calls" list.[12]

A "telephonic sales call" is defined as a telephone call or text message to a consumer for the purpose of soliciting a sale of, an extension of credit for, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

According to the department, advances in ringless communication technology allow telemarketers to directly delivery voicemail messages without causing a customer's phone to ring. The department believes that ringless communication constitutes a telephonic sales call under the state's Do Not Call statute. In the absence of a federal rule regarding this technological innovation, the department believes adding a state prohibition of ringless voicemails is necessary.

Effect of Proposed Changes

The bill expands consumer protections provided under the state's Do Not Call statute, prohibiting ringless direct-to-voicemail solicitation phone calls and requiring commercial telephone sellers to retain and make call records available.

The bill requires a commercial telephone seller to keep the following information for two years after the date the information first becomes part of the seller's business records:

- The name and telephone number of each consumer contacted by a telephone sales call;
- All express requests authorizing the telephone solicitor to contact the consumer; and
- Any script, outline, or presentation the applicant requires or suggests a salesperson use when soliciting, including sales information or literature to be provided by the commercial telephone seller to a salesperson and a consumer in connection with any solicitation.

The bill requires a telephone sales call solicitor to provide on the call recipient's caller ID, a telephone number that is capable of receiving calls and that can connect the call recipient to the telephone solicitor.

The bill also increases penalties for violations of the Do Not Call statute up to $10,000 for violations prosecuted administratively, and $10,000 or more for those prosecuted civilly.

[11] 47 U.S.C. § 227.
[12] s. 501.059(3), F.S.

Florida Antifreeze Act (Sections 11-14)

Each brand of antifreeze to be distributed in Florida must register with the department before distribution. The bill makes several changes to the state Antifreeze Act. The bill consolidates the definition of antifreeze to include all antifreeze-coolant, antifreeze and summer coolant, extends antifreeze permitting for up to 24-months, eliminates phased-out product affidavits, and removes the requirement for the department's internal testing.

The bill changes the registration application timeframe from annual to both annual and biennial, and requires the expiration timeframes to be indicated on the registration certificate. The bill specifies that for each brand of antifreeze, the application fee for a 12-month registration is $200 and a 24-month registration is $400.

The bill removes the provisions that addresses a registered brand that is not in production for distribution in this state. The bill requires a completed registration application be accompanied by specimens or copies of the label for each brand of antifreeze.

The bill removes the requirement that a completed application be accompanied by a one to two gallon labeled sample of each brand of antifreeze, and instead requires that all first-time applications be accompanied by a certified report from an independent testing laboratory. The report shall be dated no more than six months prior to the registration application and include an analysis which shows that the antifreeze conforms to minimum standards required for antifreeze by this part or rules of the department, and is not adulterated.

Credit and Debit Card Skimming Devices (Section 15)

Present Situation

Skimming is the theft of credit card information used in an otherwise legitimate transaction. A thief can procure a victim's credit card by using a small electronic device to swipe and store card numbers. Last year, the department identified 340 credit and debit card skimming devices for seizure, in connection with gasoline and oil inspections. When department inspectors locate the devices, they contact the Office of Agriculture Law Enforcement (OALE), or when geographic and staffing issues prevent a response from OALE, local law enforcement is asked to remove the devices. Law enforcement personnel must seize the illegal devices and maintain a proper chain of custody for future legal proceedings.

Effect of Proposed Changes

The bill authorizes the department to seize without a warrant, any skimming device as defined in s. 817.625, F.S.

Emergency Powers (Sections 16, 17 & 39)

Present Situation

Current law governing emergency management gives the Governor extensive authority to act as he or she deems necessary during a declared state of emergency. The law authorizes the Governor to assume or delegate direct operational control over all or any part of the emergency

management functions within this state. In addition, the Governor may issue executive orders, proclamations, and rules, which have the force and effect of law.

The department is authorized to declare an emergency when one exists in any matter pertaining to agriculture, and to make, adopt, and promulgate rules and issue orders, which will be effective during the term of the emergency.

Effect of Proposed Changes

The bill authorizes the Commissioner of Agriculture during a state of emergency declared pursuant to s. 252.36, F.S., to issue an emergency order temporarily suspending the enforcement of ss. 526.304 and 526.305, F.S., in recognition of motor fuel as an essential commodity necessary to effectuate emergency plans and aid in recovery.

Additionally, the bill authorizes the Commissioner of Agriculture during a state of emergency declared pursuant to s. 252.36, F.S., to waive fees by emergency order for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations during a period specified by the commissioner.

Brake Fluid (Sections 18 & 19)

Present Situation

The department regularly conducts inspections of the petroleum distribution system and analyzes samples of petroleum products to ensure that Florida consumers are getting the amount they pay for and the quality they expect. Gasoline, alternative fuels, kerosene, diesel, fuel oil, antifreeze products, and brake fluid products are routinely tested and must meet strict standards.

Applicants must submit all brake fluid brands and products to the Bureau of Standards' laboratory for testing prior to initial registration. Despite this requirement, there are no assurances that the samples the department tests are the same as the products being offered for sale since the applicant collects and ships samples directly to the laboratory.

Effect of Proposed Changes

The bill authorizes a 24-month brake fluid registration period in addition to the 12-month registration period, and sets forth an application fee of $50 for the 12-month registration, or $100 for the 24-month registration. The bill requires completed brake fluid registration applications to be accompanied by specimens or copies of the label for each brand of brake fluid, and an application fee of $50 for a 12-month registration or $100 for a 24-month registration for each brand of brake fluid.

The bill requires that the certified report from an independent testing laboratory required of all first time-applicants be dated no more than six months before the registration application. The bill removes the requirement that an applicant submit to the department a sample of at least 24 fluid ounces of brake fluid in a container with a label printed in the same manner that it will be labeled when sold. The bill removes the requirement that the sample and container be analyzed and inspected by the department in order that compliance be verified.

Liquefied Petroleum Gas (Sections 20-29)

Currently, the department regulates the licensing, inspection and training requirements relating to the liquefied petroleum gas (LPG) industry.[13] Current law governing LPG provides definitions for numerous LPG and the LPG license categories.[14] These licenses include those for selling propane, installation, service or repair work, manufacture of equipment, and other miscellaneous activities.

Definitions (Section 20)

Current law governing LPG provides definitions for numerous LPG and the LPG license categories. These licenses include those for selling propane, installation, service or repair work, manufacture of equipment, and other miscellaneous activities.

The bill clarifies LPG license categories, revises the license year terminology, and expands the license period from one to three years from the issuance of the license. The bill also removes the word "ultimate" from the definition of "ultimate consumer" throughout the LPG chapter of law.

License, Penalty, Fees (Section 21)

The bill redefines the LPG unlawful activities by incorporating the activities specified in s. 527.01(6)-(11), F.S., replaces the two-tiered LPG fee structure with a single tiered annual fee structure with new fees, allows a material change in license information prior to renewal with a $10 fee. In addition, the bill revises the requirement that the department waive the initial license fee for honorably discharged veterans, their spouses, or the businesses they own by only allowing the waiver to occur for one year.

The bill deletes the provisions related to pipeline-system operator licensure and fees. According to the department, pipeline-operator requirements are now regulated under federal code 43 and only monitored by the department during the startup phase or after an incident. The bill deletes the transferability of LPG licensure as licenses may be applied for continuously instead of once annually.

Qualifiers; Master Qualifiers; Examinations (Section 22)

The bill requires only persons applying for a license to engage in category I, II, and V activities to prove competency by passing the written the department examination. The bill reduces the examination grade percentage that applicants must achieve for passage from 75 percent or above, to 70 percent or above. The bill requires the department to register an examinee who successfully completes the examination, instead of issuing the examinee a qualifier identification card. The bill revises the automatic expiration provision for qualifiers so that it addresses the registration instead of the identification cards, and makes conforming changes regarding registration as opposed to qualifier status. The bill requires businesses in license categories I, II and V to employ a full time qualifier in each business location.

[13] ch. 527, F.S.
[14] s. 527.02, F.S.

The bill provides that qualifier registration, instead of cards, expire three years after the date of issuance. The bill removes an outdated qualifier renewal date, and requires persons failing to renew before the expiration date to reapply and take a qualifier competency examination in order to reestablish qualifier status.

The bill removes the requirement that, if a category I LPG qualifier or LPG installer qualifier becomes a master qualifier at any time during the effective date of the qualifier card, the card remains in effect until expiration of the master qualifier certification.

Registration of Transport Vehicles (Section 23)

The bill revises the annual registration requirement to instead require each LPG bulk delivery vehicle owned or leased by an LPG licensee to be registered as part of the licensing application or when placed into service.

License Renewals (Section 24)

Present Situation

Current law requires all LPG licenses to be renewed annually within certain timeframes and subject to the license fees.[15] All licenses, except category III LPG cylinder exchange unit operator licenses and dealer in appliances and equipment for use of LPG licenses, must be renewed for the period beginning September 1 and expire on the following August 31 unless suspended, revoked, or otherwise terminated sooner. Category III LPG cylinder exchange unit operator licenses and dealer in appliances and equipment for use of LPG licenses must be renewed for the period beginning April 1 and expire on the following March 31 unless suspended, revoked, or otherwise terminated sooner. Any license allowed to expire becomes inoperative because of failure to renew. The fee for restoration of a license is equal to the original license fee and must be paid before the licensee is allowed to resume operations.

Effect of Proposed Changes

The bill allows LPG licenses to be renewed annually, biennially, or triennially, as elected by the licensee; requires all renewals to meet the same requirements and conditions as an annual license for each licensed year; and removes the timeframes for license category renewals. According to the department, these changes optimize the application process and should accelerate application processing, especially during periods of high volume.[16]

Proof of Insurance (Section 25)

Currently, LPG companies are required to provide the department with proof of insurance coverage or a surety bond to conduct business in the state. However, for a license other than a dealer in appliances and equipment for use of LPG or a category III LPG cylinder exchange operator, the Governor is authorized to accept a $1 million bond in lieu of the insurance policy requirements.[17]

[15] s. 527.03, F.S.
[16] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 Senate Bill 740, p. 10 (Nov. 15, 2017).
[17] s. 527.04(1), F.S.

Effect of Proposed Changes

This bill replaces the Governor with the Commissioner of Agriculture as the responsible party authorized to accept the $1 million and the $300,000 bonds in lieu of the insurance policy requirements. The bill also adds category IV licenses to the exceptions to the insurance requirements.

Bulk Storage Locations; Jurisdiction (Section 26)

Present Situation

Current law requires, prior to the installation of any bulk storage container, an LPG licensee to submit to the department a site plan of the facility, which shows the proposed location of the container, and to obtain written approval of such location from the department. A fee of $200 is assessed for each site plan that the department reviews. The review must include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.

Effect of Proposed Changes

The bill removes the requirements that an LPG licensee submit to the department a site plan of the facility, which shows the proposed location of the container, the requirement to obtain written approval of such location from department, and the fee of $200, which is assessed for each site plan that the department reviews. The bill also removes the requirement for the review to include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.

Notification of Accidents; Leak Calls; Responsibilities (Sections 27 & 28)

Present Situation

Currently, immediately upon discovery, all LPG licensees are required to notify the department of any LPG related accident that involves an LPG licensee or customer account. The accident must fall under one of the following descriptions:

- Caused a death or personal injury requiring professional medical treatment;
- Uncontrolled ignition of LPG resulted in death, personal injury, or property damage exceeding $1,000; or
- Caused estimated damage to property exceeding $1,000.

Effect of Proposed Changes

The bill increases the cost threshold for reporting LPG accidents involving property damage and/or personal injury from $1,000 to $3,000. According to the department, this reflects inflation adjusted costs.[18] The dollar value has not been updated since 2003.[19]

[18] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 Senate Bill 740, p. 11 (Nov. 21, 2017).

[19] The last time the dollar value was revised was in 2003 (Ch. No. 2003-132, Laws of Florida.) providing that an LP gas-related incident must be reported by an LP gas licensee only when it involves death, personal injury, or property damage exceeding $1,000.

The bill requires an LPG dealer to give a five day written or electronic notice before discontinuing service or rendering a consumer's LPG equipment or system inoperable. This notice does not apply in the event of a hazardous condition known to the LPG dealer.

Restriction on Use of Unsafe Container or System (Section 29) & Definitions Relating to Florida Propane Gas Education, Safety, and Research Act (Section 30)

Currently, the definition for "dealer" and "wholesaler" relating to the Florida Propane Gas Education, Safety, and Research Act include the term "ultimate consumer."

The bill removes the term "ultimate" from "ultimate consumer" to make these provisions consistent with the rest of the chapter regarding consumers.

Florida Propane Gas Education, Safety, and Research Council[20] Established; Membership; Duties and Responsibilities (Section 31)

The bill removes the requirement that the Commissioner of Agriculture make a call to qualified industry organizations for nominees to the Florida Propane Gas Education, Safety, and Research Council but retains the submission of nominees by qualified industry organizations.

Weights, Measures and Standards (Section 32)

Present Situation

Currently, the department's Bureau of Standards is responsible for the inspection of weights and measures devices or instruments in Florida.[21] The law defines "weights and measures" as all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices, excluding those weights and measures used for the purpose of inspecting the accuracy of devices used in conjunction with aviation fuel.[22] The weights and measures program is funded through permit fees.[23] This framework including provisions related to general permitting, initial and renewal applications, maximum permit fees, suspensions, penalties, revocations, and exemptions, is set to expire on July 1, 2020.

Effect of Proposed Changes

The bill extends the expiration date for the weights and measures program permitting fee framework until July 1, 2025. According to the department, it will no longer be able to cover the costs to perform this function if the permitting statute is not extended.[24]

[20] s. 527.22, F.S.
[21] ch. 531, F.S., "Weights and Measures Act of 1971."
[22] s. 531.37(1), F.S.
[23] s. 531.67, F.S.
[24] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 Senate Bill 740, p. 12 (Nov. 15, 2017).

Livestock (Sections 33-38)

Present Situation

Currently, the department has jurisdiction of the inspection and protection of livestock in the state under s. 534.011, F.S. This includes oversight of the sale of, and payment for, livestock at livestock markets. The Packers and Stockyards Act is a federal law designed to ensure effective competition and integrity in livestock, meat, and poultry items administered by the Packers and Stockyards Program within the United States Department of Agriculture.

Effect of Proposed Changes

The bill aligns definitions of the law that govern the sale of livestock at livestock markets with the federal Packers and Stockyards Act and makes conforming changes.

The bill repeals the section of law that provides a process by which livestock markets notify the department that a payment for livestock has been dishonored, which triggers subsequent notification by the department to all licensed livestock markets. The bill makes failure to render payment for livestock to any seller or consignee of cattle an unfair or deceptive act in trade or commerce in violation of s. 501.204(1), F.S., and removes the provision that expressly protects the payer's right to refuse payment of unauthorized livestock draft.

The bill repeals the section of law that prohibits a livestock market from filing a complaint under s. 604.21, F.S., which sets forth the process for complaints and investigations regarding dealers in agriculture products. The bill adds court costs and expenses to the section of law prescribing liability of a purchaser who fails to make payment for purchased livestock as required by the livestock law or the federal Packers and Stockyards Act.

Marketing Order Notice (Section 40)

Present Situation

The "Florida Agricultural Commodities Marketing Law" regulates the marketing of agricultural commodities through the establishment of marketing orders and agreements. A marketing order is an order issued by the department, prescribing rules governing the distribution, or handling in any manner, of agricultural commodities in the primary channel of trade during any specified period or periods. Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice must be posted on a public bulletin board maintained by the department in the Nathan Mayo Building.

Effect of Proposed Changes

The bill removes the requirement to post notice on a public bulletin board in the Nathan Mayo Building while retaining the requirement to post notice to the department's website.

Florida Seed Law (Sections 41-56)

The department regulates the sale and distribution of all seed sold in Florida pursuant to the Florida Seed Law (FSL).[25] According to the department, technological and federal regulatory changes have created the need for Florida to update and reorganize the FSL. Generally, trees and shrubs, and new seed types, are not addressed under the current law. However, the authority to regulate seed is not expressly preempted to the state.

Definitions (Section 41)

The bill makes numerous definitional changes to the Florida Seed Law pursuant to recommendations of the department's Agricultural Feed, Seed and Fertilizer Advisory Council.

Preemption (Section 42)

Present Situation

Currently, the department regulates the sale and distribution of all seed sold in Florida. However, the authority to regulate seed is not expressly preempted to the state.

Effect of Proposed Changes

The bill provides that it is the intent of the Legislature to eliminate duplication of regulation of seed. The bill provides that this chapter is intended as comprehensive and exclusive and occupies the whole field of regulation of seed. The bill preempts to the state the authority to regulate seed or matters relating to seed. The bill prohibits a local government or political subdivision of the state from enacting or enforcing an ordinance that regulates seed, including the power to assess any penalties provided for violation of this chapter.

Registrations (Section 43)

Present Situation

Currently, any person who intends to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed or mixture thereof, is required to register with the department as a seed dealer.[26]

Effect of Proposed Changes

The bill removes references to s. 578.14, F.S., relating to packet vegetable and flower seed. The bill expands the definition of tree seed by deleting "forest" and including "shrub seed" to the types of seed that require registration.

The bill requires the application for registration to include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The bill removes the requirement that registration and payment receipts from the department be in writing. This eliminates the need for the department to issue registration receipts, and thus allows for electronic receipts.

[25] ch. 578, F.S
[26] s. 578.08(1), F.S.

The bill removes the exemption from registration requirements for agricultural experiment stations of the State University System and places it in the section of the FSL directly relating to exemptions.

The bill also provides that when packet seed is sold, offered for sale, or exposed for sale, the company who packs seed for retail sale must register and pay fees as provided.

Label Requirements for Agricultural, Vegetable, Flower, and Tree or Shrub Seed (Section 44)

Present Situation

Current law sets forth seed label requirements for each container of agricultural, vegetable, or flower seed sold, offered for sale, exposed for sale, or distributed for sale within this state for sowing or planting purposes.[27] As with the previous section, trees and shrubs are not explicitly covered under the current law, and sections relating to new seed types are not addressed.

When seed is treated with certain substances, the current statute only requires a cautionary statement such as "Do not use for food, feed, or oil purposes," which is inconsistent with current Environmental Protection Agency (EPA) requirements and provisions of the Farm Service Agency.

Effect of Proposed Changes

The bill revises the labeling requirements to align with the Recommended Uniform State Seed Law. The bill:

- Deletes specific terms and font requirements;
- Adds provisions relating to coated and vegetable seed;
- Moves the department's authority to prescribe uniform analysis tags, for consistency;
- Includes additional terms to clarify requirements of all seed types, including those of trees and shrubs;
- Allows the term "blend" as an option for identifying products containing more than one agricultural seed component; and
- Includes lawn and turf seed under the requirements and clarifies that hybrids must be labeled as hybrids.

Forest Tree Seed (Section 45)

Present Situation

Current law governing forest tree seed requires each container sold, offered for sale, exposed for sale, or transported within this state for sowing purposes to meet certain labeling requirements.

[27] s. 578.09, F.S.

Effect of Proposed Changes

The bill repeals the section of law relating to labeling of forest tree seed. These requirements are replaced with expanded provisions relating to all tree and shrub seed, and included in the aforementioned revised section of law relating to label requirements.[28]

Exemptions (Section 46)

Present Situation

Currently, the FSL exempts the following from the FSL labeling requirements and prohibitions:

- Seed or grain not intended for sowing or planting purposes.
- Seed in storage in, consigned to or being transported to seed cleaning or processing establishments for cleaning or processing only. Any labeling or other representation which may be made with respect to the unclean seed shall be subject to this law.[29]

The FSL also provides an exemption from the criminal penalties of this law for persons having sold, offered, exposed, or distributed for sale in this state any agricultural, vegetable, or forest tree seed incorrectly labeled or represented.

Effect of Proposed Changes

The bill adds an exemption for seed under development or maintained exclusively for research purposes. The bill revises the exemption for incorrectly labeled seed. The bill provides that, if seed cannot be identified by examination, a person is not subject to the criminal penalties of this chapter for having sold seed that was incorrectly labeled, unless he or she has failed to obtain labeling information to ensure the identity of the seed to be as stated by the grower. The bill provides that a genuine grower's declaration of variety must affirm that the grower holds records of proof of identity concerning parent seed, such as invoice and labels.

Duties, Authority, and Rules; Stop-Sale, Stop-Use, Removal, or Hold Orders (Sections 47 & 48)

Present Situation

Multiple references to "forest tree seed" is used throughout the sections of law that sets forth the duties, authority and rulemaking requirements of the department relating to the FSL,[30] and the section of law that addresses stop-sale, stop-use, removal, or hold orders for violations of the FSL.

Effect of Proposed Changes

The bill replaces the multiple references to "forest tree seed" with "tree or shrub seed."

[28] s. 578.091, F.S.
[29] s. 578.10(2), F.S.
[30] s. 578.11, F.S.

Prohibitions (Section 49)

Present Situation

Currently, it is unlawful for any person to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed within this state.[31]

Effect of Proposed Changes

The bill revises the section of law relating to prohibitions to be consistent with changes throughout the bill that expand the definition of seed to include shrubs. The bill clarifies the stop-sale provisions and the requirements for certified seed labeling. The bill removes the seven month timeframe within which the test to determine the percentage of germination required by the FSL labeling requirements must be completed as all seed types are listed in the proposed section of the bill relating to labeling requirements, and each category of seed contains a specific germination testing requirement.

Packet Vegetable and Flower Seed (Section 50)

Present Situation

Currently, when vegetable or flower seed are sold, offered for sale, or exposed for sale in packets of less than eight ounces, the company who packs the seed for retail sale is required to register and pay fees as provided under s. 578.08, F.S.[32]

Effect of Proposed Changes

The bill repeals the section of the FSL relating to packet vegetable and flower seed. The bill moves the registration requirements to the revised section of the FSL relating to registrations, and the labeling information to the revised section of the FSL relating to registrations, for consistency.

Penalties and Administrative Fine (Section 51)

Present Situation

Currently, the department is authorized to enter an order imposing one or more of the following penalties against a person who violates the FSL or the rules adopted under the FSL, or who impedes, obstructs, or hinders the department in performing its duties under the FSL:

- Imposition of an administrative fine in the Class I category pursuant to s. 570.971, F.S., for each occurrence after the issuance of a warning letter.
- Revocation or suspension of the registration as a seed dealer.

Any person who violates the provisions of the FSL is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. According to the department, the current language could benefit from being aligned with penalty language found in other chapters.[33]

[31] s. 578.13(1), F.S.
[32] s. 578.14, F.S.
[33] *Id.*

Effect of Proposed Changes

The bill revises the penalty provisions in the FSL relating to circumstances by which the department may enter an order, and the types of violations the order may be based on. The bill also revises the requirement that the department issue a warning letter before the imposition of an administrative fine in the Class I category.

Dealers' Records (Section 52)

Present Situation

Currently, every seed dealer is required to make and keep for a period of three years satisfactory records of all agricultural, vegetable, flower, or forest tree seed bought or handled to be sold. The records must at all times be made readily available for inspection, examination, or audit by the department, and must also be maintained by persons who purchase seed for production of plants for resale.

Effect of Proposed Changes

The bill requires each person who allows his or her name or brand to appear on the label as handling agricultural, vegetable, flower, tree, or shrub seed subject to the FSL to keep records pursuant to the following timeframes:

- For two years, complete records of each lot of agricultural, vegetable, flower, tree, or shrub seed handled.
- For one year after final disposition a file sample of each.

The bill also requires the records and samples pertaining to the shipment or shipments involved to be accessible for inspection by the department or its authorized representative during normal business hours.

Complaints (Section 53)

Present Situation

Current law provides a complaint process to farmers when seed fails to produce or perform as represented by the label.[34] Farmers are required to make a sworn complaint to the department against the dealer alleging damages sustained, and the Seed Investigation and Conciliation Council (council) assists in determining the validity of complaints.

Effect of Proposed Changes

The bill expands the types of complainants by replacing the term "farmer" with "buyer," revises the reference to "forest tree seed" to instead reference "tree or shrub seed," and limits complaints to those that stem from seed planted in this state. The labeling provision is broadened to include any labeling of such seed, instead of only the label attached to the seed.

The bill broadens the council's inspection authority, and prohibits the buyer from commencing legal proceedings against the dealer or asserting such a claim as a counterclaim or defense in any

[34] s. 578.26, F.S.

action brought by the dealer until the findings and recommendations of the council are transmitted to the complainant and the dealer. The bill removes the requirement that the department, upon receipt of the findings and recommendation of the council, transmit them to the farmer and to the dealer by certified mail, and requires the department to mail a copy of the council's procedures to each party upon receipt of a complaint by the department.

Seed Investigation and Conciliation Council (Section 54)

Present Situation

Current law requires the council to assist farmers and agricultural seed dealers in determining the validity of complaints made by farmers against dealers.[35]The law establishes the process by which council members are appointed and how it operates.

Effect of Proposed Changes

To conform to changes made in the complaints section of the bill, the bill expands covered complainants to include all "buyers," expands the types of seed dealers by removing the term "agricultural," and expands the council's authority to recommend settlements beyond cost damages. In addition, the bill streamlines the terms and succession of the council members, updates the name of the Florida Seedsmen and Garden Supply Association, and clarifies the council's inspection requirements regarding the complainant's farming operation.

Regarding terms and succession of the council, the bill requires each member to be appointed for a term of four years or less and to serve until his or her successor is appointed. The bill removes the staggered term lengths, and removes the requirement that each alternate member serve only in the absence of the member for whom she or he is an alternate.

The bill expands the council's requirement to recommend settlements when appropriate that are not restricted to cost damages, and requires council inspections of the complainant's farm operation to apply to the buyer's property, crops, plants, or trees referenced in or relating to the complaint.

Seed in Hermetically Sealed Containers (Section 55)

The bill renumbers the section of law relating to seed in hermetically sealed containers from s. 578.28, F.S., to s. 578.092, F.S., as part of the overall reorganization of the Seed Law chapter.

Prohibited Noxious Weed Seed (Section 56)

Although there is a definition of prohibited noxious weed seed in current law, there is no expressed authority banning these weeds. The bill creates s. 578.29, F.S., to prohibit noxious weed seed from being present in seed offered for sale in Florida.

[35] s. 578.27, F.S.

Florida Forest Service Commercial Driver License (Section 57)

Present Situation

The Florida Forest Service (FFS) has 20 different job classes that require a Class A or B Commercial Driver's License (CDL) as a condition of employment. In any given year, the FFS has approximately 80 new employees (mostly forest rangers) that must obtain their Class A or B CDL. The Department of Financial Services' *Reference Guide for State Expenditures* prohibits the use of public funds to pay license or examination fees under Chapter 691-40.002(23), F.A.C.

Effect of Proposed Changes

The bill authorizes, but does not obligate, the Florida Forest Service (FFS) to pay the cost of an initial commercial driver license (CDL) examination for employees whose position requires them to operate such equipment.

Government Impostor and Deceptive Advertisement Act (Section 58)

Present Situation

The department receives numerous complaints from consumers and businesses that have been scammed by companies selling free government forms or mimicking government services. Businesses that sell free government forms or trick businesses into filing unnecessary paperwork have operated in Florida for several years. The U.S. Post Office currently prohibits this type of mailing of federal government forms or program offers. However, the only remedy is to throw away the offending material, which does not protect unsuspecting consumers.

Effect of Proposed Changes

The bill creates the "Government Impostor and Deceptive Advertisements Act" and provides the department with the duty and responsibility to investigate potential violations, request and obtain information regarding potential violations, seek compliance, enforce this law, and adopt rules necessary to administer this law.

Violations

The bill provides that the following acts or practices constitute a violation:

- Disseminating an advertisement that:
  - Simulates a summons, complaint, jury notice, or other court, judicial, or administrative process of any kind.
  - Represents, implies, or otherwise engages in an action that may reasonably cause confusion that the person using or employing the advertisement is a part of or associated with a governmental entity, when such is not true.
- Representing, implying, or otherwise reasonably causing confusion that goods, services, an advertisement, or an offer was disseminated by or has been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when such is not true.
- Using or employing language, symbols, website or e-mail addresses, or any other term or other content that implies or otherwise reasonably causes confusion that goods, services, an advertisement, or an offer is from a governmental entity, when such is not true.
- Failing to provide the disclosures as required.

- Failing to timely submit to the department written responses and answers to its inquiries.

Disclosure Requirements

The bill requires mailings, emails, or websites to contain prominent and specific disclaimers stating that the sales material are not related to any government filing and/or that the information or forms can be obtained for free or at a lesser cost from a governmental agency. Businesses are required to give consumers the name and contact information of the governmental agency.

Penalties

The bill authorizes any person who is substantially affected by a violation of this section to bring an action in a court of proper jurisdiction to enforce the provisions of this section. A person prevailing in a civil action for a violation of this section must be awarded costs, including reasonable attorney fees, and may be awarded punitive damages in addition to actual damages proven. This provision is in addition to any other remedies prescribed by law.

The bill authorizes the department to bring one or more of the following for a violation:

- A civil action in circuit court for the following:
  - Temporary or permanent injunctive relief to enforce this section.
  - For printed advertisements and e-mail, a fine of up to $1,000 for each separately addressed advertisement or message containing content in violation, except for failing to timely submit written responses to the department that is received by or addressed to a state resident.
  - For websites, a fine of up to $5,000 for each day a website has content in violation.
  - For violations of failing to timely submit written responses to the department, a fine of up to $5,000 for each violation.
  - Recovery of restitution and damages on behalf of persons substantially affected by a violation of this section.
  - The recovery of court costs and reasonable attorney fees.
- An action for an administrative fine in the Class III category pursuant to s. 570.971, F.S., for each act or omission, which constitutes a violation under this section.

The bill authorizes the department to terminate any investigation or action upon agreement by the alleged offender to pay a stipulated fine, make restitution, pay damages to customers, or satisfy any other relief authorized by this section. Any person in violation, except for failing to timely submit written responses to the department, also commits an unfair and deceptive trade practice in violation of part II of chapter 501, F.S., and is subject to the penalties and remedies imposed for such violation.

Conforming Cross References (Section 59)

Currently, the definition for “plumbing contractor” located in the chapter of law relating to contracting cross references the outdated LPG definition for “specialty installer” that the bill deletes. The cross reference is changed to “specialty installer” to conform to the changes consistent with the bill.

Liquefied Petroleum Gas – Rules (Section 60)

The bill removes redundant implementation language from the notes section of the National Fire Protection Association provision.

III. Effect of Proposed Changes:

Section 1 amends s. 193.461, F.S., to provide that screened enclosed structures used in horticulture production for protection from pest and disease have no separately assessable value for purposes of ad valorem taxation. The bill allows agricultural lands that incur damage as a result of a natural disaster continue to be classified as agricultural lands for five years after termination of the emergency declaration. The assessment applies retroactively to lands damaged by a natural disaster that occurred on or after July 1, 2017.

Section 2 amends s. 252.3569, F.S., to establish the State Agricultural Response Team (SART) within the department. Currently, the SART is not identified in statute.

Section 3 amends s. 316.565, F.S., to replace the term "perishable food crops" with "agricultural products" and allows the Department of Transportation to issue electronic verification of permits during emergencies declared by the Governor.

Section 4 amends s. 379.361, F.S., to transfer the responsibilities for Apalachicola Bay oyster harvesting licensure from the Department of Agriculture and Consumer Services (department) to the City of Apalachicola, Florida. The bill also allows annual license fees collected by the city to be used for the Apalachicola Bay oyster shell recycling program.

Section 5 amends s. 487.041, F.S., to eliminate the requirement that payment of any pesticide registration fee must be submitted electronically using the department's Internet website.

Section 6 amends s. 496.415, F.S., to prohibit the comingling of charitable contributions with noncharitable funds in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion.

Section 7 amends s. 496.418, F.S., to define noncharitable funds to include any funds that are not used or intended to be used for the operation of a charity or for charitable purposes. It also requires those soliciting charitable funds to keep accurate and separate sets of records to justify charitable expenses.

Section 8 amends s. 500.459, F.S., to eliminate the requirement that water vending machine applicants must submit forms to the department "in writing." This change will permit applications to be submitted electronically.

Section 9 amends s. 501.059, F.S., to revise the term "telephone sales call" in order to keep pace with advances in ringless communication technology used by telemarketers to solicit sales from consumers. The bill prohibits a telephone solicitor or other person to call or text a business that does not wish to receive an outbound telephone call or text message. The bill also requires a

telephone sales call solicitor to provide a telephone number capable of receiving calls on the call recipient's caller ID.

Section 10 creates s. 501.6175, F.S., to require telemarketers to maintain specified records for two years after a consumer is contacted. A telemarketer must make records available for inspection and copying within 10 days after a department request.

Section 11 amends s. 501.912, F.S., to revise the definition of "antifreeze" to include antifreeze-coolant, antifreeze and summer coolant, and summer coolant. This change consolidates separate definitions and removes the unnecessary distinction between coolant types.

Section 12 amends s. 501.913, F.S., to allow applicants (person whose name appears on the label, the manufacturer, or the packager) to choose between a one-year or a two-year permit when registering antifreeze brands and products. The bill eliminates affidavit requirements when a registered brand is no longer in production or distribution. The bill also eliminates the requirement that the department independently test the fluids upon application. In lieu of departmental testing, all first time applicants will submit a certified report from an independent testing laboratory, dated within the last six months.

Section 13 amends s. 501.917, F.S., to require the department to perform the analysis of all samples of antifreeze that are collected in the inspection of a business that sells antifreeze. The department's certificate of analysis will be evidence that, if not overcome, will be sufficient evidence to demonstrate that the stated facts are true.

Section 14 amends s. 501.92, F.S., to conform this section's antifreeze formula requirements to the internal departmental testing requirements specified in s. 501.917, F.S.

Section 15 amends s. 525.07, F.S., to allow department inspectors to seize without warrant any credit or debit card skimming device.

Section 16 amends s. 526.304, F.S., to allow the department to temporarily suspend the Motor Fuels Marketing Practices Act during a state of emergency relating to fuel prices.

Section 17 amends s. 526.305, F.S., authorizes the department to waive licensing fees to renew or replace lost or damaged licenses during a state of emergency.

Section 18 amends s. 526.51, F.S., to allow a brake fluid business to submit readily available product analysis reports for new products to the department. The bill allows businesses to register products for 24 months, creating greater efficiency for the business as well as the department. The bill also eliminates affidavit requirements when a registered brand and formula combination is no longer in production or distribution.

Section 19 amends s. 526.53, F.S., to require the department to perform the analysis of all samples of brake fluid that are collected in the inspection of a business that sells brake fluid. The department's certificate of analysis will be evidence that, if not overcome, will be sufficient evidence to demonstrate that the stated facts are true.

Section 20 amends s. 527.01, F.S., to update definitions concerning liquefied petroleum gas licensee categories so they will more accurately reflect current business practices. The bill also provides an optional expansion of the license period from one to three years.

Section 21 amends s. 527.02, F.S., to revise the persons subject to liquefied petroleum business licensing provisions. The bill eliminates the original and renewal liquefied petroleum gas license fee structure and replaces it with a new revenue neutral fee structure. The bill allows a licensee to make information changes for a $10 fee, removing the requirement for the licensee to apply for a new license and again pay the full license fee. The bill also deletes pipeline system operator license provisions because they are now regulated by the federal government under 49 CFR 191 and 192.

Section 22 amends s. 527.0201, F.S., to clarify the difference between qualifier and master qualifier registration and licenses pertaining to the sale of liquefied petroleum gas. The bill increases the requirements to achieve master qualifier status and removes the employer's name from master qualifier certificates issued by the department. The bill also removes the overly punitive 90-day registration revocation for firms without a master qualifier.

Section 23 amends s. 527.021, F.S., to revise the circumstances under which liquefied petroleum gas bulk delivery vehicles must be registered with the department. Vehicles will be registered at the time they are placed into service or during the licensing application process by the liquefied petroleum gas dealer.

Section 24 amends s. 527.03, F.S., to allow for 12, 24, or 36-month liquefied petroleum gas licenses at the discretion of the licensee. The bill optimizes the application process by eliminating defined application periods.

Section 25 amends s. 527.04, F.S., to make the Commissioner of Agriculture responsible for liquefied petroleum gas insurance issues rather than the Governor of Florida.

Section 26 amends s. 527.0605, F.S., to remove the requirement that licensees submit a site plan and a review fee for liquefied petroleum bulk storage container site inspections prior to commencing operations and allows for master qualifier compliance reviews. A final inspection by the department is still required prior to commencing operations.

Section 27 amends s. 527.065, F.S., to update the dollar threshold for required reporting of liquefied petroleum gas accidents from $1,000 to $3,000.

Section 28 amends s. 527.067, F.S., to require a liquefied petroleum gas dealer to give notice at least five business days before rendering a consumer's liquefied petroleum gas equipment or system inoperable or before discontinuing service.

Section 29 amends s. 527.10, F.S., to conform provisions to changes made by this act.

Section 30 amends s. 527.21, F.S., to conform provisions to changes made by this act.

Section 31 amends s. 527.22, F.S., to streamline the Florida Propane Gas Education, Safety, and Research Council nomination procedures.

Section 32 amends s. 531.67, F.S., to extend the expiration date of seven weights, measures, and standards sections that provide testing, inspections, and regulations for the operation of weighing and measuring devices used in commercial transactions. The date will be extended from July 1, 2020 to July 1, 2025.

Section 33 amends s. 534.47, F.S., to revise definitions relating to livestock.

Section 34 amends s. 534.49, F.S., to revise the definition of a buyer relating to livestock drafts.

Section 35 repeals s. 534.50, F.S., to require each livestock market to report dishonored checks issued in payment for livestock within 24 hours.

Section 36 amends s. 534.501, F.S., to make failure to render payment for livestock to any seller of cattle an unfair or deceptive act in trade or commerce.

Section 37 repeals s. 534.51, F.S., to prohibit livestock markets from filing a complaint under s. 604.21 F.S., if the livestock market violated certain provisions relating to transactions.

Section 38 amends s. 534.54, F.S., to add court costs and expenses to the section of law prescribing liability of a purchaser who fails to make payment for livestock as required by state or federal livestock laws.

Section 39 amends s. 570.07, F.S., to clarify that the Commissioner of Agriculture has the authority during a state of emergency to waive fees for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations.

Section 40 amends s. 573.111, F.S., to eliminate the requirement to post a notice on the public bulletin board in the Mayo Building in Tallahassee, FL, before the issuance, suspension, amendment, or termination of any marketing order covered by chapter 573, F.S., or departmental actions affecting marketing orders. This information will continue to be available on the department's website for individuals to review.

Section 41 amends s. 578.011, F.S., to clarify and update the definitions in chapter 578, F.S., to reflect current technological developments in seed production.

Section 42 creates s. 578.012, F.S., to explicitly provide for state preemption of the authority to regulate seed or matters relating to seed in order to eliminate regulatory duplication. A local government or political subdivision of the state may not enact or enforce any ordinance that regulates seed, including the power to assess any penalties for violations.

Section 43 amends s. 578.08, F.S., to expand the definition of tree seed by deleting the limiting adjective "forest" and by including shrub seed into the types of seed that require registration. The bill eliminates the need for the department to issue written registration receipts, clarifies

registration requirements for seed dealers, and requires registration and the payment of fees when packet seed is placed into commerce.

Section 44 amends s. 578.09, F.S., to revise labeling requirements for agricultural vegetable, flower, tree, and shrub seed. The bill also requires seed labels for agricultural seed, including lawn and turf grass seed and mixtures, to label hybrids as hybrids.

Section 45 repeals s. 578.091, F.S., pertaining to forest tree seed. The provisions in this section have been moved to s. 578.09, F.S.

Section 46 amends s. 578.10, F.S., to clarify the release from liability afforded to a person who unknowingly sells seed that is mislabeled. The bill requires sellers to take reasonable actions to ensure the identity of seed in cases involving criminal penalties for incorrect labels. The bill exempts seed under development or maintained for research purposes from the provisions of s. 578.09 and 578.13, F.S., because they are not commercially available to consumers or businesses.

Section 47 amends s. 578.11, F.S., to make technical changes and to conform provisions to changes made by this act.

Section 48 amends s. 578.12, F.S., to conform provisions to changes made by this act.

Section 49 amends s. 578.13, F.S., to expand the definition of seed to include shrubs. The bill specifies that it is unlawful to move, handle, or dispose of seed or tags under a stop-sale notice or order without permission from the department. The bill specifies that it is unlawful to represent seed as certified except under specified conditions or to label seed with a variety name under certain conditions.

Section 50 repeals s. 578.14, F.S., relating to packet vegetable and flower seed. The section's registration requirements are moved to s. 578.08(5), F.S.

Section 51 amends s. 578.181, F.S., to clarify when penalties may be imposed. The bill expands what constitutes obstruction of departmental efforts and clarifies that the pre-penalty warning letter requirement is appropriate for minor seed-related violations while fines and other administrative action may be taken for major seed-related violations.

Section 52 amends s. 578.23, F.S., to reduce the seed record retention periods from three to two years. The bill adds a one-year seed holding requirement after final disposition and continues to require all such records and samples be made available for departmental inspection.

Section 53 amends s. 578.26, F.S., to change the word "farmer" to the word "buyer." The bill allows buyers, instead of exclusively farmers, to file complaints with the Seed Investigation and Conciliation Council (SICC), which is given broader authority to recommend settlements beyond cost damages. The bill requires that any contested seed be planted in the state and that all administrative remedies be exhausted prior to commending any legal action. The bill also restates that the department is to mail a copy of the SICC's procedures to each party once a complaint has been filed.

Section 54 amends s. 578.27, F.S., to remove alternate membership from the SICC and revise the terms of members of the council. The bill revises the purpose of the council to assist buyers, instead of exclusively farmers, and seed dealers. The bill also clarifies language regarding inspections by the SICC of the complainant's farming operations and practices.

Section 55 renumbers s. 578.28, F.S., pertaining to seed in hermetically sealed containers, as s. 578.092, F.S.

Section 56 creates s. 578.29, F.S., to prohibit the presence of "prohibited noxious weed seed," as defined in s. 578.011, F.S., in agricultural, vegetable, flower, tree, or shrub seed offered or exposed for sale in Florida.

Section 57 amends s. 590.02, F.S., to authorize the department to cover the cost of the initial Commercial Driver's License (CDL) examination fee for those Florida Forest Service employees whose positions entail operating CDL-requiring equipment. The bill authorizes the department to make rules to accomplish this provision.

Section 58 creates s. 817.417, F.S., to create the "Government Impostor and Deceptive Advertisement Act" to prevent Florida consumers and businesses from being scammed by companies selling free government forms or mimicking government services. The bill defines terms and specifies department duties and responsibilities. The act will prohibit mailings, emails, or websites that target Floridians without prominent disclaimers stating that the sales materials are not related to any government filing and/or that the information or forms can be obtained free of charge. Businesses will be required to give consumers the website or phone number of the agency that provides the free information or face potential fines.

Section 59 amends s. 489.105, F.S., to conform provisions made by this act.

Section 60 reenacts s. 527.06, F.S., relating to published standards of the National Fire Protection Association.

Section 61 provides that this act shall take effect July 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 revenues.

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

requirements do not apply to laws having an insignificant impact,[36] which for Fiscal Year 2017-2018, is $2.1 million or less.[37]

The Revenue Estimating Conference estimates this bill will reduce the authority that counties have to raise revenue from the local ad valorem tax by $1.9 million. Therefore, this bill has an insignificant fiscal impact on local governments and may not be a mandate requiring a two-thirds vote of the membership.

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 the reduction in the assessment on screened enclosed structures used in horticulture production will reduce local ad valorem taxes by $1.9 million on a recurring basis beginning in Fiscal Year 2018-2019.

B. Private Sector Impact:

Some owners of agricultural land will experience lower ad valorem tax assessments.

The bill requires the City of Apalachicola to take over administrative responsibilities of the Apalachicola Bay oyster harvesting license fees. This will allow the city to control the allocation of funds for oyster shell restoration activities.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services (department) estimates the bill will reduce revenues deposited in the General Inspection Trust Fund by $82,900 annually beginning in Fiscal Year 2018-2019 as a result of the transfer of the oyster harvesting license program to the City of Apalachicola and the liquid petroleum gas license consolidation. As a result, the amount of the service charge sent from the trust fund to the General Revenue Fund is expected to decrease by $6,632 annually.

[36] 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*, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Nov. 9, 2017).

[37] Based on the Demographic Estimating Conference's population adopted on December 5, 2017. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Dec. 22, 2017).

The department expects $79,000 of annual expenditures, relating to oyster harvesting licenses, will no longer be necessary. In addition, the department will experience new workload associated with its additional responsibilities for antifreeze regulation, gasoline and oil inspection, and brake fluid regulation. The costs associated with this workload is insignificant (approximately $9,000 annually).

The department is granted the discretion to pay for the commercial driver licenses for Florida Forest Service employees required to drive certain vehicles. If the department exercised this discretion and paid for such licenses, the cost is anticipated to be $36,000 annually.

General Inspection Trust Fund Revenue Reductions

	FY 2018-19	FY 2019-20	FY 2020-21
Transfer Oyster Harvesting Licensing Program to City of Apalachicola	(79,900)	(79,900)	(79,900)
Liquid Petroleum Gas (license consolidation)	(3,000)	(3,000)	(3,000)
Total Revenue Reduction	(82,900)	(82,900)	(82,900)
8% Surcharge to GR Reduction	(6,632)	(6,632)	(6,632)

General Inspection Trust Fund Expenditure Adjustments

	FY 2018-19	FY 2019-20	FY 2020-21
Transfer Oyster Harvesting Licensing Program to City of Apalachicola	(79,900)	(79,900)	(79,900)
Antifreeze (sample purchasing increase)	6,000	6,000	6,000
Gasoline and Oil Inspection (shipping costs increase)	4,800	4,800	4,800
Brake Fluid (sample purchasing increase)	4,370	4,370	4,370
Florida Forest Service (Commercial Driver License)	36,000	36,000	36,000
Total Expenditures	(28,730)	(28,730)	(28,730)
Net Fiscal Impact:	**(54,170)**	**(54,170)**	**(54,170)**

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 193.461, 316.565, 379.361, 487.041, 496.415, 496.418, 500.459, 501.059, 501.059, 501.912, 501.913, 501.917, 501.92, 525.07, 526.304, 526.305, 526.51, 526.53, 527.01, 527.02, 527.0201, 527.021, 527.03, 527.04, 527.0605, 527.065, 527.067, 527.10, 527.21, 527.22, 531.67, 534.47, 534.49, 534.501, 534.54, 570.07, 573.111, 578.011, 578.08, 578.09, 578.10, 578.11, 578.12, 578.13, 578.181, 578.23, 578.26, 578.27, 578.28, 578.092, 590.02, and 489.105.

This bill creates the following sections of the Florida Statutes: 252.3569, 501.6175, 578.012, 578.29, and 817.417.

This bill repeals the following sections of the Florida Statutes: 534.50, 534.51, 578.091 and 578.14.

The bill reenacts the following section of the Florida Statutes: 527.06(3).

IX. Additional Information:

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

CS/CS by Appropriations on February 22, 2018:
The committee substitute:

- Removes provisions revising the licensure of concealed weapons and firearm instructors and removes language authorizing tax collectors to collect concealed weapon or firearm license fees;
- Provides an agricultural assessment retroactively to lands damaged as a result of a natural disaster that occurred on or after July 1, 2017;
- Requires a telephone sales call solicitor to provide a telephone number capable of receiving calls on the call recipient's caller ID and increases penalties for violations of the Do Not Call Act;
- Allows the department to suspend the Motor Fuel Marketing Practices Act during a state of emergency;
- Aligns provisions of the state livestock law with the federal Packers and Stockyards Act and makes failure to render payment to a seller of livestock an unfair or deceptive act; and
- Requires a liquid petroleum gas dealer to give a five day notice when discontinuing service or rendering equipment inoperable.

CS by Agriculture on January 11, 2018:
The committee substitute:

- Provides that screen enclosed structures used in citrus production for pest exclusion, when consistent with department adopted best management practices, have no separately assessable value for purposes of ad valorem taxation;
- Retains the language of current law, which was unintentionally struck, pertaining to labeling requirements of agricultural, vegetable, flower, tree, or shrub seed;
- Requires seed labels for agricultural seed, including lawn and turf grass seed and mixtures, to label hybrids as hybrids; and
- Corrects a cross-reference.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/19/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (6) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(6)

(c)1. For purposes of the income methodology approach to


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assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection and screen enclosed structures used in citrus production for pest exclusion, which are consistent with the interim measures or best management practices adopted by the Department of Agriculture and Consumer Services pursuant to s. 570.93 or s. 403.067(7)(c), shall be assessed by the methodology described in subparagraph 1.

Section 2. Paragraphs (b), (d), and (i) of subsection (5) of section 379.361, Florida Statutes, are amended to read:

379.361 Licenses.—

(5) APALACHICOLA BAY OYSTER HARVESTING LICENSE.—

(b) A ~~No~~ person may not ~~shall~~ harvest oysters from the Apalachicola Bay without a valid Apalachicola Bay oyster harvesting license issued by the City of Apalachicola ~~Department of Agriculture and Consumer Services~~. This requirement does ~~shall~~ not apply to anyone harvesting noncommercial quantities of oysters in accordance with commission rules, or to any person less than 18 years old.

(d) The City of Apalachicola ~~Department of Agriculture and Consumer Services~~ shall collect an annual fee of $100 from state


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residents and $500 from nonresidents for the issuance of an Apalachicola Bay oyster harvesting license. The license year shall begin on July 1 of each year and end on June 30 of the following year. The license shall be valid only for the licensee. Only bona fide residents of the state ~~Florida~~ may obtain a resident license pursuant to this subsection.

(i) The proceeds from Apalachicola Bay oyster harvesting license fees shall be deposited by the City of Apalachicola into a trust account ~~in the General Inspection Trust Fund~~ and, less reasonable administrative costs, must ~~shall~~ be used or distributed by the City of Apalachicola ~~Department of Agriculture and Consumer Services~~ for the following purposes in Apalachicola Bay:

1. An Apalachicola Bay oyster shell recycling program ~~Relaying and transplanting live oysters~~.

2. Shell planting to construct or rehabilitate oyster bars.

3. Education programs for licensed oyster harvesters on oyster biology, aquaculture, boating and water safety, sanitation, resource conservation, small business management, marketing, and other relevant subjects.

4. Research directed toward the enhancement of oyster production in the bay and the water management needs of the bay.

Section 3. Paragraphs (a), (b), and (i) of subsection (1) of section 487.041, Florida Statutes, are amended to read:

487.041 Registration.—

(1)(a) ~~Effective January 1, 2009,~~ Each brand of pesticide, as defined in s. 487.021, which is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate


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commerce or between points within this state through any point outside this state must be registered in the office of the department, and such registration shall be renewed biennially. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1. The name, business mailing address, and street address of the registrant.

2. The name of the brand of pesticide.

3. An ingredient statement and a complete current copy of the labeling accompanying the brand of pesticide, which must conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

(b) ~~Effective January 1, 2009,~~ For the purpose of defraying expenses of the department in connection with carrying out the provisions of this part, each registrant shall pay a biennial registration fee for each registered brand of pesticide. The registration of each brand of pesticide shall cover a designated 2-year period beginning on January 1 of each odd-numbered year and expiring on December 31 of the following year.

~~(i) Effective January 1, 2013, all payments of any pesticide registration fees, including late fees, shall be submitted electronically using the department's Internet website for registration of pesticide product brands.~~

Section 4. Paragraph (a) of subsection (6) of section

493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

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

(a) Submit one of the following:

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

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

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

4. A valid DD form 214 issued by the United States Department of Defense, an acceptable form as specified by the Department of Veterans' Affairs, or other official military documentation. Such form or documentation must be issued not more than 3 years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and has served as a military firearms instructor within the last 3 years of service.

Section 5. Paragraph (d) of subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of

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the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of Investigation's national retained print arrest notification program. Subsequent renewals may be completed without submission of a new set of fingerprints.

(d) Each Class "K" licensee shall additionally submit:

1. One of the certificates specified under s. 493.6105(6) as proof that he or she remains certified to provide firearms instruction; or

2. Proof of having taught no less than six 28-hour firearms instruction courses to Class "G" applicants, as specified in s. 493.6105(5), during the previous triennial licensure period.

Section 6. Subsection (19) is added to section 496.415, Florida Statutes, to read:

496.415 Prohibited acts.—It is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to:

(19) Commingle charitable contributions with noncharitable funds.

Section 7. Section 496.418, Florida Statutes, is amended to read:

496.418 Recordkeeping and accounting ~~Records~~.—


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(1) Each charitable organization, sponsor, professional fundraising consultant, and professional solicitor that collects or takes control or possession of contributions made for a charitable purpose must keep records to permit accurate reporting and auditing as required by law, must not commingle contributions with noncharitable funds as specified in s. 496.415(19), and must be able to account for the funds. When expenditures are not properly documented and disclosed by records, there exists a rebuttable presumption that the charitable organization, sponsor, professional fundraising consultant, or professional solicitor did not properly expend such funds. Noncharitable funds include any funds that are not used or intended to be used for the operation of the charity or for charitable purposes.

(2) Each charitable organization, sponsor, professional fundraising consultant, and professional solicitor must keep for a period of at least 3 years true and accurate records as to its activities in this state which are covered by ss. 496.401-496.424. The records must be made available, without subpoena, to the department for inspection and must be furnished no later than 10 working days after requested.

Section 8. Paragraph (b) of subsection (3) and paragraph (i) of subsection (5) of section 500.459, Florida Statutes, are amended to read:

500.459 Water vending machines.—

(3) PERMITTING REQUIREMENTS.—

(b) An application for an operating permit must be made ~~in writing~~ to the department on forms provided by the department and must be accompanied by a fee as provided in subsection (4).

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The application must state the location of each water vending machine, the source of the water to be vended, the treatment the water will receive prior to being vended, and any other information considered necessary by the department.

(5) OPERATING STANDARDS.—

(i) The operator shall place on each water vending machine, in a position clearly visible to customers, the following information: the name and address of the operator; ~~the operating permit number;~~ the fact that the water is obtained from a public water supply; the method of treatment used; the method of postdisinfection used; and a local or toll-free telephone number that may be called for obtaining further information, reporting problems, or making complaints.

Section 9. Paragraph (g) of subsection (1) of section 501.059, Florida Statutes, is amended, and paragraph (i) is added to that subsection, and subsection (5), paragraph (c) of subsection (8), and subsection (9) of that section are amended, to read:

501.059 Telephone solicitation.—

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

(g) "Telephonic sales call" means a telephone call, ~~or~~ text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(i) "Voicemail transmission" means technologies that deliver a voice message directly to a voicemail application,

service, or device.

(5) A telephone solicitor or other person may not initiate an outbound telephone call, ~~or~~ text message, or voicemail transmission to a consumer, business, or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call, ~~or~~ text message, or voicemail transmission:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

(8)

(c) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the originating telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it shall not be a violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a telephonic sales call, the solicitor must ensure that telephone number is capable of receiving telephone calls and must connect the original call recipient, upon calling such

number, to the telephone solicitor or to the seller on behalf of which a telephonic sales call was placed. For purposes of this section, the term "caller identification service" means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

(9)(a) The department shall investigate any complaints received concerning violations of this section. If, after investigating a complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall be in the Class IV ~~III~~ category pursuant to s. 570.971 for each violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Legal Affairs Revolving Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(b) The department may, as an alternative to the civil

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penalties provided in paragraph (a), impose an administrative fine in the Class III ~~I~~ category pursuant to s. 570.971 for each act or omission that constitutes a violation of this section. An administrative proceeding that could result in the entry of an order imposing an administrative penalty must be conducted pursuant to chapter 120.

Section 10. Section 501.6175, Florida Statutes, is created to read:

501.6175 Recordkeeping.—A commercial telephone seller shall keep all of the following information for 2 years after the date the information first becomes part of the seller's business records:

(1) The name and telephone number of each consumer contacted by a telephone sales call.

(2) All express requests authorizing the telephone solicitor to contact the consumer.

(3) Any script, outline, or presentation the applicant requires or suggests a salesperson use when soliciting; sales information or literature to be provided by the commercial telephone seller to a salesperson; and sales information or literature to be provided by the commercial telephone seller to a consumer in connection with any solicitation.

Within 10 days of an oral or written request by the department, including a written request transmitted by electronic mail, a commercial telephone seller must make the records it keeps pursuant to this section available for inspection and copying by the department during the department's normal business hours. This section does not limit the department's ability to inspect


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and copy material pursuant to any other law.

Section 11. Section 501.912, Florida Statutes, is amended to read:

501.912 Definitions.—As used in ss. 501.91-501.923:

(1) "Antifreeze" means any substance or preparation, including, but not limited to, antifreeze-coolant, antifreeze and summer coolant, or summer coolant, that is sold, distributed, or intended for use:

(a) As the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines of motor vehicles to prevent freezing of the cooling liquid or to lower its freezing point; or

(b) To raise the boiling point of water or for the prevention of engine overheating, whether or not the liquid is used as a year-round cooling system fluid.

~~(2) "Antifreeze-coolant," "antifreeze and summer coolant," or "summer coolant" means any substance as defined in subsection (1) which also is sold, distributed, or intended for raising the boiling point of water or for the prevention of engine overheating whether or not used as a year-round cooling system fluid. Unless otherwise stated, the term "antifreeze" includes "antifreeze," "antifreeze-coolant," "antifreeze and summer coolant," and "summer coolant."~~

(2)~~(3)~~ "Department" means the Department of Agriculture and Consumer Services.

(3)~~(4)~~ "Distribute" means to hold with an intent to sell, offer for sale, sell, barter, or otherwise supply to the consumer.

(4)~~(5)~~ "Package" means a sealed, tamperproof retail


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package, drum, or other container designed for the sale of antifreeze directly to the consumer or a container from which the antifreeze may be installed directly by the seller into the cooling system. However, this term~~, but~~ does not include shipping containers containing properly labeled inner containers.

(5)~~(6)~~ "Label" means any display of written, printed, or graphic matter on, or attached to, a package or to the outside individual container or wrapper of the package.

(6)~~(7)~~ "Labeling" means the labels and any other written, printed, or graphic matter accompanying a package.

Section 12. Section 501.913, Florida Statutes, is amended to read:

501.913 Registration.—

(1) Each brand of antifreeze to be distributed in this state must ~~shall~~ be registered with the department before distribution. The person whose name appears on the label, the manufacturer, or the packager shall make application annually or biennially to the department on forms provided by the department. The registration certificate expires ~~shall expire~~ 12 or 24 months after the date of issue, as indicated on the registration certificate. The registrant assumes, by application to register the brand, full responsibility for the registration, quality, and quantity of the product sold, offered, or exposed for sale in this state. ~~If a registered brand is not in production for distribution in this state and to ensure any remaining product that is still available for sale in the state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying~~


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~~that:~~

~~(a) The stated brand is no longer in production;~~

~~(b) The stated brand will not be distributed in this state; and~~

~~(c) All existing product of the stated brand will be removed by the registrant from the state within 30 days after expiration of the registration or the registrant will reregister the brand for two subsequent registration periods.~~

~~If production resumes, the brand must be reregistered before it is distributed in this state.~~

(2) The completed application shall be accompanied by:

(a) Specimens or copies ~~facsimiles~~ of the label for each brand of antifreeze;

(b) An application fee of $200 for a 12-month registration or $400 for a 24-month registration for each brand of antifreeze; and

(c) For first-time applications, a certified report from an independent testing laboratory, dated no more than 6 months before the registration application, providing analysis showing that the antifreeze conforms to minimum standards required for antifreeze by this part or rules of the department and is not adulterated ~~A properly labeled sample of between 1 and 2 gallons for each brand of antifreeze~~.

(3) The department may analyze or inspect the antifreeze to ensure that it:

(a) Meets the labeling claims;

(b) Conforms to minimum standards required for antifreeze by this part ~~chapter~~ or rules of the department; and


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(c) Is not adulterated as prescribed for antifreeze by this part ~~chapter~~.

(4)(a) If the registration requirements are met, and, if the antifreeze meets the minimum standards, is not adulterated, and meets the labeling claims, the department shall issue a certificate of registration authorizing the distribution of that antifreeze in the state for the permit period ~~year~~.

(b) If registration requirements are not met, or, if the antifreeze fails to meet the minimum standards, is adulterated, or fails to meet the labeling claims, the department shall refuse to register the antifreeze.

Section 13. Section 501.917, Florida Statutes, is amended to read:

501.917 Inspection by department; sampling and analysis.—The department has ~~shall have~~ the right to have access at reasonable hours to all places and property where antifreeze is stored, distributed, or offered or intended to be offered for sale, including the right to inspect and examine all antifreeze and to take reasonable samples of antifreeze for analysis together with specimens of labeling. Collected samples must be analyzed by the department. The certificate of analysis by the department shall be prima facie evidence of the facts stated therein in any legal proceeding in this state ~~All samples taken shall be properly sealed and sent to a laboratory designated by the department for examination together with all labeling pertaining to such samples. It shall be the duty of said laboratory to examine promptly all samples received in connection with the administration and enforcement of this act~~.

Section 14. Section 501.92, Florida Statutes, is amended to

read:

501.92 Formula may be required.—The department may, if required for the analysis of antifreeze by ~~the laboratory designated by~~ the department ~~for the purpose of registration~~, require the applicant to furnish a statement of the formula of such antifreeze, unless the applicant can furnish other satisfactory evidence that such antifreeze is not adulterated or misbranded. Such statement need not include inhibitor or other minor ingredients which total less than 5 percent by weight of the antifreeze; and, if over 5 percent, the composition of the inhibitor and such other ingredients may be given in generic terms.

Section 15. Paragraph (e) of subsection (10) of section 525.07, Florida Statutes, is redesignated as paragraph (f), and a new paragraph (e) is added to that subsection, to read:

525.07 Powers and duties of department; inspections; unlawful acts.—

(10)

(e) The department may seize without warrant any skimming device, as defined in s. 817.625, for use as evidence.

Section 16. Subsection (4) is added to section 526.304, Florida Statutes, to read:

526.304 Predatory practices unlawful; exceptions.—

(4) The Department of Agriculture and Consumer Services may by emergency order, in furtherance of executing emergency plans or to aid in the recovery of an emergency-impacted area, temporarily suspend enforcement of this section during a state of emergency declared pursuant to s. 252.36.

Section 17. Subsection (6) is added to section 526.305,

Florida Statutes, to read:

526.305 Discriminatory practices unlawful; exceptions.—

(6) The Department of Agriculture and Consumer Services may by emergency order, in furtherance of executing emergency plans or to aid in the recovery of an emergency-impacted area, temporarily suspend enforcement of this section during a state of emergency declared pursuant to s. 252.36.

Section 18. Subsection (1) of section 526.51, Florida Statutes, is amended to read:

526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.—

(1)(a) Application for registration of each brand of brake fluid shall be made on forms supplied by the department. The applicant shall give his or her name and address and the brand name of the brake fluid, state that he or she owns the brand name and has complete control over the product sold thereunder in this state, and provide the name and address of the resident agent in this state. If the applicant does not own the brand name but wishes to register the product with the department, a notarized affidavit that gives the applicant full authorization to register the brand name and that is signed by the owner of the brand name must accompany the application for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name shall maintain complete control over each product sold under that brand name in this state.


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(b) The completed application must be accompanied by the following:

1. Specimens or copies of the label for each brand of brake fluid.

2. An application fee of $50 for a 12-month registration or $100 for a 24-month registration for each brand of brake fluid.

3. For ~~All~~ first-time applications for a brand and formula combination, ~~must be accompanied by~~ a certified report from an independent testing laboratory, dated no more than 6 months before the registration application, setting forth the analysis of the brake fluid which shows its quality to be not less than the specifications established by the department for brake fluids. ~~A sample of not less than 24 fluid ounces of brake fluid shall be submitted, in a container with a label printed in the same manner that it will be labeled when sold, and the sample and container shall be analyzed and inspected by the department in order that compliance with the department's specifications and labeling requirements may be verified.~~

Upon approval of the application, the department shall register the brand name of the brake fluid and issue to the applicant a permit authorizing the registrant to sell the brake fluid in this state. The registration certificate expires ~~shall expire~~ 12 or 24 months after the date of issue, as indicated on the registration certificate.

(c) ~~(b) Each applicant shall pay a fee of $100 with each application.~~ A permit may be renewed by application to the department, accompanied by a renewal fee of $50 for a 12-month registration, or $100 for a 24-month registration, on or before


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the expiration of the previously issued permit. To reregister a previously registered brand and formula combination, an applicant must submit a completed application and all materials as required in this section to the department before the expiration of the previously issued permit. A brand and formula combination for which a completed application and all materials required in this section are not received before the expiration of the previously issued permit may not be registered with the department until a completed application and all materials required in this section have been received and approved. If the brand and formula combination was previously registered with the department and a fee, application, or materials required in this section are received after the expiration of the previously issued permit, a penalty of $25 accrues, which shall be added to the fee. Renewals shall be accepted only on brake fluids that have no change in formula, composition, or brand name. Any change in formula, composition, or brand name of a brake fluid constitutes a new product that must be registered in accordance with this part.

~~(c) If a registered brand and formula combination is no longer in production for distribution in this state, in order to ensure that any remaining product still available for sale in this state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying that:~~

~~1. The stated brand and formula combination is no longer in production;~~

~~2. The stated brand and formula combination will not be distributed in this state; and~~

~~3. Either all existing product of the stated brand and formula combination will be removed by the registrant from the state within 30 days after the expiration of the registration or that the registrant will reregister the brand and formula combination for 2 subsequent years.~~

~~If production resumes, the brand and formula combination must be reregistered before it is again distributed in this state.~~

Section 19. Subsection (1) of section 526.53, Florida Statutes, is amended to read:

526.53 Enforcement; inspection and analysis, stop-sale and disposition, regulations.—

(1) The department shall enforce ~~the provisions of~~ this part through the department, and may sample, inspect, analyze, and test any brake fluid manufactured, packed, or sold within this state. Collected samples must be analyzed by the department. The certificate of analysis by the department shall be prima facie evidence of the facts stated therein in any legal proceeding in this state. The department has ~~shall have~~ free access during business hours to all premises, buildings, vehicles, cars, or vessels used in the manufacture, packing, storage, sale, or transportation of brake fluid, and may open any box, carton, parcel, or container of brake fluid and take samples for inspection and analysis or for evidence.

Section 20. Section 527.01, Florida Statutes, is amended to read:

527.01 Definitions.—As used in this chapter:

(1) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons, or

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mixtures of the same: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(2) "Person" means any individual, firm, partnership, corporation, company, association, organization, or cooperative.

(3) "~~Ultimate~~ Consumer" means the person last purchasing liquefied petroleum gas in its liquid or vapor state for industrial, commercial, or domestic use.

(4) "Department" means the Department of Agriculture and Consumer Services.

(5) "Qualifier" means any person who has passed a competency examination administered by the department and is employed by a licensed category I, category II, or category V business. ~~in one or more of the following classifications:~~

~~(a) Category I liquefied petroleum gas dealer.~~

~~(b) Category II liquefied petroleum gas dispenser.~~

~~(c) LP gas installer.~~

~~(d) Specialty installer.~~

~~(e) Requalifier of cylinders.~~

~~(f) Fabricator, repairer, and tester of vehicles and cargo tanks.~~

~~(g) Category IV liquefied petroleum gas dispensing unit operator and recreational vehicle servicer.~~

~~(h) Category V liquefied petroleum gases dealer for industrial uses only.~~

(6) "Category I liquefied petroleum gas dealer" means any person selling or offering to sell by delivery or at a stationary location any liquefied petroleum gas to the ~~ultimate~~ consumer for industrial, commercial, or domestic use; any person leasing or offering to lease, or exchanging or offering to

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exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders.

(7) "Category II liquefied petroleum gas dispenser" means any person engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid products to the ~~ultimate~~ consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, including maintaining a cylinder storage rack at the licensed business location for the purpose of storing cylinders filled by the licensed business for sale or use at a later date.

(8) "Category III liquefied petroleum gas cylinder exchange operator" means any person operating a storage facility used for the purpose of storing filled propane cylinders of not more than 43.5 pounds propane capacity or 104 pounds water capacity, while awaiting sale to the ~~ultimate~~ consumer, or a facility used for the storage of empty or filled containers which have been offered for exchange.

(9) "Category IV dealer in appliances and equipment ~~liquefied petroleum gas dispenser and recreational vehicle servicer~~" means any person selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas ~~engaging in the business of operating a liquefied petroleum gas dispensing unit~~


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~~for the purpose of serving liquid product to the ultimate consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment~~.

(10) "Category V LP gas installer" means any person who is engaged in the liquefied petroleum gas business and whose services include the installation, servicing, altering, or modifying of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum or natural gas.

(11) "Category VI miscellaneous operator" means any person who is engaged in operation as a manufacturer of LP gas appliances and equipment; a fabricator, repairer, and tester of vehicles and cargo tanks; a requalifier of LP gas cylinders; or a pipeline system operator ~~Specialty installer" means any person involved in the installation, service, or repair of liquefied petroleum or natural gas appliances and equipment, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, whose activities are limited to specific types of appliances and equipment as designated by department rule~~.

~~(12) "Dealer in appliances and equipment for use of liquefied petroleum gas" means any person selling or offering to sell, or leasing or offering to lease, apparatus, appliances,~~

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~~and equipment for the use of liquefied petroleum gas.~~

(12)~~(13)~~ "Manufacturer of liquefied petroleum gas appliances and equipment" means any person in this state manufacturing and offering for sale or selling tanks, cylinders, or other containers and necessary appurtenances for use in the storage, transportation, or delivery of such gas to the ~~ultimate~~ consumer, or manufacturing and offering for sale or selling apparatus, appliances, and equipment for the use of liquefied petroleum gas to the ~~ultimate~~ consumer.

(13)~~(14)~~ "Wholesaler" means any person, as defined by subsection (2), selling or offering to sell any liquefied petroleum gas for industrial, commercial, or domestic use to any person except the ~~ultimate~~ consumer.

(14)~~(15)~~ "Requalifier of cylinders" means any person involved in the retesting, repair, qualifying, or requalifying of liquefied petroleum gas tanks or cylinders manufactured under specifications of the United States Department of Transportation ~~or former Interstate Commerce Commission~~.

(15)~~(16)~~ "Fabricator, repairer, and tester of vehicles and cargo tanks" means any person involved in the hydrostatic testing, fabrication, repair, or requalifying of any motor vehicles or cargo tanks used for the transportation of liquefied petroleum gases, when such tanks are permanently attached to or forming a part of the motor vehicle.

~~(17) "Recreational vehicle" means a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use, which has its own propulsion or is mounted on or towed by another motor vehicle.~~

(16)~~(18)~~ "Pipeline system operator" means any person who


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owns or operates a liquefied petroleum gas pipeline system that is used to transmit liquefied petroleum gas from a common source to the ~~ultimate~~ customer and that serves 10 or more customers.

~~(19) "Category V liquefied petroleum gases dealer for industrial uses only" means any person engaged in the business of filling, selling, and transporting liquefied petroleum gas containers for use in welding, forklifts, or other industrial applications.~~

(17)~~(20)~~ "License period ~~year~~" means the period 1 to 3 years from the issuance of the license ~~from September 1 through the following August 31, or April 1 through the following March 31, depending upon the type of license~~.

Section 21. Section 527.02, Florida Statutes, is amended to read:

527.02 License; penalty; fees.—

(1) It is unlawful for any person to engage in this state in the activities defined in s. 527.01(6) through (11) ~~of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category III liquefied petroleum gas cylinder exchange operator, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gas dealer for industrial uses only, LP gas installer, specialty installer, dealer in liquefied petroleum gas appliances and equipment, manufacturer of liquefied petroleum gas appliances and equipment, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks~~ without first obtaining from the department a license to engage in one or more of these businesses. The sale of liquefied petroleum gas cylinders with a

volume of 10 pounds water capacity or 4.2 pounds liquefied petroleum gas capacity or less is exempt from the requirements of this chapter. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to intentionally or willfully engage in any of said activities without first obtaining appropriate licensure from the department.

(2) Each business location of a person having multiple locations must ~~shall~~ be separately licensed and must meet the requirements of this section. Such license shall be granted to any applicant determined by the department to be competent, qualified, and trustworthy who files with the department a surety bond, insurance affidavit, or other proof of insurance, as hereinafter specified, and pays for such license the following annual license ~~original application~~ fee ~~for new licenses and annual renewal fees for existing licenses~~:

License Category	License ~~Original~~ ~~Application~~ Fee Per Year	~~Renewal~~ Fee
Category I liquefied petroleum gas dealer	$400 ~~$525~~	~~$425~~
Category II liquefied petroleum gas dispenser	$400 ~~525~~	~~375~~

	Category III liquefied petroleum gas cylinder exchange unit operator	$65 ~~100~~	~~65~~
	Category IV dealer in appliances and equipment ~~liquefied petroleum~~ gas dispenser and recreational vehicle servicer	$65 ~~525~~	~~400~~
	Category V LP gas installer ~~liquefied~~ petroleum gases dealer for industrial uses only	$200 ~~300~~	~~200~~
	Category VI miscellaneous	$200 ~~300~~	~~200~~

operator ~~LP gas~~ installer		
~~Specialty~~ installer	~~300~~	~~200~~
~~Dealer in appliances~~ and equipment for use of liquefied petroleum gas	~~50~~	~~45~~
~~Manufacturer of~~ liquefied petroleum gas appliances and equipment	~~525~~	~~375~~
~~Requalifier of~~ cylinders	~~525~~	~~375~~
~~Fabricator,~~ ~~repairer,~~ and tester of vehicles and cargo tanks	~~525~~	~~375~~


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(3)(a) ~~An applicant for an original license who submits an application during the last 6 months of the license year may have the original license fee reduced by one-half for the 6-month period. This provision applies only to those companies applying for an original license and may not be applied to licensees who held a license during the previous license year and failed to renew the license.~~ The department may refuse to issue an initial license to an applicant who is under investigation in any jurisdiction for an action that would constitute a violation of this chapter until such time as the investigation is complete.

(b) The department shall waive the initial license fee for 1 year for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense or another acceptable form of identification as specified by the Department of Veterans' Affairs; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the


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department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

(4) Any licensee submitting a material change in their information for licensing, before the date for renewal, must submit such change to the department in the manner prescribed by the department, along with a fee in the amount of $10 ~~Any person applying for a liquefied petroleum gas license as a specialty installer, as defined by s. 527.01(11), shall upon application to the department identify the specific area of work to be performed. Upon completion of all license requirements set forth in this chapter, the department shall issue the applicant a license specifying the scope of work, as identified by the applicant and defined by rule of the department, for which the person is authorized~~.

~~(5) The license fee for a pipeline system operator shall be $100 per system owned or operated by the person, not to exceed $400 per license year. Such license fee applies only to a pipeline system operator who owns or operates a liquefied petroleum gas pipeline system that is used to transmit liquefied petroleum gas from a common source to the ultimate customer and that serves 10 or more customers.~~

(5)~~(6)~~ The department shall adopt ~~promulgate~~ rules specifying acts deemed by the department to demonstrate a lack


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of trustworthiness to engage in activities requiring a license or qualifier identification card under this section.

~~(7) Any license issued by the department may be transferred to any person, firm, or corporation for the remainder of the current license year upon written request to the department by the original licenseholder. Prior to approval of any transfer, all licensing requirements of this chapter must be met by the transferee. A license transfer fee of $50 shall be charged for each such transfer.~~

Section 22. Section 527.0201, Florida Statutes, is amended to read:

527.0201 Qualifiers; master qualifiers; examinations.—

(1) In addition to the requirements of s. 527.02, any person applying for a license to engage in category I, category II, or category V ~~the~~ activities ~~of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gases dealer for industrial uses only, LP gas installer, specialty installer, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks~~ must prove competency by passing a written examination administered by the department or its agent with a grade of 70 ~~75~~ percent or above in each area tested. Each applicant for examination shall submit a $20 nonrefundable fee. The department shall by rule specify the general areas of competency to be covered by each examination and the relative weight to be assigned in grading each area tested.

(2) Application for examination for competency may be made


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by an individual or by an owner, a partner, or any person employed by the license applicant. Upon successful completion of the competency examination, the department shall register ~~issue a qualifier identification card to~~ the examinee.

(a) Qualifier registration automatically expires if ~~identification cards, except those issued to category I liquefied petroleum gas dealers and liquefied petroleum gas installers, shall remain in effect as long as the individual shows to the department proof of active employment in the area of examination and all continuing education requirements are met. Should~~ the individual terminates ~~terminate~~ active employment in the area of examination for a period exceeding 24 months, or fails ~~fail~~ to provide documentation of continuing education~~, the individual's qualifier status shall automatically expire~~. If the qualifier registration ~~status~~ has expired, the individual must apply for and successfully complete an examination by the department in order to reestablish qualifier status.

(b) Every business organization in license category I, category II, or category V shall employ at all times a full-time qualifier who has successfully completed an examination in the corresponding category of the license held by the business organization. A person may not act as a qualifier for more than one licensed location.

(3) Qualifier registration expires ~~cards issued to category I liquefied petroleum gas dealers and liquefied petroleum gas installers shall expire~~ 3 years after the date of issuance. ~~All category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer qualifiers holding a valid~~


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~~qualifier card upon the effective date of this act shall retain their qualifier status until July 1, 2003, and may sit for the master qualifier examination at any time during that time period.~~ All such ~~category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer~~ qualifiers may renew their qualification ~~on or before July 1, 2003,~~ upon application to the department, payment of a $20 renewal fee, and documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by department rule, during the previous 3-year period. Applications for renewal must be made 30 calendar days before expiration. Persons failing to renew before the expiration date must reapply and take a qualifier competency examination in order to reestablish ~~category I liquefied petroleum gas dealer qualifier and liquefied petroleum gas installer~~ qualifier status. ~~If a category I liquefied petroleum gas qualifier or liquefied petroleum gas installer qualifier becomes a master qualifier at any time during the effective date of the qualifier card, the card shall remain in effect until expiration of the master qualifier certification.~~

(4) A qualifier for a business ~~organization involved in installation, repair, maintenance, or service of liquefied petroleum gas appliances, equipment, or systems~~ must actually function in a supervisory capacity of other company employees performing licensed activities ~~installing, repairing, maintaining, or servicing liquefied petroleum gas appliances, equipment, or systems~~. A separate qualifier shall be required for every 10 such employees. ~~Additional qualifiers are required for those business organizations employing more than 10~~

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~~employees that install, repair, maintain, or service liquefied petroleum gas equipment and systems.~~

(5) In addition to all other licensing requirements, each category I and category V licensee ~~liquefied petroleum gas dealer and liquefied petroleum gas installer~~ must, at the time of application for licensure, identify to the department one master qualifier who is a full-time employee at the licensed location. This person shall be a manager, owner, or otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to the department as provided by rule. The master qualifier requirement shall be in addition to the requirements of subsection (1).

(a) In order to apply for certification as a master qualifier, each applicant must have been a registered ~~be a category I liquefied petroleum gas dealer qualifier or liquefied petroleum gas installer~~ qualifier for a minimum of 3 years immediately preceding submission of the application, must be employed by a licensed category I or category V licensee ~~liquefied petroleum gas dealer, liquefied petroleum gas installer~~, or applicant for such license, ~~must provide documentation of a minimum of 1 year's work experience in the gas industry,~~ and must pass a master qualifier competency examination. Master qualifier examinations shall be based on Florida's laws, rules, and adopted codes governing liquefied petroleum gas safety, general industry safety standards, and administrative procedures. The applicant must successfully pass the examination with a grade of 70 ~~75~~ percent or above. Each applicant for master qualifier registration ~~status~~ must submit to the department a nonrefundable $30 examination fee before the


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examination.

(b) Upon successful completion of the master qualifier examination, the department shall issue the examinee a ~~certificate of~~ master qualifier registration ~~status which shall include the name of the licensed company for which the master qualifier is employed~~. A master qualifier may transfer from one licenseholder to another upon becoming employed by the company and providing a written request to the department.

(c) A master qualifier registration expires ~~status shall expire~~ 3 years after the date of issuance ~~of the certificate~~ and may be renewed by submission to the department of documentation of completion of at least 16 hours of approved continuing education courses during the 3-year period; proof of employment ~~with a licensed category I liquefied petroleum gas dealer, liquefied petroleum gas installer, or applicant~~; and a $30 certificate renewal fee. The department shall define~~,~~ by rule~~,~~ approved courses of continuing education.

~~(d) Each category I liquefied petroleum gas dealer or liquefied petroleum gas installer licensed as of August 31, 2000, shall identify to the department one current category I liquefied petroleum gas dealer qualifier or liquefied petroleum gas installer qualifier who will be the designated master qualifier for the licenseholder. Such individual must provide proof of employment for 3 years or more within the liquefied petroleum gas industry, and shall, upon approval of the department, be granted a master qualifier certificate. All other requirements with regard to master qualifier certificate expiration, renewal, and continuing education shall apply.~~

(6) A vacancy in a qualifier or master qualifier position


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in a business organization which results from the departure of the qualifier or master qualifier shall be immediately reported to the department by the departing qualifier or master qualifier and the licensed company.

(a) If a business organization no longer possesses a duly designated qualifier, as required by this section, its liquefied petroleum gas licenses shall be suspended by order of the department after 20 working days. The license shall remain suspended until a competent qualifier has been employed, the order of suspension terminated by the department, and the license reinstated. A vacancy in the qualifier position for a period of more than 20 working days shall be deemed to constitute an immediate threat to the public health, safety, and welfare. ~~Failure to obtain a replacement qualifier within 60 days after the vacancy occurs shall be grounds for revocation of licensure or eligibility for licensure.~~

(b) Any category I or category V licensee ~~liquefied petroleum gas dealer or LP gas installer~~ who no longer possesses a master qualifier but currently employs a ~~category I liquefied petroleum gas dealer or LP gas installer~~ qualifier as required by this section~~,~~ has ~~shall have~~ 60 days within which to replace the master qualifier. If the company fails to replace the master qualifier within the 60-day ~~time~~ period, the license of the company shall be suspended by order of the department. The license shall remain suspended until a competent master qualifier has been employed, the order of suspension has been terminated by the department, and the license reinstated. ~~Failure to obtain a replacement master qualifier within 90 days after the vacancy occurs shall be grounds for revocation of~~


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~~licensure or eligibility for licensure.~~

(7) The department may deny, refuse to renew, suspend, or revoke any qualifier ~~card~~ or master qualifier registration ~~certificate~~ for any of the following causes:

(a) Violation of any provision of this chapter or any rule or order of the department;

(b) Falsification of records relating to the qualifier ~~card~~ or master qualifier registration ~~certificate~~; or

(c) Failure to meet any of the renewal requirements.

(8) Any individual having competency qualifications on file with the department may request the transfer of such qualifications to any existing licenseholder by making a written request to the department for such transfer. Any individual having a competency examination on file with the department may use such examination for a new license application after making application in writing to the department. All examinations are confidential and exempt from the provisions of s. 119.07(1).

(9) If a duplicate license, qualifier ~~card~~, or master qualifier registration certificate is requested by the licensee, a fee of $10 must be received before issuance of the duplicate license or certificate ~~card~~. ~~If a facsimile transmission of an original license is requested, upon completion of the transmission a fee of $10 must be received by the department before the original license may be mailed to the requester.~~

(10) All revenues collected herein shall be deposited in the General Inspection Trust Fund for the purpose of administering the provisions of this chapter.

Section 23. Section 527.021, Florida Statutes, is amended to read:


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527.021 Registration of transport vehicles.—

(1) Each liquefied petroleum gas bulk delivery vehicle owned or leased by a liquefied petroleum gas licensee must be registered with the department as part of the licensing application or when placed into service ~~annually~~.

(2) For the purposes of this section, a "liquefied petroleum gas bulk delivery vehicle" means any vehicle that is used to transport liquefied petroleum gas on any public street or highway as liquid cargo in a cargo tank, which tank is mounted on a conventional truck chassis or is an integral part of a transporting vehicle in which the tank constitutes, in whole or in part, the stress member used as a frame and is a permanent part of the transporting vehicle.

(3) ~~Vehicle registrations shall be submitted by the vehicle owner or lessee in conjunction with the annual renewal of his or her liquefied petroleum gas license, but no later than August 31 of each year.~~ A dealer who fails to register a vehicle with the department ~~does not submit the required vehicle registration by August 31 of each year~~ is subject to the penalties in s. 527.13.

(4) The department shall issue a decal to be placed on each vehicle that is inspected by the department and found to be in compliance with applicable codes.

Section 24. Section 527.03, Florida Statutes, is amended to read:

527.03 ~~Annual~~ Renewal of license.—All licenses required under this chapter shall be renewed annually, biennially, or triennially, as elected by the licensee, subject to the license fees prescribed in s. 527.02. All renewals must meet the same requirements and conditions as an annual license for each


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licensed year ~~All licenses, except Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses, shall be renewed for the period beginning September 1 and shall expire on the following August 31 unless sooner suspended, revoked, or otherwise terminated. Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses shall be renewed for the period beginning April 1 and shall expire on the following March 31 unless sooner suspended, revoked, or otherwise terminated~~. Any license allowed to expire will ~~shall~~ become inoperative because of failure to renew. The fee for restoration of a license is equal to the original license fee and must be paid before the licensee may resume operations.

Section 25. Section 527.04, Florida Statutes, is amended to read:

527.04 Proof of insurance required.—

(1) Before any license is issued, except to a category IV dealer in appliances and equipment ~~for use of liquefied petroleum gas~~ or a category III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to such business and is issued by an insurer authorized to do business in this state for an amount not less than $1 million and that the premium on such insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of

acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy, the applicant may deliver a good and sufficient bond in the amount of $1 million, payable to the Commissioner of Agriculture ~~Governor of Florida~~, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant's compliance with this chapter and the rules of the department with respect to the conduct of such business and shall indemnify and hold harmless all persons from loss or damage by reason of the applicant's failure to comply. However, the aggregated liability of the surety may not exceed $1 million. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to be filed, and if the licenseholder fails to comply, the department shall cancel the license issued and give the licenseholder written notice that it is unlawful to engage in business without a license. A new bond is not required as long as the original bond remains sufficient and in force. If the licenseholder's insurance coverage as required by this subsection is canceled or otherwise terminated, the insurer must notify the department within 30 days after the cancellation or termination.

(2) Before any license is issued to a category ~~class~~ III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to the business

and is issued by an insurer authorized to do business in this state for an amount not less than $300,000 and that the premium on the insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy, the applicant may deliver a good and sufficient bond in the amount of $300,000, payable to the Commissioner of Agriculture ~~Governor~~, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant's compliance with this chapter and the rules of the department with respect to the conduct of such business and must indemnify and hold harmless all persons from loss or damage by reason of the applicant's failure to comply. However, the aggregated liability of the surety may not exceed $300,000. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to be filed, and if the licenseholder fails to comply, the department shall cancel the license issued and give the licenseholder written notice that it is unlawful to engage in business without a license. A new bond is not required as long as the original bond remains sufficient and in force. If the licenseholder's insurance coverage required by this subsection is canceled or otherwise terminated, the insurer must notify the department within 30 days after the cancellation or termination.

(3) Any person having a cause of action on the bond may bring suit against the principal and surety, and a copy of such bond duly certified by the department shall be received in


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evidence in the courts of this state without further proof. The department shall furnish a certified copy of the ~~such~~ bond upon payment to it of its lawful fee for making and certifying such copy.

Section 26. Section 527.0605, Florida Statutes, is amended to read:

527.0605 Liquefied petroleum gas bulk storage locations; jurisdiction.—

(1) The provisions of this chapter ~~shall~~ apply to liquefied petroleum gas bulk storage locations when:

(a) A single container in the bulk storage location has a capacity of 2,000 gallons or more;

(b) The aggregate container capacity of the bulk storage location is 4,000 gallons or more; or

(c) A container or containers are installed for the purpose of serving the public the liquid product.

~~(2) Prior to the installation of any bulk storage container, the licensee must submit to the department a site plan of the facility which shows the proposed location of the container and must obtain written approval of such location from the department.~~

~~(3) A fee of $200 shall be assessed for each site plan reviewed by the division. The review shall include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.~~

(2)~~(4)~~ No newly installed container may be placed in operation until it has been inspected and approved by the department.

Section 27. Subsection (1) of section 527.065, Florida


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Statutes, is amended to read:

527.065 Notification of accidents; leak calls.—

(1) Immediately upon discovery, all liquefied petroleum gas licensees shall notify the department of any liquefied petroleum gas-related accident involving a liquefied petroleum gas licensee or customer account:

(a) Which caused a death or personal injury requiring professional medical treatment;

(b) Where uncontrolled ignition of liquefied petroleum gas resulted in death, personal injury, or property damage exceeding $3,000 ~~$1,000~~; or

(c) Which caused estimated damage to property exceeding $3,000 ~~$1,000~~.

Section 28. Subsection (3) is added to section 527.067, Florida Statutes, to read:

527.067 Responsibilities of persons engaged in servicing liquefied petroleum gas equipment and systems and consumers, end users, or owners of liquefied petroleum gas equipment or systems.—

(3) A category I liquefied petroleum gas dealer may not render a consumer’s liquefied petroleum gas equipment or system inoperable or discontinue service without providing written or electronic notification to the consumer at least 5 business days before rendering the liquefied petroleum gas equipment or system inoperable or discontinuing service. This notification does not apply in the event of a hazardous condition known to the category I liquefied petroleum gas dealer.

Section 29. Section 527.10, Florida Statutes, is amended to read:


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527.10 Restriction on use of unsafe container or system.—No liquefied petroleum gas shall be introduced into or removed from any container or system in this state that has been identified by the department or its duly authorized inspectors as not complying with the rules pertaining to such container or system, until such violations as specified have been satisfactorily corrected and authorization for continued service or removal granted by the department. A statement of violations of the rules that render such a system unsafe for use shall be furnished in writing by the department to the ~~ultimate~~ consumer or dealer in liquefied petroleum gas.

Section 30. Subsections (3) and (17) of section 527.21, Florida Statutes, are amended to read:

527.21 Definitions relating to Florida Propane Gas Education, Safety, and Research Act.—As used in ss. 527.20-527.23, the term:

(3) "Dealer" means a business engaged primarily in selling propane gas and its appliances and equipment to the ~~ultimate~~ consumer or to retail propane gas dispensers.

(17) "Wholesaler" or "reseller" means a seller of propane gas who is not a producer and who does not sell propane gas to the ~~ultimate~~ consumer.

Section 31. Paragraph (a) of subsection (2) of section 527.22, Florida Statutes, is amended to read:

527.22 Florida Propane Gas Education, Safety, and Research Council established; membership; duties and responsibilities.—

(2)(a) ~~Within 90 days after the effective date of this act, the commissioner shall make a call to qualified industry organizations for nominees to the council.~~ The commissioner


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shall appoint members of the council from a list of nominees submitted by qualified industry organizations. The commissioner may require such reports or documentation as is necessary to document the nomination process for members of the council. Qualified industry organizations, in making nominations, and the commissioner, in making appointments, shall give due regard to selecting a council that is representative of the industry and the geographic regions of the state. Other than the public member, council members must be full-time employees or owners of propane gas producers or dealers doing business in this state.

Section 32. Section 531.67, Florida Statutes, is amended to read:

531.67 Expiration of sections.—Sections 531.60, 531.61, 531.62, 531.63, 531.64, 531.65, and 531.66 shall expire July 1, 2025 ~~2020~~.

Section 33. Section 534.47, Florida Statutes, is amended to read:

534.47 Definitions.—As used in ss. 534.48-534.54, the term ~~ss. 534.48-534.53~~:

(1) "Dealer" means a person, not a market agency, engaged in the business of buying or selling in commerce livestock either on his or her own account or as the employee or agent of a vendor or purchaser.

(2)~~(1)~~ "Department" means the Department of Agriculture and Consumer Services.

(3) "Livestock" has the same meaning as in s. 585.01(13).

(4)~~(2)~~ "Livestock market" means any location in the state where livestock is assembled and sold at public auction or on a commission basis during regularly scheduled or special sales.


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The term "livestock market" does ~~shall~~ not include private farms or ranches or sales made at livestock shows, fairs, exhibitions, or special breed association sales.

(5) "Packer" means a person engaged in the business of buying livestock in commerce for purposes of slaughter, or of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesaler broker, dealer, or distributor in commerce.

(6) "Purchaser" means a person, partnership, firm, corporation, or other organization owning, managing, producing, or dealing in livestock, including, but not limited to, a packer or dealer, that buys livestock for breeding, feeding, reselling, slaughter, or other purpose.

(7) "Registered and approved livestock market" means a livestock market fully registered, bonded, and approved as a market agency pursuant to the Stockyards Act and governing regulations of the United States Department of Agriculture Grain Inspection, Packers and Stockyards Administration.

(8) "Seller" means a person, partnership, firm, corporation, or other organization owning, managing, producing, financing, or dealing in livestock, including, but not limited to, a registered and approved livestock market as consignee or a dealer, that sells livestock for breeding, feeding, reselling, slaughter, or other purpose.

(9) "Stockyards Act" means the Packers and Stockyards Act of 1921, 7 U.S.C. ss. 181-229 and the regulations promulgated pursuant to that act under 9 C.F.R. part 201.

~~(3) "Buyer" means the party to whom title of livestock~~


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~~passes or who is responsible for the purchase price of livestock, including, but not limited to, producers, dealers, meat packers, or order buyers.~~

Section 34. Section 534.49, Florida Statutes, is amended to read:

534.49 Livestock drafts; effect.—For the purposes of this section, a livestock draft given as payment at a livestock auction market for a livestock purchase shall not be deemed an express extension of credit to the purchaser ~~buyer~~ and shall not defeat the creation of a lien on such ~~an~~ animal and its carcass, ~~and~~ all products therefrom, and all proceeds thereof, to secure all or a part of its sales price, as provided in s. 534.54(3) ~~s. 534.54(4)~~.

Section 35. Section 534.50, Florida Statutes, is repealed.

Section 36. Section 534.501, Florida Statutes, is amended to read:

534.501 ~~Livestock draft;~~ Unlawful ~~to~~ delay or failure in payment.—It is ~~shall be~~ unlawful for the purchaser of livestock to delay or fail in rendering payment for livestock to a seller of cattle as provided in s. 534.54. A person who violates this section commits an unfair or deceptive act or practice as specified in s. 501.204 ~~payment of the livestock draft upon presentation of said draft at the payor's bank. Nothing contained in this section shall be construed to preclude a payor's right to refuse payment of an unauthorized draft~~.

Section 37. Section 534.51, Florida Statutes, is repealed.

Section 38. Section 534.54, Florida Statutes, is amended to read:

534.54 Cattle or hog processors; prompt payment; penalty;


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lien.—

~~(1) As used in this section:~~

~~(a) "Livestock" means cattle or hogs.~~

~~(b) "Meat processor" means a person, corporation, association, or other legal entity engaged in the business of slaughtering cattle or hogs.~~

(1)~~(2)~~(a) A purchaser that ~~meat processor who~~ purchases livestock from a seller~~, or any person, corporation, association, or other legal entity who purchases livestock from a seller for slaughter,~~ shall make payment by cash or check for the purchase price of the livestock and actually deliver the cash or check to the seller or her or his representative at the location where the purchaser takes physical possession of the livestock on the day the transfer of possession occurs or by ~~shall~~ wire transfer of funds on the business day within which the possession of the ~~said~~ livestock is transferred. However, if the transfer of possession is accomplished after normal banking hours, ~~said~~ payment shall be made in the manner ~~herein~~ provided in this subsection no ~~not~~ later than the close of the first business day following the ~~said~~ transfer of possession. In the case of ~~"~~grade and yield~~"~~ selling, the purchaser shall make payment by wire transfer of funds or by personal or cashier's check by registered mail postmarked no ~~not~~ later than the close of the first business day following determination of ~~"~~grade and yield.~~"~~

(b) All instruments issued in payment as required by this section ~~hereunder~~ shall be drawn on banking institutions which are so located as not artificially to delay collection of funds through the mail or otherwise cause an undue lapse of time in

the clearance process.

(2)~~(3) In all cases in which~~ A purchaser of ~~who purchases~~ livestock that ~~for slaughter from a seller~~ fails to comply with subsection (1) ~~make payment for the livestock as required by this section~~ or artificially delays collection of funds for the payment of the livestock~~, the purchaser~~ shall be liable to pay the seller ~~owner~~ of the livestock, in addition to the price of the livestock:

(a) Twelve percent damages on the amount of the price.

(b) Interest on the purchase price of the livestock at the highest legal rate from and after the transfer of possession until payment is made as required by this section.

(c) ~~A~~ Reasonable attorney fees, court costs, and expenses ~~attorney's fee~~ for the prosecution of collection of the payment.

(3)~~(4)~~(a) A seller that ~~Any person, partnership, firm, corporation, or other organization which~~ sells livestock to a purchaser shall have a lien on such animal and its carcass, all products therefrom, and all proceeds thereof to secure all or a part of its sales price.

(b) The lien provided in this subsection shall be deemed to have attached and to be perfected upon delivery of the livestock to the purchaser without further action, and such lien shall continue in the livestock and its carcass, all products therefrom, and all proceeds thereof without regard to possession thereof by the party entitled to such lien without further perfection.

(c) If the livestock or its carcass or products therefrom are so commingled with other livestock, carcasses, or products so that the identity thereof is lost, then the lien granted in

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this subsection shall extend to the same effect as if same had been perfected originally in all such animals, carcasses, and products with which it has become commingled. However, all liens so extended under this paragraph to such commingled livestock, carcasses, and products shall be on a parity with one another, and, with respect to such commingled carcasses or products upon which a lien or liens have been so extended under this paragraph, no such lien shall be enforceable as against any purchaser without actual knowledge thereof purchasing one or more of such carcasses or products in the ordinary course of trade or business from the party having commingled such carcasses or products or against any subsequent transferee from such purchaser, but in the event of such sale, such lien shall instead extend to the proceeds of such sale.

Section 39. Subsection (46) is added to section 570.07, Florida Statutes, to read:

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

(46) During a state of emergency declared pursuant to s. 252.36, to waive fees by emergency order for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations during a period specified by the commissioner.

Section 40. Section 573.111, Florida Statutes, is amended to read:

573.111 Notice of effective date of marketing order.—Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice must ~~shall~~ be posted

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~~on a public bulletin board to be maintained by the department in the Division of Marketing and Development of the department in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice shall be posted~~ on the department website ~~the same date that the notice is posted on the bulletin board~~. A ~~No~~ marketing order, or any suspension, amendment, or termination thereof, may not ~~shall~~ become effective until ~~the termination of a period of~~ 5 days after ~~from~~ the date of posting and publication.

Section 41. Section 578.011, Florida Statutes, is amended to read:

578.011 Definitions; Florida Seed Law.—When used in this chapter, the term:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this law.

(2) "Agricultural seed" includes the seed of grass, forage, cereal and fiber crops, and chufas and any other seed commonly recognized within the state as agricultural seed, lawn seed, and combinations of such seed, and may include identified noxious weed seed when the department determines that such seed is being used as agricultural seed ~~or field seed and mixtures of such seed~~.

(3) "Blend" means seed consisting of more than one variety of one kind, each present in excess of 5 percent by weight of the whole.

(4) "Buyer" means a person who purchases agricultural, vegetable, flower, tree, or shrub seed in packaging of 1,000 seeds or more by count.


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(5) "Brand" means a distinguishing word, name, symbol, number, or design used to identify seed produced, packaged, advertised, or offered for sale by a particular person.

(6) ~~(3)~~ "Breeder seed" means a class of certified seed directly controlled by the originating or sponsoring plant breeding institution or person, or designee thereof, and is the source for the production of seed of the other classes of certified seed ~~that are released directly from the breeder or experiment station that develops the seed. These seed are one class above foundation seed~~.

(7) ~~(4)~~ "Certified seed~~,~~" means a class of seed which is the progeny of breeder, foundation, or registered seed ~~"registered seed," and "foundation seed" mean seed that have been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of any agency authorized by the laws of this state or the laws of another state~~.

(8) "Certifying agency" means:

(a) An agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country that the United States Secretary of Agriculture has determined as adhering to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under paragraph (a).

(9) "Coated seed" means seed that has been covered by a layer of materials that obscures the original shape and size of


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the seed and substantially increases the weight of the product. The addition of biologicals, pesticides, identifying colorants or dyes, or other active ingredients including polymers may be included in this process.

(10) ~~(5)~~ "Date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(11) ~~(6)~~ "Dealer" means any person who sells or offers for sale any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed for seeding purposes, and includes farmers who sell cleaned, processed, packaged, and labeled seed.

(12) ~~(7)~~ "Department" means the Department of Agriculture and Consumer Services or its authorized representative.

(13) ~~(8)~~ "Dormant seed" refers to viable seed, other than hard seed, which neither germinate nor decay during the prescribed test period and under the prescribed test conditions.

(14) ~~(9)~~ "Flower seed" includes seed of herbaceous plants grown for blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or wildflower seed in this state.

~~(10) "Forest tree seed" includes seed of woody plants commonly known and sold as forest tree seed.~~

(15) "Foundation seed" means a class of certified seed which is the progeny of breeder or other foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing foundation seed, for the purpose of maintaining genetic purity and identity.

(16) ~~(11)~~ "Germination" means the emergence and development


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from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions ~~percentage of seed capable of producing normal seedlings under ordinarily favorable conditions. Broken seedlings and weak, malformed and obviously abnormal seedlings shall not be considered to have germinated~~.

(17) ~~(12)~~ "Hard seed" means seeds that remain hard at the end of a prescribed test period because they have not absorbed water due to an impermeable seed coat ~~the percentage of seed which because of hardness or impermeability did not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned~~.

(18) ~~(13)~~ "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) Two or more inbred lines;

(b) One inbred or a single cross with an open-pollinated variety; or

(c) Two varieties or species, except open-pollinated varieties of corn (*Zea mays*).

The second generation or subsequent generations from such crosses may ~~shall~~ not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(19) ~~(14)~~ "Inert matter" means all matter that is not a full seed ~~includes broken seed when one-half in size or less; seed of legumes or crucifers with the seed coats removed; undeveloped and badly injured weed seed such as sterile dodder which, upon~~


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~~visual examination, are clearly incapable of growth; empty glumes of grasses; attached sterile glumes of grasses (which must be removed from the fertile glumes except in Rhodes grass); dirt, stone, chaff, nematode, fungus bodies, and any matter other than seed~~.

(20) ~~(15)~~ "Kind" means one or more related species or subspecies which singly or collectively is known by one common name; e.g., corn, beans, lespedeza.

(21) "Label" means the display or displays of written or printed material upon or attached to a container of seed.

(22) ~~(16)~~ "Labeling" includes all labels and other written, printed, or graphic representations, in any form, accompanying and pertaining to any seed, whether in bulk or in containers, and includes invoices and other bills of shipment when sold in bulk.

(23) ~~(17)~~ "Lot ~~of seed~~" means a definite quantity of seed identified by a lot number or other mark ~~identification~~, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling~~, for the factors which appear in the labeling, within permitted tolerances~~.

(24) ~~(18)~~ "Mix," "mixed," or "mixture" means seed consisting of more than one kind ~~or variety~~, each present in excess of 5 percent by weight of the whole.

(25) "Mulch" means a protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aid in the prevention of the evaporation of soil moisture, the control of weeds, and the prevention of erosion.

(26) "Noxious weed seed" means seed in one of two classes


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of seed:

(a) "Prohibited noxious weed seed" means the seed of weeds that are highly destructive and difficult to control by good cultural practices and the use of herbicides.

(b) "Restricted noxious weed seed" means weed seeds that are objectionable in agricultural crops, lawns, and gardens of this state and which can be controlled by good agricultural practices or the use of herbicides.

(27) ~~(19)~~ "Origin" means the state, District of Columbia, Puerto Rico, or possession of the United States, or the foreign country where the seed were grown, except for native species, where the term means the county or collection zone and the state where the seed were grown ~~for forest tree seed, with respect to which the term "origin" means the county or state forest service seed collection zone and the state where the seed were grown~~.

(28) ~~(20)~~ "Other crop seed" includes all seed of plants grown in this state as crops, other than the kind or kind and variety included in the pure seed, when not more than 5 percent of the whole of a single kind or variety is present, unless designated as weed seed.

(29) "Packet seed" means seed prepared for use in home gardens and household plantings packaged in labeled, sealed containers of less than 8 ounces and typically sold from seed racks or displays in retail establishments, via the Internet, or through mail order.

(30) ~~(21)~~ "Processing" means conditioning, cleaning, scarifying, or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and, therefore, require retesting to determine the quality


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of the seed.

~~(22) "Prohibited noxious weed seed" means the seed and bulblets of perennial weeds such as not only reproduce by seed or bulblets, but also spread by underground roots or stems and which, when established, are highly destructive and difficult to control in this state by ordinary good cultural practice.~~

(31) ~~(23)~~ "Pure seed" means the seed, exclusive of inert matter, of the kind or kind and variety of seed declared on the label or tag ~~includes all seed of the kind or kind and variety or strain under consideration, whether shriveled, cracked, or otherwise injured, and pieces of broken seed larger than one-half the original size~~.

(32) ~~(24)~~ "Record" includes the symbol identifying the seed as to origin, amount, processing, testing, labeling, and distribution, ~~file sample of the seed,~~ and any other document or instrument pertaining to the purchase, sale, or handling of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed. Such information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

(33) "Registered seed" means a class of certified seed which is the progeny of breeder or foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for the purpose of maintaining genetic purity and identity.

~~(25) "Restricted noxious weed seed" means the seed of such weeds as are very objectionable in fields, lawns, or gardens of this state, but can be controlled by good cultural practice. Seed of poisonous plants may be included.~~

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(34) "Shrub seed" means seed of a woody plant that is smaller than a tree and has several main stems arising at or near the ground.

(35)~~(26)~~ "Stop-sale" means any written or printed notice or order issued by the department to the owner or custodian of any lot of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed in the state, directing the owner or custodian not to sell or offer for sale seed designated by the order within the state until the requirements of this law are complied with and a written release has been issued; except that the seed may be released to be sold for feed.

(36)~~(27)~~ "Treated" means that the seed has been given an application of a material or subjected to a process designed to control or repel disease organisms, insects, or other pests attacking seed or seedlings grown therefrom to improve its planting value or to serve any other purpose.

(37) "Tree seed" means seed of a woody perennial plant typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

(38)~~(28)~~ "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(39)~~(29)~~ "Variety" means a subdivision of a kind which is distinct in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; uniform in the sense that the variations in essential and distinctive characteristics are describable; and stable in the


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sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted ~~characterized by growth, plant fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind; e.g., Whatley's Prolific corn, Bountiful beans, Kobe lespedeza~~.

(40)~~(30)~~ "Vegetable seed" means the seed of those crops that ~~which~~ are grown in gardens or on truck farms, and are generally known and sold under the name of vegetable seed or herb seed in this state.

(41)~~(31)~~ "Weed seed" includes the seed of all plants generally recognized as weeds within this state, and includes prohibited and restricted noxious weed seed, bulblets, ~~and~~ tubers, and any other vegetative propagules.

Section 42. Section 578.012, Florida Statutes, is created to read:

578.012 Preemption.—

(1) It is the intent of the Legislature to eliminate duplication of regulation of seed. As such, this chapter is intended as comprehensive and exclusive and occupies the whole field of regulation of seed.

(2) The authority to regulate seed or matters relating to seed in this state is preempted to the state. A local government or political subdivision of the state may not enact or enforce an ordinance that regulates seed, including the power to assess any penalties provided for violation of this chapter.

Section 43. Section 578.08, Florida Statutes, is amended to read:

578.08 Registrations.—

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(1) Every person, except as provided in subsection (4) ~~and s. 578.14~~, before selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed or mixture thereof, shall first register with the department as a seed dealer. The application for registration must include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The application must ~~for registration shall~~ be filed with the department by using a form prescribed by the department or by using the department's website and shall be accompanied by an annual registration fee for each such place of business based on the gross receipts from the sale of such seed for the last preceding license year as follows:

(a)1. Receipts of less than $500, a fee of $10.

2. Receipts of $500 or more but less than $1,000, a fee of $25.

3. Receipts of $1,000 or more but less than $2,500, a fee of $100.

4. Receipts of $2,500 or more but less than $5,000, a fee of $200.

5. Receipts of $5,000 or more but less than $10,000, a fee of $350.

6. Receipts of $10,000 or more but less than $20,000, a fee of $800.

7. Receipts of $20,000 or more but less than $40,000, a fee of $1,000.

8. Receipts of $40,000 or more but less than $70,000, a fee


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of $1,200.

9. Receipts of $70,000 or more but less than $150,000, a fee of $1,600.

10. Receipts of $150,000 or more but less than $400,000, a fee of $2,400.

11. Receipts of $400,000 or more, a fee of $4,600.

(b) For places of business not previously in operation, the fee shall be based on anticipated receipts for the first license year.

(2) A ~~written~~ receipt from the department of the registration and payment of the fee shall constitute a sufficient permit for the dealer to engage in or continue in the business of selling, distributing for sale, offering or exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed within the state. However, the department has ~~shall have~~ authority to suspend or revoke any permit for the violation of any provision of this law or of any rule adopted under authority hereof. The registration shall expire on June 30 of the next calendar year and shall be renewed on July 1 of each year. If any person subject to the requirements of this section fails to comply, the department may issue a stop-sale notice or order which shall prohibit the person from selling or causing to be sold any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed until the requirements of this section are met.

(3) Every person selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed in the state other than as


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provided in subsection (4) ~~s. 578.14~~, shall be subject to the requirements of this section~~; except that agricultural experiment stations of the State University System shall not be subject to the requirements of this section~~.

(4) ~~The provisions of~~ This chapter does ~~shall~~ not apply to farmers who sell only uncleaned, unprocessed, unpackaged, and unlabeled seed, but shall apply to farmers who sell cleaned, processed, packaged, and labeled seed in amounts in excess of $10,000 in any one year.

(5) When packet seed is sold, offered for sale, or exposed for sale, the company who packs seed for retail sale must register and pay fees as provided under subsection (1).

Section 44. Section 578.09, Florida Statutes, is amended to read:

578.09 Label requirements for agricultural, vegetable, flower, tree, or shrub seeds.—Each container of agricultural, vegetable, ~~or~~ flower, tree, or shrub seed which is sold, offered for sale, exposed for sale, or distributed for sale within this state for sowing ~~or planting~~ purposes must ~~shall~~ bear thereon or have attached thereto, in a conspicuous place~~,~~ a ~~label or labels containing all information required under this section,~~ plainly written or printed label or tag in the English language~~, in Century type~~. All data pertaining to analysis must ~~shall~~ appear on a single label. Language setting forth the requirements for filing and serving complaints as described in s. 578.26(1)(c) must ~~s. 578.26(1)(b) shall~~ be included on the analysis label or be otherwise attached to the package, except for packages containing less than 1,000 seeds by count.

(1) ~~FOR TREATED SEED.—~~ For all treated agricultural,


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vegetable, ~~or~~ flower, tree, or shrub seed ~~treated~~ as defined in this chapter:

(a) A word or statement indicating that the seed has been treated ~~or description of process used~~.

(b) The commonly accepted coined, chemical, or abbreviated chemical (generic) name of the applied substance or description of the process used ~~and the words "poison treated" in red letters, in not less than 1/4-inch type~~.

(c) If the substance in the amount present with the seed is harmful to humans or other vertebrate animals, a caution statement such as "Do not use for food, feed, or oil purposes." The caution for mercurials, Environmental Protection Agency Toxicity Category 1 as referenced in 7 C.F.R. 201.31a(c)(2), and similarly toxic substances shall be designated by a poison statement or symbol.

~~(d) Rate of application or statement "Treated at manufacturer's recommended rate."~~

(d)~~(c)~~ If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).

A label separate from other labels required by this section or other law may be used to identify seed treatments as required by this subsection.

(2) For agricultural seed, including lawn and turf grass seed and mixtures thereof: ~~AGRICULTURAL SEED.—~~

(a) ~~Commonly accepted~~ The name of the kind and variety of each ~~agricultural seed~~ component present in excess of 5 percent of the whole, and the percentage by weight of each in the order

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of its predominance. Where more than one component is required to be named, the word "mixed," "mixture," or "blend" must ~~the word "mixed" shall~~ be shown conspicuously on the label. Hybrids must be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Net weight or seed count.

(d) Origin, if known. If the origin is ~~; if~~ unknown, that fact must ~~shall~~ be stated.

(e) Percentage by weight of all weed seed.

(f) ~~The~~ Name and number of noxious weed seed per pound, if present ~~per pound of each kind of restricted noxious weed seed~~.

(g) Percentage by weight of agricultural seed which may be designated as other crop seed, other than those required to be named on the label.

(h) Percentage by weight of inert matter.

(i) For each named agricultural seed, including lawn and turf grass seed:

1. Percentage of germination, exclusive of hard or dormant seed;

2. Percentage of hard or dormant seed, if ~~when~~ present~~, if desired~~; and

3. The calendar month and year the test was completed to determine such percentages, provided that the germination test must have been completed within the previous 9 months, exclusive of the calendar month of test.

(j) Name and address of the person who labeled said seed or who sells, distributes, offers, or exposes said seed for sale within this state.


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The sum total of the percentages listed pursuant to paragraphs (a),(e),(g), and (h) must be equal to 100 percent.

(3) For seed that is coated:

(a) Percentage by weight of pure seed with coating material removed. The percentage of coating material may be included with the inert matter percentage or may be listed separately.

(b) Percentage of germination. This percentage must be determined based on an examination of 400 coated units with or without seed.

In addition to the requirements of this subsection, labeling of coated seed must also comply with the requirements of any other subsection pertaining to that type of seed. ~~FOR VEGETABLE SEED IN CONTAINERS OF 8 OUNCES OR MORE.—~~

~~(a) Name of kind and variety of seed.~~

~~(b) Net weight or seed count.~~

~~(c) Lot number or other lot identification.~~

~~(d) Percentage of germination.~~

~~(e) Calendar month and year the test was completed to determine such percentages.~~

~~(f) Name and address of the person who labeled said seed or who sells, distributes, offers or exposes said seed for sale within this state.~~

~~(g) For seed which germinate less than the standard last established by the department the words "below standard," in not less than 8-point type, must be printed or written in ink on the face of the tag, in addition to the other information required. Provided, that no seed marked "below standard" shall be sold which falls more than 20 percent below the standard for such~~


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~~seed which has been established by the department, as authorized by this law.~~

~~(h) The name and number of restricted noxious weed seed per pound.~~

(4) For combination mulch, seed, and fertilizer products:

(a) The word "combination" followed, as appropriate, by the words "mulch - seed - fertilizer" must appear prominently on the principal display panel of the package.

(b) If the product is an agricultural seed placed in a germination medium, mat, tape, or other device or is mixed with mulch or fertilizer, it must also be labeled with all of the following:

1. Product name.

2. Lot number or other lot identification.

3. Percentage by weight of pure seed of each kind and variety named which may be less than 5 percent of the whole.

4. Percentage by weight of other crop seed.

5. Percentage by weight of inert matter.

6. Percentage by weight of weed seed.

7. Name and number of noxious weed seeds per pound, if present.

8. Percentage of germination, and hard or dormant seed if appropriate, of each kind or kind and variety named. The germination test must have been completed within the previous 12 months exclusive of the calendar month of test.

9. The calendar month and year the test was completed to determine such percentages.

10. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within the

state.

The sum total of the percentages listed pursuant to subparagraphs 3., 4., 5., and 6. must be equal to 100 percent.

(5) For vegetable seed in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices: ~~FOR VEGETABLE SEED IN CONTAINERS OF LESS THAN 8 OUNCES.—~~

(a) Name of kind and variety of seed. Hybrids must be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Germination test date identified in the following manner:

1. The calendar month and year the germination test was completed and the statement "Sell by ...(month/year)...", which may be no more than 12 months from the date of test, beginning with the month after the test date;

2. The month and year the germination test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test; or

3. The year for which the seed was packaged for sale as "Packed for ...(year)..." and the statement "Sell by ...(year)..." which shall be one year after the seed was packaged for sale.

(d) ~~(b)~~ Name and address of the person who labeled the seed or who sells, ~~distributes,~~ offers, or exposes said seed for sale within this state.

(e) ~~(c)~~ For seed which germinate less than standard last


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established by the department~~, the additional information must be shown~~:

1. Percentage of germination, exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed ~~when present~~, if present ~~desired~~.

~~3. Calendar month and year the test was completed to determine such percentages.~~

3.~~4.~~ The words "Below Standard" prominently displayed ~~in not less than 8-point type~~.

(f)~~(d)~~ No seed marked "below standard" may ~~shall~~ be sold that falls ~~which fall~~ more than 20 percent below the established standard for such seed. For seeds that do not have an established standard, the minimum germination standard shall be 50 percent, and no such seed may be sold that is 20 percent below this standard.

(g) For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.

(6) For vegetable seed in containers, other than packets prepared for use in home gardens or household plantings, and other than preplanted containers, mats, tapes, or other planting devices:

(a) The name of each kind and variety present of any seed in excess of 5 percent of the total weight in the container, and the percentage by weight of each type of seed in order of its

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predominance. Hybrids must be labeled as hybrids.

(b) Net weight or seed count.

(c) Lot number or other lot identification.

(d) For each named vegetable seed:

1. Percentage germination, exclusive of hard or dormant seed;

2. Percentage of hard or dormant seed, if present;

3. Listed below the requirements of subparagraphs 1. and 2., the "total germination and hard or dormant seed" may be stated as such, if desired; and

4. The calendar month and year the test was completed to determine the percentages specified in subparagraphs 1. and 2., provided that the germination test must have been completed within 9 months, exclusive of the calendar month of test.

(e) Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

(f) For seed which germinate less than the standard last established by the department, the words "Below Standard" prominently displayed.

1. No seed marked "Below Standard" may be sold if the seed is more than 20 percent below the established standard for such seed.

2. For seeds that do not have an established standard, the minimum germination standard shall be 50 percent, and no such seed may be sold that is 20 percent below this standard.

(7) ~~(5)~~ For flower seed in packets prepared for use in home gardens or household plantings or flower seed in preplanted containers, mats, tapes, or other planting devices: ~~FOR FLOWER~~


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~~SEED IN PACKETS PREPARED FOR USE IN HOME GARDENS OR HOUSEHOLD PLANTINGS OR FLOWER SEED IN PREPLANTED CONTAINERS, MATS, TAPES, OR OTHER PLANTING DEVICES.~~

(a) For all kinds of flower seed:

1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules and regulations adopted ~~promulgated~~ under the provisions of this chapter.

2. Germination test date, identified in the following manner:

a. The calendar month and year the germination test was completed and the statement "Sell by ...(month/year)...". The sell by date must be no more than 12 months from the date of test, beginning with the month after the test date;

b. The year for which the seed was packed for sale as "Packed for ...(year)..." and the statement "Sell by ...(year)..." which shall be for a calendar year; or

c. The calendar month and year the test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test.

~~2. The calendar month and year the seed was tested or the year for which the seed was packaged.~~

3. The name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this state.

(b) For seed of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under the provisions of


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this chapter:

1. The percentage of germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. The words "Below Standard" prominently displayed ~~in not less than 8-point type~~.

(c) For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seed from the medium, mat, tape, or device, a statement to indicate the minimum number of seed in the container.

(8) ~~(6)~~ For flower seed in containers other than packets and other than preplanted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings: ~~FOR FLOWER SEED IN CONTAINERS OTHER THAN PACKETS PREPARED FOR USE IN HOME FLOWER GARDENS OR HOUSEHOLD PLANTINGS AND OTHER THAN PREPLANTED CONTAINERS, MATS, TAPES, OR OTHER PLANTING DEVICES.—~~

(a) The name of the kind and variety, and for wildflowers, the genus and species and subspecies, if appropriate ~~or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this chapter~~.

(b) Net weight or seed count.

(c) ~~(b) The~~ Lot number or other lot identification.

(d) For flower seed with a pure seed percentage of less than 90 percent:

1. Percentage, by weight, of each component listed in order of its predominance.

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2. Percentage by weight of weed seed, if present.

3. Percentage by weight of other crop seed.

4. Percentage by weight of inert matter.

(e) For those kinds of seed for which standard testing procedures are prescribed:

1. Percentage germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3.~~(c)~~ The calendar month and year that the test was completed. The germination test must have been completed within the previous 9 months, exclusive of the calendar month of test.

(f) For those kinds of seed for which standard testing procedures are not available, the year of production or collection ~~seed were tested or the year for which the seed were packaged~~.

(g)~~(d)~~ The name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

~~(e) For those kinds of seed for which standard testing procedures are prescribed:~~

~~1. The percentage germination exclusive of hard seed.~~

~~2. The percentage of hard seed, if present.~~

(h)~~(f)~~ For ~~those~~ seed~~s~~ which germinate less than the standard last established by the department, the words "Below Standard" prominently displayed ~~in not less than 8-point type must be printed or written in ink on the face of the tag~~.

(9) For tree or shrub seed:

(a) Common name of the species of seed and, if appropriate, subspecies.

(b) The scientific name of the genus, species, and, if appropriate, subspecies.

(c) Lot number or other lot identification.

(d) Net weight or seed count.

(e) Origin, indicated in the following manner:

1. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude or geographic description, or political subdivision, such as state or county.

2. For seed collected from other than a predominantly indigenous stand, the area of collection and the origin of the stand or the statement "Origin not Indigenous".

3. The elevation or the upper and lower limits of elevations within which the seed was collected.

(f) Purity as a percentage of pure seed by weight.

(g) For those species for which standard germination testing procedures are prescribed by the department:

1. Percentage germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. The calendar month and year test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test.

(h) In lieu of subparagraphs (g)1., 2., and 3., the seed may be labeled "Test is in progress; results will be supplied upon request."

(i) For those species for which standard germination testing procedures have not been prescribed by the department, the calendar year in which the seed was collected.

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(j) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

~~(7) DEPARTMENT TO PRESCRIBE UNIFORM ANALYSIS TAG.—The department shall have the authority to prescribe a uniform analysis tag required by this section.~~

The information required by this section to be placed on labels attached to seed containers may not be modified or denied in the labeling or on another label attached to the container. However, labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number displayed on the bag or other container. Each bag or container that is not so identified must carry complete labeling.

Section 45. Section 578.091, Florida Statutes, is repealed.

Section 46. Subsections (2) and (3) of section 578.10, Florida Statutes, are amended to read:

578.10 Exemptions.—

(2) The provisions of ss. 578.09 and 578.13 do not apply to:

(a) ~~To~~ Seed or grain not intended for sowing or planting purposes.

(b) ~~To~~ Seed stored ~~in storage~~ in, consigned to, or being transported to seed cleaning or processing establishments for cleaning or processing only. Any labeling or other representation which may be made with respect to the unclean seed is ~~shall be~~ subject to this law.

(c) Seed under development or maintained exclusively for research purposes.

(3) If seeds cannot be identified by examination thereof, a person is not subject to the criminal penalties of this chapter for having sold or offered for sale seeds subject to this chapter which were incorrectly labeled or represented as to kind, species, and, if appropriate, subspecies, variety, type, or origin, elevation, and, if required, year of collection unless he or she has failed to obtain an invoice, genuine grower's or tree seed collector's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity of the seeds to be as stated by the grower. A genuine grower's declaration of variety must affirm that the grower holds records of proof of identity concerning parent seed, such as invoice and labels ~~No person shall be subject to the criminal penalties of this law for having sold, offered, exposed, or distributed for sale in this state any agricultural, vegetable, or forest tree seed which were incorrectly labeled or represented as to kind and variety or origin, which seed cannot be identified by examination thereof, unless she or he has failed to obtain an invoice or grower's declaration giving kind and variety and origin~~.

Section 47. Section 578.11, Florida Statutes, is amended to read:

578.11 Duties, authority, and rules of the department.—

(1) The duty of administering this law and enforcing its provisions and requirements shall be vested in the Department of Agriculture and Consumer Services, which is hereby authorized to employ such agents and persons as in its judgment shall be


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necessary therefor. It shall be the duty of the department, which may act through its authorized agents, to sample, inspect, make analyses of, and test agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed transported, sold, offered or exposed for sale, or distributed within this state for sowing or planting purposes, at such time and place and to such extent as it may deem necessary to determine whether said agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed are in compliance with the provisions of this law, and to notify promptly the person who transported, distributed, sold, offered or exposed the seed for sale, of any violation.

(2) The department is authorized to:

(a) ~~To~~ Enforce this chapter ~~act~~ and prescribe the methods of sampling, inspecting, testing, and examining agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed.

(b) ~~To~~ Establish standards and tolerances to be followed in the administration of this law, which shall be in general accord with officially prescribed practices in interstate commerce.

(c) ~~To~~ Prescribe uniform labels.

(d) ~~To~~ Adopt prohibited and restricted noxious weed seed lists.

(e) ~~To~~ Prescribe limitations for each restricted noxious weed to be used in enforcement of this chapter ~~act~~ and to add or subtract therefrom from time to time as the need may arise.

(f) ~~To~~ Make commercial tests of seed and to fix and collect charges for such tests.

(g) ~~To~~ List the kinds of flower, ~~and forest~~ tree, and shrub seed subject to this law.

(h) ~~To~~ Analyze samples, as requested by a consumer. The


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department shall establish, by rule, a fee schedule for analyzing samples at the request of a consumer. The fees shall be sufficient to cover the costs to the department for taking the samples and performing the analysis, not to exceed $150 per sample.

(i) ~~To~~ Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this chapter ~~act~~.

(j) ~~To~~ Establish, by rule, requirements governing aircraft used for the aerial application of seed, including requirements for recordkeeping, annual aircraft registration, secure storage when not in use, area-of-application information, and reporting any sale, lease, purchase, rental, or transfer of such aircraft to another person.

(3) For the purpose of carrying out ~~the provisions of~~ this law, the department, through its authorized agents, is authorized to:

(a) ~~To~~ Enter upon any public or private premises, where agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed is sold, offered, exposed, or distributed for sale during regular business hours, in order to have access to seed subject to this law and the rules and regulations hereunder.

(b) ~~To~~ Issue and enforce a stop-sale notice or order to the owner or custodian of any lot of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed~~,~~ which the department finds or has good reason to believe is in violation of any provisions of this law, which shall prohibit further sale, barter, exchange, or distribution of such seed until the department is satisfied that the law has been complied with and has issued a written release or notice to the owner or custodian


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of such seed. After a stop-sale notice or order has been issued against or attached to any lot of seed and the owner or custodian of such seed has received confirmation that the seed does not comply with this law, she or he has ~~shall have~~ 15 days beyond the normal test period within which to comply with the law and obtain a written release of the seed. ~~The provisions of~~ This paragraph may ~~shall~~ not be construed as limiting the right of the department to proceed as authorized by other sections of this law.

(c) ~~To~~ Establish and maintain a seed laboratory, employ seed analysts and other personnel, and incur such other expenses as may be necessary to comply with these provisions.

Section 48. Section 578.12, Florida Statutes, is amended to read:

578.12 Stop-sale, stop-use, removal, or hold orders.—When agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed is being offered or exposed for sale or held in violation of any of the provisions of this chapter, the department, through its authorized representative, may issue and enforce a stop-sale, stop-use, removal, or hold order to the owner or custodian of said seed ordering it to be held at a designated place until the law has been complied with and said seed is released in writing by the department or its authorized representative. If seed is not brought into compliance with this law it shall be destroyed within 30 days or disposed of by the department in such a manner as it shall by regulation prescribe.

Section 49. Section 578.13, Florida Statutes, is amended to read:

578.13 Prohibitions.—


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(1) It shall be unlawful for any person to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub, seed within this state:

(a) Unless the test to determine the percentage of germination required by s. 578.09 has ~~shall have~~ been completed ~~within a period of 7 months, exclusive of the calendar month in which the test was completed,~~ immediately prior to sale, exposure for sale, offering for sale, or transportation, except for a germination test for seed in hermetically sealed containers which is provided for in s. 578.092 ~~s. 578.28~~.

(b) Not labeled in accordance with ~~the provisions of~~ this law, or having false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement.

(d) Containing noxious weed seeds subject to tolerances and methods of determination prescribed in the rules and regulations under this law.

(e) Unless a seed license has been obtained in accordance with ~~the provisions of~~ this law.

(f) Unless such seed conforms to the definition of a "lot ~~of seed~~."

(2) It shall be unlawful for a ~~any~~ person within this state to:

(a) ~~To~~ Detach, deface, destroy, or use a second time any label or tag provided for in this law or in the rules and regulations made and promulgated hereunder or to alter or substitute seed in a manner that may defeat the purpose of this law.

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(b) ~~To~~ Disseminate any false or misleading advertisement concerning agricultural, vegetable, flower, ~~or forest~~ tree ,or shrub seed in any manner or by any means.

(c) ~~To~~ Hinder or obstruct in any way any authorized person in the performance of her or his duties under this law.

(d) ~~To~~ Fail to comply with a stop-sale order or to move, handle, or dispose of any lot of seed, or tags attached to such seed, held under a "stop-sale" order, except with express permission of the department and for the purpose specified by the department ~~or seizure order~~.

(e) Label, advertise, or otherwise represent seed subject to this chapter to be certified seed or any class thereof, including classes such as "registered seed," "foundation seed," "breeder seed" or similar representations, unless:

1. A seed certifying agency determines that such seed conformed to standards of purity and identify as to the kind, variety, or species and, if appropriate, subspecies and the seed certifying agency also determines that tree or shrub seed was found to be of the origin and elevation claimed, in compliance with the rules and regulations of such agency pertaining to such seed; and

2. The seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and specified to the kind, variety, or species and, if appropriate, subspecies.

(f) Label, by variety name, seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the United States Plant Variety Protection Act, 7 U.S.C. 2321 et. seq., specifies


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sale only as a class of certified seed, except that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the written approval of, the owner of the variety. ~~To sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed labeled "certified seed," "registered seed," "foundation seed," "breeder seed," or similar terms, unless it has been produced and labeled under seal in compliance with the rules and regulations of any agency authorized by law.~~

(g) ~~(f) To~~ Fail to keep a complete record, including a file sample which shall be retained for 1 year after seed is sold, of each lot of seed and to make available for inspection such records to the department or its duly authorized agents.

(h) ~~(g) To~~ Use the name of the Department of Agriculture and Consumer Services or Florida State Seed Laboratory in connection with analysis tag, labeling advertisement, or sale of any seed in any manner whatsoever.

Section 50. Section 578.14, Florida Statutes, is repealed.

Section 51. Subsection (1) of section 578.181, Florida Statutes, is amended to read:

578.181 Penalties; administrative fine.—

(1) The department may enter an order imposing one or more of the following penalties against a person who violates this chapter or the rules adopted under this chapter or who impedes, obstructs, ~~or~~ hinders, or otherwise attempts to prevent the department from performing its duty in connection with ~~performing its duties under~~ this chapter:

(a) For a minor violation, issuance of a warning letter.


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(b) For violations other than a minor violation:

1. Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each occurrence ~~after the issuance of a warning letter~~.

2.~~(c)~~ Revocation or suspension of the registration as a seed dealer.

Section 52. Section 578.23, Florida Statutes, is amended to read:

578.23 ~~Dealers'~~ Records ~~to be kept available~~.—Each person who allows his or her name or brand to appear on the label as handling agricultural, vegetable, flower, tree, or shrub seeds subject to this chapter must keep, for 2 years, complete records of each lot of agricultural, vegetable, flower, tree, or shrub seed handled, and keep for 1 year after final disposition a file sample of each lot of seed. All such records and samples pertaining to the shipment or shipments involved must be accessible for inspection by the department or its authorized representative during normal business hours ~~Every seed dealer shall make and keep for a period of 3 years satisfactory records of all agricultural, vegetable, flower, or forest tree seed bought or handled to be sold, which records shall at all times be made readily available for inspection, examination, or audit by the department. Such records shall also be maintained by persons who purchase seed for production of plants for resale~~.

Section 53. Section 578.26, Florida Statutes, is amended to read:

578.26 Complaint, investigation, hearings, findings, and recommendation prerequisite to legal action.—

(1)(a) When any buyer ~~farmer~~ is damaged by the failure of

agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed planted in this state to produce or perform as represented by the labeling of such ~~label attached to the~~ seed as required by s. 578.09, as a prerequisite to her or his right to maintain a legal action against the dealer from whom the seed was purchased, the buyer must ~~farmer shall~~ make a sworn complaint against the dealer alleging damages sustained. The complaint shall be filed with the department, and a copy of the complaint shall be served by the department on the dealer by certified mail, within such time as to permit inspection of the property, crops, plants, or trees referenced in, or related to, the buyer's complaint by the seed investigation and conciliation council or its representatives and by the dealer from whom the seed was purchased.

(b) For types of claims specified in paragraph (a), the buyer may not commence legal proceedings against the dealer or assert such a claim as a counterclaim or defense in any action brought by the dealer until the findings and recommendations of the seed investigation and conciliation council are transmitted to the complainant and the dealer.

(c) ~~(b)~~ Language setting forth the requirement for filing and serving the complaint shall be legibly typed or printed on the analysis label or be attached to the package containing the seed at the time of purchase by the buyer ~~farmer~~.

(d) ~~(c)~~ A nonrefundable filing fee of $100 shall be paid to the department with each complaint filed. However, the complainant may recover the filing fee cost from the dealer upon the recommendation of the seed investigation and conciliation council.

(2) Within 15 days after receipt of a copy of the complaint, the dealer shall file with the department her or his answer to the complaint and serve a copy of the answer on the buyer ~~farmer~~ by certified mail. ~~Upon receipt of the findings and recommendation of the arbitration council, the department shall transmit them to the farmer and to the dealer by certified mail.~~

(3) The department shall refer the complaint and the answer thereto to the seed investigation and conciliation council provided in s. 578.27 for investigation, informal hearing, findings, and recommendation on the matters complained of.

(a) Each party must ~~shall~~ be allowed to present its side of the dispute at an informal hearing before the seed investigation and conciliation council. Attorneys may be present at the hearing to confer with their clients. However, no attorney may participate directly in the proceeding.

(b) Hearings, including the deliberations of the seed investigation and conciliation council, must ~~shall~~ be open to the public.

(c) Within 30 days after completion of a hearing, the seed investigation and conciliation council shall transmit its findings and recommendations to the department. Upon receipt of the findings and recommendation of the seed investigation and conciliation council, the department shall transmit them to the buyer ~~farmer~~ and to the dealer by certified mail.

(4) The department shall provide administrative support for the seed investigation and conciliation council and shall mail a copy of the council's procedures to each party upon receipt of a complaint by the department.

Section 54. Subsections (1), (2), and (4) of section

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578.27, Florida Statutes, are amended to read:

578.27 Seed investigation and conciliation council; composition; purpose; meetings; duties; expenses.—

(1) The Commissioner of Agriculture shall appoint a seed investigation and conciliation council composed of seven members ~~and seven alternate members~~, one member ~~and one alternate~~ to be appointed upon the recommendation of each of the following: the deans of extension and research, Institute of Food and Agricultural Sciences, University of Florida; president of the Florida Seed ~~Seedsmen and Garden Supply~~ Association; president of the Florida Farm Bureau Federation; and the president of the Florida Fruit and Vegetable Association. The Commissioner of Agriculture shall appoint a representative ~~and an alternate~~ from the agriculture industry at large and from the Department of Agriculture and Consumer Services. Each member shall be appointed for a term of 4 years or less and shall serve until his or her successor is appointed ~~Initially, three members and their alternates shall be appointed for 4-year terms and four members and their alternates shall be appointed for 2-year terms. Thereafter, members and alternates shall be appointed for 4-year terms. Each alternate member shall serve only in the absence of the member for whom she or he is an alternate~~. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment. The council shall annually elect a chair from its membership. It shall be the duty of the chair to conduct all meetings and deliberations held by the council and to direct all other activities of the council. The department representative shall serve as secretary of the council. It shall be the duty of the secretary to keep


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accurate and correct records on all meetings and deliberations and perform other duties for the council as directed by the chair.

(2) The purpose of the seed investigation and conciliation council is to assist buyers ~~farmers~~ and ~~agricultural~~ seed dealers in determining the validity of seed complaints made by buyers ~~farmers~~ against dealers and recommend a settlement, when appropriate, ~~cost damages~~ resulting from the alleged failure of the seed to produce or perform as represented by the label of such ~~on the~~ seed ~~package~~.

(4)(a) When the department refers to the seed investigation and conciliation council any complaint made by a buyer ~~farmer~~ against a dealer, the ~~said~~ council must ~~shall~~ make a full and complete investigation of the matters complained of and at the conclusion of the ~~said~~ investigation must ~~shall~~ report its findings and make its recommendation ~~of cost damages~~ and file same with the department.

(b) In conducting its investigation, the seed investigation and conciliation council or any representative, member, or members thereof are authorized to examine the buyer's property, crops, plants, or trees referenced in or relating to the complaint ~~farmer on her or his farming operation of which she or he complains~~ and the dealer on her or his packaging, labeling, and selling operation of the seed alleged to be faulty; to grow to production a representative sample of the alleged faulty seed through the facilities of the state, under the supervision of the department when such action is deemed to be necessary; to hold informal hearings at a time and place directed by the department or by the chair of the council upon reasonable notice


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to the buyer ~~farmer~~ and the dealer.

(c) Any investigation made by less than the whole membership of the council must ~~shall~~ be by authority of a written directive by the department or by the chair, and such investigation must ~~shall~~ be summarized in writing and considered by the council in reporting its findings and making its recommendation.

Section 55. Section 578.28, Florida Statutes, is renumbered as section 578.092, Florida Statutes, and amended to read:

578.092 ~~578.28~~ Seed in hermetically sealed containers.—The period of validity of germination tests is extended to the following periods for seed packaged in hermetically sealed containers, under conditions and label requirements set forth in this section:

(1) GERMINATION TESTS.—The germination test for agricultural and vegetable seed must ~~shall~~ have been completed within the following periods, exclusive of the calendar month in which the test was completed, immediately prior to shipment, delivery, transportation, or sale:

(a) In the case of agricultural or vegetable seed shipped, delivered, transported, or sold to a dealer for resale, 18 months;

(b) In the case of agricultural or vegetable seed for sale or sold at retail, 24 months.

(2) CONDITIONS OF PACKAGING.—The following conditions are considered as minimum:

(a) *Hermetically sealed packages or containers.*—A container, to be acceptable under the provisions of this section, shall not allow water vapor penetration through any

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wall, including the wall seals, greater than 0.05 gram of water per 24 hours per 100 square inches of surface at 100 °F. with a relative humidity on one side of 90 percent and on the other of 0 percent. Water vapor penetration (WVP) is measured by the standards of the National Institute of Standards and Technology as: gm H_2O/24 hr./100 sq. in./100 °F/90 percent RH V. 0 percent RH.

(b) *Moisture of seed packaged.*—The moisture of agricultural or vegetable seed subject to the provisions of this section shall be established by rule of the department.

(3) LABELING REQUIRED.—In addition to the labeling required by s. 578.09, seed packaged under the provisions of this section shall be labeled with the following information:

(a) Seed has been preconditioned as to moisture content.

(b) Container is hermetically sealed.

(c) "Germination test valid until (month, year)" may be used. (Not to exceed 24 months from date of test).

Section 56. Section 578.29, Florida Statutes, is created to read:

578.29 Prohibited noxious weed seed.—Seeds meeting the definition of prohibited noxious weed seed under s. 578.011, may not be present in agricultural, vegetable, flower, tree, or shrub seed offered or exposed for sale in this state.

Section 57. Subsection (1) of section 590.02, Florida Statutes, is amended to read:

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

(1) The Florida Forest Service has the following powers,

authority, and duties to:

(a) ~~To~~ Enforce the provisions of this chapter;

(b) ~~To~~ Prevent, detect, and suppress wildfires wherever they may occur on public or private land in this state and to do all things necessary in the exercise of such powers, authority, and duties;

(c) ~~To~~ Provide firefighting crews, who shall be under the control and direction of the Florida Forest Service and its designated agents;

(d) ~~To~~ Appoint center managers, forest area supervisors, forestry program administrators, a forest protection bureau chief, a forest protection assistant bureau chief, a field operations bureau chief, deputy chiefs of field operations, district managers, forest operations administrators, senior forest rangers, investigators, forest rangers, firefighter rotorcraft pilots, and other employees who may, at the Florida Forest Service's discretion, be certified as forestry firefighters pursuant to s. 633.408(8). Other law notwithstanding, center managers, district managers, forest protection assistant bureau chief, and deputy chiefs of field operations have ~~shall have~~ Selected Exempt Service status in the state personnel designation;

(e) ~~To~~ Develop a training curriculum for forestry firefighters which must contain the basic volunteer structural fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training;

(f) Pay the cost of the initial commercial driver license examination fee for those employees whose position requires them


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to operate equipment requiring a license. This paragraph is intended to be an authorization to the department to pay such costs, not an obligation ~~To make rules to accomplish the purposes of this chapter~~;

(g) ~~To~~ Provide fire management services and emergency response assistance and to set and charge reasonable fees for performance of those services. Moneys collected from such fees shall be deposited into the Incidental Trust Fund of the Florida Forest Service;

(h) ~~To~~ Require all state, regional, and local government agencies operating aircraft in the vicinity of an ongoing wildfire to operate in compliance with the applicable state Wildfire Aviation Plan; ~~and~~

(i) ~~To~~ Authorize broadcast burning, prescribed burning, pile burning, and land clearing debris burning to carry out the duties of this chapter and the rules adopted thereunder; and

(j) Make rules to accomplish the purposes of this chapter.

Section 58. Subsection (9) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(9) In the event that a concealed weapon or firearm license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of $15 to the Department of Agriculture and Consumer Services, obtain a duplicate, or substitute thereof, upon furnishing a ~~notarized~~ statement under oath to the Department of Agriculture and Consumer Services that such license has been lost or destroyed.

Section 59. Subsections (5) and (8) of section 790.0625,


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Florida Statutes, are amended, and sections (9) and (10) are added to that section, to read:

790.0625 Appointment of tax collectors to accept applications for a concealed weapon or firearm license; fees; penalties.—

(5) A tax collector appointed under this section shall collect and remit weekly to the department the license fees pursuant to s. 790.06 for deposit in the Division of Licensing Trust Fund and may collect and retain ~~a~~ convenience fees for the following: ~~fee of $22 for each new application and $12 for each renewal application and shall remit weekly to the department the license fees pursuant to s. 790.06 for deposit in the Division of Licensing Trust Fund.~~

(a) Twenty-two dollars for each new application.

(b) Twelve dollars for each renewal application.

(c) Twelve dollars for each duplicate license issued to replace a lost or destroyed license.

(d) Six dollars for fingerprinting.

(e) Six dollars for photographing services associated with the completion of an application submitted online.

(8) Upon receipt of a completed renewal application, a new color photograph, and ~~appropriate~~ payment of required fees, a tax collector authorized to accept renewal applications for concealed weapon or firearm licenses under this section may, upon approval and confirmation of license issuance by the department, print and deliver a concealed weapon or firearm license to a licensee renewing his or her license at the tax collector’s office.

(9) Upon receipt of a statement under oath to the

department, and the payment of required fees, a tax collector authorized to accept applications for concealed weapon or firearm licenses under this section may, upon approval and confirmation from the department that a license is in good standing, print and deliver a concealed weapon or firearm license to a licensee whose license has been lost or destroyed.

(10) Tax collectors authorized to accept applications for concealed weapon or firearm licenses under this section may provide fingerprinting and photographing services to aid concealed weapon and firearm applicants and licensees with online initial and renewal applications.

Section 60. Section 817.417, Florida Statutes, is created to read:

817.417 Government Impostor and Deceptive Advertisement Act.—

(1) SHORT TITLE.—This act may be cited as the "Government Impostor and Deceptive Advertisements Act."

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

(a) "Advertisement" means any representation disseminated in any manner or by any means, other than by a label, for the purpose of inducing, or which is reasonably likely to induce, directly or indirectly, a purchase.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Governmental entity" means a political subdivision or agency of any state, possession, or territory of the United States, or the Federal Government, including, but not limited to, a board, a department, an office, an agency, a military veteran entity, or a military or veteran service organization by

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whatever name known.

(3) DUTIES AND RESPONSIBILITIES.—The department has the duty and responsibility to:

(a) Investigate potential violations of this section.

(b) Request and obtain information regarding potential violations of this section.

(c) Seek compliance with this section.

(d) Enforce this section.

(e) Adopt rules necessary to administer this section.

(4) VIOLATIONS.—Each occurrence of the following acts or practices constitute a violation of this section:

(a) Disseminating an advertisement that:

1. Simulates a summons, complaint, jury notice, or other court, judicial, or administrative process of any kind.

2. Represents, implies, or otherwise engages in an action that may reasonably cause confusion that the person using or employing the advertisement is a part of or associated with a governmental entity, when such is not true.

(b) Representing, implying, or otherwise reasonably causing confusion that goods, services, an advertisement, or an offer was disseminated by or has been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when such is not true.

(c) Using or employing language, symbols, logos, representations, statements, titles, names, seals, emblems, insignia, trade or brand names, business or control tracking numbers, website or e-mail addresses, or any other term, symbol, or other content that represents or implies or otherwise reasonably causes confusion that goods, services, an

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advertisement, or an offer is from a governmental entity, when such is not true.

(d) Failing to provide the disclosures as required in subsections (5) or (6).

(e) Failing to timely submit to the department written responses and answers to its inquiries concerning alleged practices inconsistent with, or in violation of, this section. Responses or answers may include, but are not limited to, copies of customer lists, invoices, receipts, or other business records.

(5) NOTICE REGARDING DOCUMENT AVAILABILITY.—

(a) Any person offering documents that are available free of charge or at a lesser price from a governmental entity must provide the notice specified in paragraph (b) on advertisements as follows:

1. For printed or written advertisements, notice must be in the same font size, color, style, and visibility as primarily used elsewhere on the page or envelope and displayed as follows:

a. On the outside front of any mailing envelope used in disseminating the advertisement.

b. At the top of each printed or written page used in the advertisement.

2. For electronic advertisements, notice must be in the same font size, color, style, and visibility as the body text primarily used in the e-mail or web page and displayed as follows:

a. At the beginning of each e-mail message, before any offer or other substantive information.

b. In a prominent location on each web page, such as the

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top of each page or immediately following the offer or other substantive information on the page.

(b) Advertisements specified in paragraph (a) must include the following disclosure:

"IMPORTANT NOTICE:

The documents offered by this advertisement are available to Florida consumers free of charge or for a lesser price from ...(insert name, telephone number, and mailing address of the applicable governmental entity).... You are NOT required to purchase anything from this company and the company is NOT affiliated, endorsed, or approved by any governmental entity. The item offered in this advertisement has NOT been approved or endorsed by any governmental agency, and this offer is NOT being made by an agency of the government."

(6) NOTICE REGARDING CLAIM OF LEGAL COMPLIANCE.—

(a) Any person disseminating an advertisement that includes a form or template to be completed by the consumer with the claim that such form or template will assist the consumer in complying with a legal filing or record retention requirement must provide the notice specified in paragraph (b) on advertisements as follows:

1. For printed or written advertisements, the notice must be in the same font size, color, style, and visibility as primarily used elsewhere on the page or envelope and displayed as follows:

a. On the outside front of any mailing envelope used in

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disseminating the advertisement.

b. At the top of each printed or written page used in the advertisement.

2. For electronic advertisements, the notice must be in the same font size, color, style, and visibility as the body text primarily used in the e-mail or web page and displayed as follows:

a. At the beginning of each e-mail message, before any offer or other substantive information.

b. In a prominent location on each web page, such as the top of each page or immediately following the offer or other substantive information on the page.

(b) Advertisements specified in paragraph (a) must include the following disclosure:

"IMPORTANT NOTICE:

You are NOT required to purchase anything from this company and the company is NOT affiliated, endorsed, or approved by any governmental entity. The item offered in this advertisement has NOT been approved or endorsed by any governmental agency, and this offer is NOT being made by an agency of the government."

(7) PENALTIES.—

(a) Any person substantially affected by a violation of this section may bring an action in a court of proper jurisdiction to enforce the provisions of this section. A person prevailing in a civil action for a violation of this section shall be awarded costs, including reasonable attorney fees, and

may be awarded punitive damages in addition to actual damages proven. This provision is in addition to any other remedies prescribed by law.

(b) The department may bring one or more of the following for a violation of this section:

1. A civil action in circuit court for:

a. Temporary or permanent injunctive relief to enforce this section.

b. For printed advertisements and e-mail, a fine of up to $1,000 for each separately addressed advertisement or message containing content in violation of paragraphs (4)(a)-(d) received by or addressed to a state resident.

c. For websites, a fine of up to $5,000 for each day a website, with content in violation of paragraphs (4)(a)-(d), is published and made available to the general public.

d. For violations of paragraph (4)(e), a fine of up to $5,000 for each violation.

e. Recovery of restitution and damages on behalf of persons substantially affected by a violation of this section.

f. The recovery of court costs and reasonable attorney fees.

2. An action for an administrative fine in the Class III category pursuant to s. 570.971 for each act or omission which constitutes a violation under this section.

(c) The department may terminate any investigation or action upon agreement by the alleged offender to pay a stipulated fine, make restitution, pay damages to customers, or satisfy any other relief authorized by this section.

(d) In addition to any remedies or penalties set forth in

this section, any person who violates paragraphs (4) (a)-(d) also commits an unfair or deceptive trade practice in violation of part II of chapter 501 and is subject to the penalties and remedies imposed for such violation.

Section 61. Paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is 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 compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law,

design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This

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definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6) and does not require certification or registration under this part as a category I liquefied petroleum gas dealer, or category V LP gas installer, as defined in s. 527.01, ~~or specialty installer~~ who is licensed under chapter 527 or an authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 62. Subsection (3) of section 527.06, Florida Statutes, is reenacted to read:

527.06 Rules.—

(3) Rules in substantial conformity with the published standards of the National Fire Protection Association (NFPA) are deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

Section 63. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 193.461, F.S.;

specifying a methodology for the assessment of certain structures used in citrus production; amending s. 379.361, F.S.; transferring authority to issue licenses for oyster harvesting in Apalachicola Bay from the department to the City of Apalachicola; revising the disposition and permitted uses of license proceeds; amending s. 487.041, F.S.; deleting obsolete provisions; deleting a requirement that all pesticide registration fees be submitted electronically; amending s. 493.6105, F.S.; revising the submission requirements for a Class "K" firearm license application; amending s. 493.6113, F.S.; revising submission requirements for a Class "K" firearm license renewal; amending s. 496.415, F.S.; prohibiting the comingling of funds in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion; amending s. 496.418, F.S.; revising recordkeeping and accounting requirements for solicitations of funds; specifying a rebuttable presumption under certain circumstances; amending s. 500.459, F.S.; revising permitting requirements and operating standards for water vending machines; amending s. 501.059, F.S.; revising the term "telephonic sales call" to include voicemail transmissions; defining the term "voicemail transmission"; prohibiting the transmission of voicemails to specified persons who communicate to a telephone solicitor that they would not like to receive certain voicemail solicitations or requests

for donations; requiring a solicitor to ensure that if a telephone number is available through a caller identification system, that telephone number must be capable of receiving calls and must connect the original call recipient to the solicitor; revising civil penalties; creating s. 501.6175, F.S.; specifying recordkeeping requirements for commercial telephone sellers; amending s. 501.912, F.S.; revising terms; amending s. 501.913, F.S.; authorizing antifreeze brands to be registered for a specified period; deleting a provision relating to the registration of brands that are no longer in production; specifying a certified report requirement for first-time applications; amending s. 501.917, F.S.; revising department sampling and analysis requirements for antifreeze; specifying that the certificate of analysis is prima facie evidence of the facts stated therein; amending s. 501.92, F.S.; revising when the department may require an antifreeze formula for analysis; amending s. 525.07, F.S.; authorizing the department to seize skimming devices without a warrant; amending s. 526.304, F.S.; authorizing the department to temporarily suspend enforcement, for specified purposes during states of emergency, of certain provisions relating to predatory practices in the retail sale of motor fuel; amending s. 526.305, F.S.; authorizing the department to temporarily suspend enforcement, for specified purposes during states of emergency, of certain

provisions relating to discriminatory practices in sale of motor fuel; amending s. 526.51, F.S.; revising application requirements and fees for brake fluid brands; deleting a provision relating to the registration of brands that are no longer in production; amending s. 526.53, F.S.; revising department sampling and analysis requirements for brake fluid; specifying that the certificate of analysis is prima facie evidence of the facts stated therein; amending s. 527.01, F.S.; revising terms; amending s. 527.02, F.S.; revising the persons subject to liquefied petroleum business licensing provisions; revising such licensing fees and requirements; revising reporting and fee requirements for certain material changes to license information; deleting a provision authorizing license transfers; amending s. 527.0201, F.S.; revising the persons subject to liquefied petroleum qualifier competency examination, registry, supervisory, and employment requirements; revising the expiration of qualifier registrations; revising the persons subject to master qualifier requirements; revising master qualifier application requirements; deleting provisions specifying that a failure to replace master qualifiers within certain periods constitutes grounds for license revocation; deleting a provision relating to facsimile transmission of duplicate licenses; amending s. 527.021, F.S.; revising the circumstances under which liquefied petroleum gas bulk delivery vehicles must be


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registered with the department; amending s. 527.03, F.S.; authorizing certain liquefied petroleum gas registrations to be renewed for 2 or 3 years; deleting certain renewal period requirements; amending s. 527.04, F.S.; revising the persons required to provide the department with proof of insurance; revising the required payee for a bond in lieu of such insurance; amending s. 527.0605, F.S.; deleting provisions requiring licensees to submit a site plan and review fee for liquefied petroleum bulk storage container locations; amending s. 527.065, F.S.; revising the circumstances under which a liquefied petroleum gas licensee must notify the department of an accident; amending s. 527.067, F.S.; requiring certain liquefied petroleum gas dealers to provide notice within a specified period before rendering a consumer's liquefied petroleum gas equipment or system inoperable or discontinuing service; providing an exception; amending ss. 527.10 and 527.21, F.S.; conforming provisions to changes made by the act; amending s. 527.22, F.S.; deleting an obsolete provision; amending s. 531.67, F.S.; extending the expiration date of certain provisions relating to permits for commercially operated or tested weights or measures instruments or devices; amending s. 534.47, F.S.; revising and providing definitions; amending s. 534.49, F.S.; conforming provisions to changes made by the act; repealing s. 534.50, F.S., relating to reporting and notice requirements for dishonored

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checks and drafts for payment of livestock purchases; amending s. 534.501, F.S.; providing that delaying or failing to make payment for certain livestock is an unfair and deceptive act; repealing s. 534.51, F.S., relating to the prohibition of the filing of complaints by certain livestock markets; amending s. 534.54, F.S.; providing that purchasers who delay or fail to render payment for purchased livestock are liable for certain fees, costs, and expenses; conforming provisions to changes made by the act; amending s. 570.07, F.S.; authorizing the department to waive certain fees during a state of emergency; amending s. 573.111, F.S.; revising the required posting location for the issuance of an agricultural commodity marketing order; amending s. 578.011, F.S.; revising and defining terms; creating s. 578.012, F.S.; providing legislative intent; creating a preemption of local law relating to regulation of seed; amending s. 578.08, F.S.; revising application requirements for the registration of seed dealers; conforming provisions to changes made by the act; specifying that a receipt from the department need not be written to constitute a permit; deleting an exception to registration requirements for certain experiment stations; requiring the payment of fees when packet seed is placed into commerce; amending s. 578.09, F.S.; revising labeling requirements for agricultural, vegetable, flower, tree, and shrub seeds; conforming a cross-reference; repealing s.

578.091, F.S., relating to labeling of forest tree seed; amending s. 578.10, F.S.; revising exemptions to seed labeling, sale, and solicitation requirements; amending s. 578.11, F.S.; conforming provisions to changes made by the act; making technical changes; amending s. 578.12, F.S.; conforming provisions to changes made by the act; amending s. 578.13, F.S.; conforming provisions to changes made by the act; specifying that it is unlawful to move, handle, or dispose of seeds or tags under a stop-sale notice or order without permission from the department; specifying that it is unlawful to represent seed as certified except under specified conditions or to label seed with a variety name under certain conditions; repealing s. 578.14, F.S., relating to packet vegetable and flower seed; amending s. 578.181, F.S.; revising penalties; amending s. 578.23, F.S.; revising recordkeeping requirements relating to seed labeling; amending s. 578.26, F.S.; conforming provisions to changes made by the act; specifying that certain persons may not commence legal proceedings or make certain claims against a seed dealer before certain findings and recommendations are transmitted by the seed investigation and conciliation council to the complainant and dealer; deleting a requirement that the department transmit such findings and recommendations to complainants and dealers; requiring the department to mail a copy of the council's procedures to both parties upon receipt of a

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complaint; amending s. 578.27, F.S.; removing alternate membership from the seed investigation and conciliation council; revising the terms of members of the council; conforming provisions to changes made by the act; revising the purpose of the council; revising the council's investigatory process; renumbering and amending s. 578.28, F.S.; making a technical change; creating s. 578.29, F.S.; prohibiting certain noxious weed seed from being offered or exposed for sale; amending s. 590.02, F.S.; authorizing the Florida Forest Service to pay certain employees' initial commercial driver license examination fees; amending s. 790.06, F.S.; revising the required furnished statement to obtain a duplicate or substitute concealed weapon or firearm license; amending s. 790.0625, F.S.; revising required tax collector collection and remittance of firearm license fees; revising the fees which a tax collector may retain; authorizing certain tax collectors to print and deliver certain replacement licenses under certain conditions; authorizing certain tax collectors to offer fingerprinting and photographing services to aid license applicants; creating s. 817.417, F.S.; providing a short title; defining terms; specifying department duties and responsibilities relating to government impostor and deceptive advertisements; requiring rulemaking by the department; specifying that it is a violation to disseminate certain misleading or confusing advertisements, to make

certain misleading or confusing representations, to use content implying or leading to confusion that such content is from a governmental entity when such is not true, to fail to provide certain disclosures, and to fail to provide certain responses and answers to the department; requiring a person offering documents that are available free of charge or at a lesser price from a governmental entity to provide a certain disclosure; providing penalties; amending s. 489.105, F.S.; conforming provisions to changes made by the act; reenacting s. 527.06(3), F.S., relating to published standards of the National Fire Protection Association; providing an effective date.

350294

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
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The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (6) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(6)

(c)1. For purposes of the income methodology approach to


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assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection and screen enclosed structures used in citrus production for pest exclusion, which are consistent with the interim measures or best management practices adopted by the Department of Agriculture and Consumer Services pursuant to s. 570.93 or s. 403.067(7)(c), shall be assessed by the methodology described in subparagraph 1.

Section 2. Paragraphs (b), (d), and (i) of subsection (5) of section 379.361, Florida Statutes, are amended to read:

379.361 Licenses.—

(5) APALACHICOLA BAY OYSTER HARVESTING LICENSE.—

(b) A ~~No~~ person may not ~~shall~~ harvest oysters from the Apalachicola Bay without a valid Apalachicola Bay oyster harvesting license issued by the City of Apalachicola ~~Department of Agriculture and Consumer Services~~. This requirement does ~~shall~~ not apply to anyone harvesting noncommercial quantities of oysters in accordance with commission rules, or to any person less than 18 years old.

(d) The City of Apalachicola ~~Department of Agriculture and Consumer Services~~ shall collect an annual fee of $100 from state


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residents and $500 from nonresidents for the issuance of an Apalachicola Bay oyster harvesting license. The license year shall begin on July 1 of each year and end on June 30 of the following year. The license shall be valid only for the licensee. Only bona fide residents of the state ~~Florida~~ may obtain a resident license pursuant to this subsection.

(i) The proceeds from Apalachicola Bay oyster harvesting license fees shall be deposited by the City of Apalachicola into a trust account ~~in the General Inspection Trust Fund~~ and, less reasonable administrative costs, must ~~shall~~ be used or distributed by the City of Apalachicola ~~Department of Agriculture and Consumer Services~~ for the following purposes in Apalachicola Bay:

1. An Apalachicola Bay oyster shell recycling program ~~Relaying and transplanting live oysters~~.

2. Shell planting to construct or rehabilitate oyster bars.

3. Education programs for licensed oyster harvesters on oyster biology, aquaculture, boating and water safety, sanitation, resource conservation, small business management, marketing, and other relevant subjects.

4. Research directed toward the enhancement of oyster production in the bay and the water management needs of the bay.

Section 3. Paragraphs (a), (b), and (i) of subsection (1) of section 487.041, Florida Statutes, are amended to read:

487.041 Registration.—

(1)(a) ~~Effective January 1, 2009,~~ Each brand of pesticide, as defined in s. 487.021, which is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate


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commerce or between points within this state through any point outside this state must be registered in the office of the department, and such registration shall be renewed biennially. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1. The name, business mailing address, and street address of the registrant.

2. The name of the brand of pesticide.

3. An ingredient statement and a complete current copy of the labeling accompanying the brand of pesticide, which must conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

(b) ~~Effective January 1, 2009,~~ For the purpose of defraying expenses of the department in connection with carrying out the provisions of this part, each registrant shall pay a biennial registration fee for each registered brand of pesticide. The registration of each brand of pesticide shall cover a designated 2-year period beginning on January 1 of each odd-numbered year and expiring on December 31 of the following year.

~~(i) Effective January 1, 2013, all payments of any pesticide registration fees, including late fees, shall be submitted electronically using the department's Internet website for registration of pesticide product brands.~~

Section 4. Subsection (19) is added to section 496.415,

Florida Statutes, to read:

496.415 Prohibited acts.—It is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to:

(19) Commingle charitable contributions with noncharitable funds.

Section 5. Section 496.418, Florida Statutes, is amended to read:

496.418 Recordkeeping and accounting ~~Records~~.—

(1) Each charitable organization, sponsor, professional fundraising consultant, and professional solicitor that collects or takes control or possession of contributions made for a charitable purpose must keep records to permit accurate reporting and auditing as required by law, must not commingle contributions with noncharitable funds as specified in s. 496.415(19), and must be able to account for the funds. When expenditures are not properly documented and disclosed by records, there exists a rebuttable presumption that the charitable organization, sponsor, professional fundraising consultant, or professional solicitor did not properly expend such funds. Noncharitable funds include any funds that are not used or intended to be used for the operation of the charity or for charitable purposes.

(2) Each charitable organization, sponsor, professional fundraising consultant, and professional solicitor must keep for a period of at least 3 years true and accurate records as to its activities in this state which are covered by ss. 496.401-496.424. The records must be made available, without subpoena, to the department for inspection and must be furnished no later

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than 10 working days after requested.

Section 6. Paragraph (b) of subsection (3) and paragraph (i) of subsection (5) of section 500.459, Florida Statutes, are amended to read:

500.459 Water vending machines.—

(3) PERMITTING REQUIREMENTS.—

(b) An application for an operating permit must be made ~~in writing~~ to the department on forms provided by the department and must be accompanied by a fee as provided in subsection (4). The application must state the location of each water vending machine, the source of the water to be vended, the treatment the water will receive prior to being vended, and any other information considered necessary by the department.

(5) OPERATING STANDARDS.—

(i) The operator shall place on each water vending machine, in a position clearly visible to customers, the following information: the name and address of the operator; ~~the operating permit number;~~ the fact that the water is obtained from a public water supply; the method of treatment used; the method of postdisinfection used; and a local or toll-free telephone number that may be called for obtaining further information, reporting problems, or making complaints.

Section 7. Paragraph (g) of subsection (1) of section 501.059, Florida Statutes, is amended, and paragraph (i) is added to that subsection, and subsection (5), paragraph (c) of subsection (8), and subsection (9) of that section are amended, to read:

501.059 Telephone solicitation.—

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

(g) "Telephonic sales call" means a telephone call, ~~or~~ text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(i) "Voicemail transmission" means technologies that deliver a voice message directly to a voicemail application, service, or device.

(5) A telephone solicitor or other person may not initiate an outbound telephone call, ~~or~~ text message, or voicemail transmission to a consumer, business, or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call, ~~or~~ text message, or voicemail transmission:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

(8)

(c) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the originating telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it shall not be a

violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a telephonic sales call, the solicitor must ensure that telephone number is capable of receiving telephone calls and must connect the original call recipient, upon calling such number, to the telephone solicitor or to the seller on behalf of which a telephonic sales call was placed. For purposes of this section, the term "caller identification service" means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

(9)(a) The department shall investigate any complaints received concerning violations of this section. If, after investigating a complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall be in the Class IV ~~III~~ category pursuant to s. 570.971 for each violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Legal Affairs Revolving Trust Fund if the action or proceeding was brought by


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the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(b) The department may, as an alternative to the civil penalties provided in paragraph (a), impose an administrative fine in the Class III ~~I~~ category pursuant to s. 570.971 for each act or omission that constitutes a violation of this section. An administrative proceeding that could result in the entry of an order imposing an administrative penalty must be conducted pursuant to chapter 120.

Section 8. Section 501.6175, Florida Statutes, is created to read:

501.6175 Recordkeeping.—A commercial telephone seller shall keep all of the following information for 2 years after the date the information first becomes part of the seller's business records:

(1) The name and telephone number of each consumer contacted by a telephone sales call.

(2) All express requests authorizing the telephone solicitor to contact the consumer.

(3) Any script, outline, or presentation the applicant requires or suggests a salesperson use when soliciting; sales information or literature to be provided by the commercial telephone seller to a salesperson; and sales information or

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literature to be provided by the commercial telephone seller to a consumer in connection with any solicitation.

Within 10 days of an oral or written request by the department, including a written request transmitted by electronic mail, a commercial telephone seller must make the records it keeps pursuant to this section available for inspection and copying by the department during the department's normal business hours. This section does not limit the department's ability to inspect and copy material pursuant to any other law.

Section 9. Section 501.912, Florida Statutes, is amended to read:

501.912 Definitions.—As used in ss. 501.91-501.923:

(1) "Antifreeze" means any substance or preparation, including, but not limited to, antifreeze-coolant, antifreeze and summer coolant, or summer coolant, that is sold, distributed, or intended for use:

(a) As the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines of motor vehicles to prevent freezing of the cooling liquid or to lower its freezing point; or

(b) To raise the boiling point of water or for the prevention of engine overheating, whether or not the liquid is used as a year-round cooling system fluid.

~~(2) "Antifreeze-coolant," "antifreeze and summer coolant," or "summer coolant" means any substance as defined in subsection (1) which also is sold, distributed, or intended for raising the boiling point of water or for the prevention of engine overheating whether or not used as a year-round cooling system~~


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~~fluid. Unless otherwise stated, the term "antifreeze" includes "antifreeze," "antifreeze-coolant," "antifreeze and summer coolant," and "summer coolant."~~

(2)~~(3)~~ "Department" means the Department of Agriculture and Consumer Services.

(3)~~(4)~~ "Distribute" means to hold with an intent to sell, offer for sale, sell, barter, or otherwise supply to the consumer.

(4)~~(5)~~ "Package" means a sealed, tamperproof retail package, drum, or other container designed for the sale of antifreeze directly to the consumer or a container from which the antifreeze may be installed directly by the seller into the cooling system. However, this term~~, but~~ does not include shipping containers containing properly labeled inner containers.

(5)~~(6)~~ "Label" means any display of written, printed, or graphic matter on, or attached to, a package or to the outside individual container or wrapper of the package.

(6)~~(7)~~ "Labeling" means the labels and any other written, printed, or graphic matter accompanying a package.

Section 10. Section 501.913, Florida Statutes, is amended to read:

501.913 Registration.—

(1) Each brand of antifreeze to be distributed in this state must ~~shall~~ be registered with the department before distribution. The person whose name appears on the label, the manufacturer, or the packager shall make application annually or biennially to the department on forms provided by the department. The registration certificate expires ~~shall expire~~ 12

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or 24 months after the date of issue, as indicated on the registration certificate. The registrant assumes, by application to register the brand, full responsibility for the registration, quality, and quantity of the product sold, offered, or exposed for sale in this state. ~~If a registered brand is not in production for distribution in this state and to ensure any remaining product that is still available for sale in the state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying that:~~

~~(a) The stated brand is no longer in production;~~

~~(b) The stated brand will not be distributed in this state; and~~

~~(c) All existing product of the stated brand will be removed by the registrant from the state within 30 days after expiration of the registration or the registrant will reregister the brand for two subsequent registration periods.~~

~~If production resumes, the brand must be reregistered before it is distributed in this state.~~

(2) The completed application shall be accompanied by:

(a) Specimens or copies ~~facsimiles~~ of the label for each brand of antifreeze;

(b) An application fee of $200 for a 12-month registration or $400 for a 24-month registration for each brand of antifreeze; and

(c) For first-time applications, a certified report from an independent testing laboratory, dated no more than 6 months before the registration application, providing analysis showing

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that the antifreeze conforms to minimum standards required for antifreeze by this part or rules of the department and is not adulterated ~~A properly labeled sample of between 1 and 2 gallons for each brand of antifreeze~~.

(3) The department may analyze or inspect the antifreeze to ensure that it:

(a) Meets the labeling claims;

(b) Conforms to minimum standards required for antifreeze by this part ~~chapter~~ or rules of the department; and

(c) Is not adulterated as prescribed for antifreeze by this part ~~chapter~~.

(4)(a) If the registration requirements are met, and, if the antifreeze meets the minimum standards, is not adulterated, and meets the labeling claims, the department shall issue a certificate of registration authorizing the distribution of that antifreeze in the state for the permit period ~~year~~.

(b) If registration requirements are not met, or, if the antifreeze fails to meet the minimum standards, is adulterated, or fails to meet the labeling claims, the department shall refuse to register the antifreeze.

Section 11. Section 501.917, Florida Statutes, is amended to read:

501.917 Inspection by department; sampling and analysis.—The department has ~~shall have~~ the right to have access at reasonable hours to all places and property where antifreeze is stored, distributed, or offered or intended to be offered for sale, including the right to inspect and examine all antifreeze and to take reasonable samples of antifreeze for analysis together with specimens of labeling. Collected samples must be

analyzed by the department. The certificate of analysis by the department shall be prima facie evidence of the facts stated therein in any legal proceeding in this state ~~All samples taken shall be properly sealed and sent to a laboratory designated by the department for examination together with all labeling pertaining to such samples. It shall be the duty of said laboratory to examine promptly all samples received in connection with the administration and enforcement of this act~~.

Section 12. Section 501.92, Florida Statutes, is amended to read:

501.92 Formula may be required.—The department may, if required for the analysis of antifreeze by ~~the laboratory designated by~~ the department ~~for the purpose of registration~~, require the applicant to furnish a statement of the formula of such antifreeze, unless the applicant can furnish other satisfactory evidence that such antifreeze is not adulterated or misbranded. Such statement need not include inhibitor or other minor ingredients which total less than 5 percent by weight of the antifreeze; and, if over 5 percent, the composition of the inhibitor and such other ingredients may be given in generic terms.

Section 13. Paragraph (e) of subsection (10) of section 525.07, Florida Statutes, is redesignated as paragraph (f), and a new paragraph (e) is added to that subsection, to read:

525.07 Powers and duties of department; inspections; unlawful acts.—

(10)

(e) The department may seize without warrant any skimming device, as defined in s. 817.625, for use as evidence.

Section 14. Subsection (4) is added to section 526.304, Florida Statutes, to read:

526.304 Predatory practices unlawful; exceptions.—

(4) The Department of Agriculture and Consumer Services may by emergency order, in furtherance of executing emergency plans or to aid in the recovery of an emergency-impacted area, temporarily suspend enforcement of this section during a state of emergency declared pursuant to s. 252.36.

Section 15. Subsection (6) is added to section 526.305, Florida Statutes, to read:

526.305 Discriminatory practices unlawful; exceptions.—

(6) The Department of Agriculture and Consumer Services may by emergency order, in furtherance of executing emergency plans or to aid in the recovery of an emergency-impacted area, temporarily suspend enforcement of this section during a state of emergency declared pursuant to s. 252.36.

Section 16. Subsection (1) of section 526.51, Florida Statutes, is amended to read:

526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.—

(1)(a) Application for registration of each brand of brake fluid shall be made on forms supplied by the department. The applicant shall give his or her name and address and the brand name of the brake fluid, state that he or she owns the brand name and has complete control over the product sold thereunder in this state, and provide the name and address of the resident agent in this state. If the applicant does not own the brand name but wishes to register the product with the department, a notarized affidavit that gives the applicant full authorization


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to register the brand name and that is signed by the owner of the brand name must accompany the application for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name shall maintain complete control over each product sold under that brand name in this state.

(b) The completed application must be accompanied by the following:

1. Specimens or copies of the label for each brand of brake fluid.

2. An application fee of $50 for a 12-month registration or $100 for a 24-month registration for each brand of brake fluid.

3. For ~~All~~ first-time applications for a brand and formula combination, ~~must be accompanied by~~ a certified report from an independent testing laboratory, dated no more than 6 months before the registration application, setting forth the analysis of the brake fluid which shows its quality to be not less than the specifications established by the department for brake fluids. ~~A sample of not less than 24 fluid ounces of brake fluid shall be submitted, in a container with a label printed in the same manner that it will be labeled when sold, and the sample and container shall be analyzed and inspected by the department in order that compliance with the department's specifications and labeling requirements may be verified.~~

Upon approval of the application, the department shall register


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the brand name of the brake fluid and issue to the applicant a permit authorizing the registrant to sell the brake fluid in this state. The registration certificate expires ~~shall expire~~ 12 or 24 months after the date of issue, as indicated on the registration certificate.

(c) ~~(b) Each applicant shall pay a fee of $100 with each application.~~ A permit may be renewed by application to the department, accompanied by a renewal fee of $50 for a 12-month registration, or $100 for a 24-month registration, on or before the expiration of the previously issued permit. To reregister a previously registered brand and formula combination, an applicant must submit a completed application and all materials as required in this section to the department before the expiration of the previously issued permit. A brand and formula combination for which a completed application and all materials required in this section are not received before the expiration of the previously issued permit may not be registered with the department until a completed application and all materials required in this section have been received and approved. If the brand and formula combination was previously registered with the department and a fee, application, or materials required in this section are received after the expiration of the previously issued permit, a penalty of $25 accrues, which shall be added to the fee. Renewals shall be accepted only on brake fluids that have no change in formula, composition, or brand name. Any change in formula, composition, or brand name of a brake fluid constitutes a new product that must be registered in accordance with this part.

~~(c) If a registered brand and formula combination is no~~

~~longer in production for distribution in this state, in order to ensure that any remaining product still available for sale in this state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying that:~~

~~1. The stated brand and formula combination is no longer in production;~~

~~2. The stated brand and formula combination will not be distributed in this state; and~~

~~3. Either all existing product of the stated brand and formula combination will be removed by the registrant from the state within 30 days after the expiration of the registration or that the registrant will reregister the brand and formula combination for 2 subsequent years.~~

~~If production resumes, the brand and formula combination must be reregistered before it is again distributed in this state.~~

Section 17. Subsection (1) of section 526.53, Florida Statutes, is amended to read:

526.53 Enforcement; inspection and analysis, stop-sale and disposition, regulations.—

(1) The department shall enforce ~~the provisions of~~ this part through the department, and may sample, inspect, analyze, and test any brake fluid manufactured, packed, or sold within this state. Collected samples must be analyzed by the department. The certificate of analysis by the department shall be prima facie evidence of the facts stated therein in any legal proceeding in this state. The department has ~~shall have~~ free access during business hours to all premises, buildings,

vehicles, cars, or vessels used in the manufacture, packing, storage, sale, or transportation of brake fluid, and may open any box, carton, parcel, or container of brake fluid and take samples for inspection and analysis or for evidence.

Section 18. Section 527.01, Florida Statutes, is amended to read:

527.01 Definitions.—As used in this chapter:

(1) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(2) "Person" means any individual, firm, partnership, corporation, company, association, organization, or cooperative.

(3) "~~Ultimate~~ Consumer" means the person last purchasing liquefied petroleum gas in its liquid or vapor state for industrial, commercial, or domestic use.

(4) "Department" means the Department of Agriculture and Consumer Services.

(5) "Qualifier" means any person who has passed a competency examination administered by the department and is employed by a licensed category I, category II, or category V business. ~~in one or more of the following classifications:~~

~~(a) Category I liquefied petroleum gas dealer.~~

~~(b) Category II liquefied petroleum gas dispenser.~~

~~(c) LP gas installer.~~

~~(d) Specialty installer.~~

~~(e) Requalifier of cylinders.~~

~~(f) Fabricator, repairer, and tester of vehicles and cargo tanks.~~

~~(g) Category IV liquefied petroleum gas dispensing unit operator and recreational vehicle servicer.~~

~~(h) Category V liquefied petroleum gases dealer for industrial uses only.~~

(6) "Category I liquefied petroleum gas dealer" means any person selling or offering to sell by delivery or at a stationary location any liquefied petroleum gas to the ~~ultimate~~ consumer for industrial, commercial, or domestic use; any person leasing or offering to lease, or exchanging or offering to exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders.

(7) "Category II liquefied petroleum gas dispenser" means any person engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid products to the ~~ultimate~~ consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, including maintaining a cylinder storage rack at the licensed business location for the purpose of storing cylinders filled by the licensed business for sale or use at a later date.

(8) "Category III liquefied petroleum gas cylinder exchange operator" means any person operating a storage facility used for the purpose of storing filled propane cylinders of not more than 43.5 pounds propane capacity or 104 pounds water capacity, while

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awaiting sale to the ~~ultimate~~ consumer, or a facility used for the storage of empty or filled containers which have been offered for exchange.

(9) "Category IV dealer in appliances and equipment ~~liquefied petroleum gas dispenser and recreational vehicle servicer~~" means any person selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas ~~engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid product to the ultimate consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment~~.

(10) "Category V LP gas installer" means any person who is engaged in the liquefied petroleum gas business and whose services include the installation, servicing, altering, or modifying of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum or natural gas.

(11) "Category VI miscellaneous operator" means any person who is engaged in operation as a manufacturer of LP gas appliances and equipment; a fabricator, repairer, and tester of vehicles and cargo tanks; a requalifier of LP gas cylinders; or a pipeline system operator ~~Specialty installer" means any person~~

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~~involved in the installation, service, or repair of liquefied petroleum or natural gas appliances and equipment, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, whose activities are limited to specific types of appliances and equipment as designated by department rule~~.

~~(12) "Dealer in appliances and equipment for use of liquefied petroleum gas" means any person selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas.~~

(12) ~~(13)~~ "Manufacturer of liquefied petroleum gas appliances and equipment" means any person in this state manufacturing and offering for sale or selling tanks, cylinders, or other containers and necessary appurtenances for use in the storage, transportation, or delivery of such gas to the ~~ultimate~~ consumer, or manufacturing and offering for sale or selling apparatus, appliances, and equipment for the use of liquefied petroleum gas to the ~~ultimate~~ consumer.

(13) ~~(14)~~ "Wholesaler" means any person, as defined by subsection (2), selling or offering to sell any liquefied petroleum gas for industrial, commercial, or domestic use to any person except the ~~ultimate~~ consumer.

(14) ~~(15)~~ "Requalifier of cylinders" means any person involved in the retesting, repair, qualifying, or requalifying of liquefied petroleum gas tanks or cylinders manufactured under specifications of the United States Department of Transportation ~~or former Interstate Commerce Commission~~.

(15) ~~(16)~~ "Fabricator, repairer, and tester of vehicles and cargo tanks" means any person involved in the hydrostatic


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testing, fabrication, repair, or requalifying of any motor vehicles or cargo tanks used for the transportation of liquefied petroleum gases, when such tanks are permanently attached to or forming a part of the motor vehicle.

~~(17) "Recreational vehicle" means a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use, which has its own propulsion or is mounted on or towed by another motor vehicle.~~

(16)~~(18)~~ "Pipeline system operator" means any person who owns or operates a liquefied petroleum gas pipeline system that is used to transmit liquefied petroleum gas from a common source to the ~~ultimate~~ customer and that serves 10 or more customers.

~~(19) "Category V liquefied petroleum gases dealer for industrial uses only" means any person engaged in the business of filling, selling, and transporting liquefied petroleum gas containers for use in welding, forklifts, or other industrial applications.~~

(17)~~(20)~~ "License period ~~year~~" means the period 1 to 3 years from the issuance of the license ~~from September 1 through the following August 31, or April 1 through the following March 31, depending upon the type of license~~.

Section 19. Section 527.02, Florida Statutes, is amended to read:

527.02 License; penalty; fees.—

(1) It is unlawful for any person to engage in this state in the activities defined in s. 527.01(6) through (11) ~~of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category III liquefied petroleum gas cylinder exchange operator, category~~


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~~IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gas dealer for industrial uses only, LP gas installer, specialty installer, dealer in liquefied petroleum gas appliances and equipment, manufacturer of liquefied petroleum gas appliances and equipment, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks~~ without first obtaining from the department a license to engage in one or more of these businesses. The sale of liquefied petroleum gas cylinders with a volume of 10 pounds water capacity or 4.2 pounds liquefied petroleum gas capacity or less is exempt from the requirements of this chapter. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to intentionally or willfully engage in any of said activities without first obtaining appropriate licensure from the department.

(2) Each business location of a person having multiple locations must ~~shall~~ be separately licensed and must meet the requirements of this section. Such license shall be granted to any applicant determined by the department to be competent, qualified, and trustworthy who files with the department a surety bond, insurance affidavit, or other proof of insurance, as hereinafter specified, and pays for such license the following annual license ~~original application~~ fee ~~for new licenses and annual renewal fees for existing licenses~~:

License Category	License ~~Original Application~~ Fee Per Year	~~Renewal~~ Fee


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	Category I liquefied petroleum gas dealer	$400 ~~$525~~	~~$425~~
676			
	Category II liquefied petroleum gas dispenser	$400 ~~525~~	~~375~~
677			
	Category III liquefied petroleum gas cylinder exchange unit operator	$65 ~~100~~	~~65~~
678			
	Category IV dealer in appliances and equipment ~~liquefied petroleum~~ gas dispenser and recreational vehicle servicer	$65 ~~525~~	~~400~~
679			
	Category V LP gas	$200 ~~300~~	~~200~~

	installer ~~liquefied~~ petroleum gases dealer for industrial uses only		
680			
	Category VI miscellaneous operator ~~LP gas~~ installer	$200 ~~300~~	~~200~~
681			
	~~Specialty~~ installer	~~300~~	~~200~~
682			
	~~Dealer in~~ ~~appliances~~ and equipment for use of liquefied petroleum gas	~~50~~	~~45~~
683			
	~~Manufacturer of~~ liquefied petroleum gas appliances and equipment	~~525~~	~~375~~
684			
	~~Requalifier of~~	~~525~~	~~375~~

	cylinders		
	~~Fabricator, repairer,~~ and tester of vehicles and cargo tanks	~~525~~	~~375~~

(3)(a) ~~An applicant for an original license who submits an application during the last 6 months of the license year may have the original license fee reduced by one-half for the 6-month period. This provision applies only to those companies applying for an original license and may not be applied to licensees who held a license during the previous license year and failed to renew the license.~~ The department may refuse to issue an initial license to an applicant who is under investigation in any jurisdiction for an action that would constitute a violation of this chapter until such time as the investigation is complete.

(b) The department shall waive the initial license fee for 1 year for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide


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to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense or another acceptable form of identification as specified by the Department of Veterans' Affairs; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

(4) Any licensee submitting a material change in their information for licensing, before the date for renewal, must submit such change to the department in the manner prescribed by the department, along with a fee in the amount of $10 ~~Any person applying for a liquefied petroleum gas license as a specialty installer, as defined by s. 527.01(11), shall upon application to the department identify the specific area of work to be performed. Upon completion of all license requirements set forth in this chapter, the department shall issue the applicant a license specifying the scope of work, as identified by the applicant and defined by rule of the department, for which the~~


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~~person is authorized~~.

~~(5) The license fee for a pipeline system operator shall be $100 per system owned or operated by the person, not to exceed $400 per license year. Such license fee applies only to a pipeline system operator who owns or operates a liquefied petroleum gas pipeline system that is used to transmit liquefied petroleum gas from a common source to the ultimate customer and that serves 10 or more customers.~~

(5)~~(6)~~ The department shall adopt ~~promulgate~~ rules specifying acts deemed by the department to demonstrate a lack of trustworthiness to engage in activities requiring a license or qualifier identification card under this section.

~~(7) Any license issued by the department may be transferred to any person, firm, or corporation for the remainder of the current license year upon written request to the department by the original licenseholder. Prior to approval of any transfer, all licensing requirements of this chapter must be met by the transferee. A license transfer fee of $50 shall be charged for each such transfer.~~

Section 20. Section 527.0201, Florida Statutes, is amended to read:

527.0201 Qualifiers; master qualifiers; examinations.—

(1) In addition to the requirements of s. 527.02, any person applying for a license to engage in category I, category II, or category V ~~the~~ activities ~~of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gases dealer for industrial uses only, LP~~


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~~gas installer, specialty installer, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks~~ must prove competency by passing a written examination administered by the department or its agent with a grade of 70 ~~75~~ percent or above in each area tested. Each applicant for examination shall submit a $20 nonrefundable fee. The department shall by rule specify the general areas of competency to be covered by each examination and the relative weight to be assigned in grading each area tested.

(2) Application for examination for competency may be made by an individual or by an owner, a partner, or any person employed by the license applicant. Upon successful completion of the competency examination, the department shall register ~~issue a qualifier identification card to~~ the examinee.

(a) Qualifier registration automatically expires if ~~identification cards, except those issued to category I liquefied petroleum gas dealers and liquefied petroleum gas installers, shall remain in effect as long as the individual shows to the department proof of active employment in the area of examination and all continuing education requirements are met. Should~~ the individual terminates ~~terminate~~ active employment in the area of examination for a period exceeding 24 months, or fails ~~fail~~ to provide documentation of continuing education~~, the individual's qualifier status shall automatically expire~~. If the qualifier registration ~~status~~ has expired, the individual must apply for and successfully complete an examination by the department in order to reestablish qualifier status.

(b) Every business organization in license category I,


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category II, or category V shall employ at all times a full-time qualifier who has successfully completed an examination in the corresponding category of the license held by the business organization. A person may not act as a qualifier for more than one licensed location.

(3) Qualifier registration expires ~~cards issued to category I liquefied petroleum gas dealers and liquefied petroleum gas installers shall expire~~ 3 years after the date of issuance. ~~All category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer qualifiers holding a valid qualifier card upon the effective date of this act shall retain their qualifier status until July 1, 2003, and may sit for the master qualifier examination at any time during that time period.~~ All such ~~category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer~~ qualifiers may renew their qualification ~~on or before July 1, 2003,~~ upon application to the department, payment of a $20 renewal fee, and documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by department rule, during the previous 3-year period. Applications for renewal must be made 30 calendar days before expiration. Persons failing to renew before the expiration date must reapply and take a qualifier competency examination in order to reestablish ~~category I liquefied petroleum gas dealer qualifier and liquefied petroleum gas installer~~ qualifier status. ~~If a category I liquefied petroleum gas qualifier or liquefied petroleum gas installer qualifier becomes a master qualifier at any time during the effective date of the qualifier card, the card shall remain in effect until expiration of the master~~

~~qualifier certification.~~

(4) A qualifier for a business ~~organization involved in installation, repair, maintenance, or service of liquefied petroleum gas appliances, equipment, or systems~~ must actually function in a supervisory capacity of other company employees performing licensed activities ~~installing, repairing, maintaining, or servicing liquefied petroleum gas appliances, equipment, or systems~~. A separate qualifier shall be required for every 10 such employees. ~~Additional qualifiers are required for those business organizations employing more than 10 employees that install, repair, maintain, or service liquefied petroleum gas equipment and systems.~~

(5) In addition to all other licensing requirements, each category I and category V licensee ~~liquefied petroleum gas dealer and liquefied petroleum gas installer~~ must, at the time of application for licensure, identify to the department one master qualifier who is a full-time employee at the licensed location. This person shall be a manager, owner, or otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to the department as provided by rule. The master qualifier requirement shall be in addition to the requirements of subsection (1).

(a) In order to apply for certification as a master qualifier, each applicant must have been a registered ~~be a category I liquefied petroleum gas dealer qualifier or liquefied petroleum gas installer~~ qualifier for a minimum of 3 years immediately preceding submission of the application, must be employed by a licensed category I or category V licensee ~~liquefied petroleum gas dealer, liquefied petroleum gas~~


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~~installer~~, or applicant for such license, ~~must provide documentation of a minimum of 1 year's work experience in the gas industry,~~ and must pass a master qualifier competency examination. Master qualifier examinations shall be based on Florida's laws, rules, and adopted codes governing liquefied petroleum gas safety, general industry safety standards, and administrative procedures. The applicant must successfully pass the examination with a grade of 70 ~~75~~ percent or above. Each applicant for master qualifier registration ~~status~~ must submit to the department a nonrefundable $30 examination fee before the examination.

(b) Upon successful completion of the master qualifier examination, the department shall issue the examinee a ~~certificate of~~ master qualifier registration ~~status which shall include the name of the licensed company for which the master qualifier is employed~~. A master qualifier may transfer from one licenseholder to another upon becoming employed by the company and providing a written request to the department.

(c) A master qualifier registration expires ~~status shall expire~~ 3 years after the date of issuance ~~of the certificate~~ and may be renewed by submission to the department of documentation of completion of at least 16 hours of approved continuing education courses during the 3-year period; proof of employment ~~with a licensed category I liquefied petroleum gas dealer, liquefied petroleum gas installer, or applicant~~; and a $30 certificate renewal fee. The department shall define~~,~~ by rule~~,~~ approved courses of continuing education.

~~(d) Each category I liquefied petroleum gas dealer or liquefied petroleum gas installer licensed as of August 31,~~


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~~2000, shall identify to the department one current category I liquefied petroleum gas dealer qualifier or liquefied petroleum gas installer qualifier who will be the designated master qualifier for the licenseholder. Such individual must provide proof of employment for 3 years or more within the liquefied petroleum gas industry, and shall, upon approval of the department, be granted a master qualifier certificate. All other requirements with regard to master qualifier certificate expiration, renewal, and continuing education shall apply.~~

(6) A vacancy in a qualifier or master qualifier position in a business organization which results from the departure of the qualifier or master qualifier shall be immediately reported to the department by the departing qualifier or master qualifier and the licensed company.

(a) If a business organization no longer possesses a duly designated qualifier, as required by this section, its liquefied petroleum gas licenses shall be suspended by order of the department after 20 working days. The license shall remain suspended until a competent qualifier has been employed, the order of suspension terminated by the department, and the license reinstated. A vacancy in the qualifier position for a period of more than 20 working days shall be deemed to constitute an immediate threat to the public health, safety, and welfare. ~~Failure to obtain a replacement qualifier within 60 days after the vacancy occurs shall be grounds for revocation of licensure or eligibility for licensure.~~

(b) Any category I or category V licensee ~~liquefied petroleum gas dealer or LP gas installer~~ who no longer possesses a master qualifier but currently employs a ~~category I liquefied~~


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~~petroleum gas dealer or LP gas installer~~ qualifier as required by this section~~,~~ has ~~shall have~~ 60 days within which to replace the master qualifier. If the company fails to replace the master qualifier within the 60-day ~~time~~ period, the license of the company shall be suspended by order of the department. The license shall remain suspended until a competent master qualifier has been employed, the order of suspension has been terminated by the department, and the license reinstated. ~~Failure to obtain a replacement master qualifier within 90 days after the vacancy occurs shall be grounds for revocation of licensure or eligibility for licensure.~~

(7) The department may deny, refuse to renew, suspend, or revoke any qualifier ~~card~~ or master qualifier registration ~~certificate~~ for any of the following causes:

(a) Violation of any provision of this chapter or any rule or order of the department;

(b) Falsification of records relating to the qualifier ~~card~~ or master qualifier registration ~~certificate~~; or

(c) Failure to meet any of the renewal requirements.

(8) Any individual having competency qualifications on file with the department may request the transfer of such qualifications to any existing licenseholder by making a written request to the department for such transfer. Any individual having a competency examination on file with the department may use such examination for a new license application after making application in writing to the department. All examinations are confidential and exempt from the provisions of s. 119.07(1).

(9) If a duplicate license, qualifier ~~card~~, or master qualifier registration certificate is requested by the licensee,


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a fee of $10 must be received before issuance of the duplicate license or certificate ~~card~~. ~~If a facsimile transmission of an original license is requested, upon completion of the transmission a fee of $10 must be received by the department before the original license may be mailed to the requester.~~

(10) All revenues collected herein shall be deposited in the General Inspection Trust Fund for the purpose of administering the provisions of this chapter.

Section 21. Section 527.021, Florida Statutes, is amended to read:

527.021 Registration of transport vehicles.—

(1) Each liquefied petroleum gas bulk delivery vehicle owned or leased by a liquefied petroleum gas licensee must be registered with the department as part of the licensing application or when placed into service ~~annually~~.

(2) For the purposes of this section, a "liquefied petroleum gas bulk delivery vehicle" means any vehicle that is used to transport liquefied petroleum gas on any public street or highway as liquid cargo in a cargo tank, which tank is mounted on a conventional truck chassis or is an integral part of a transporting vehicle in which the tank constitutes, in whole or in part, the stress member used as a frame and is a permanent part of the transporting vehicle.

(3) ~~Vehicle registrations shall be submitted by the vehicle owner or lessee in conjunction with the annual renewal of his or her liquefied petroleum gas license, but no later than August 31 of each year.~~ A dealer who fails to register a vehicle with the department ~~does not submit the required vehicle registration by August 31 of each year~~ is subject to the penalties in s. 527.13.


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(4) The department shall issue a decal to be placed on each vehicle that is inspected by the department and found to be in compliance with applicable codes.

Section 22. Section 527.03, Florida Statutes, is amended to read:

527.03 ~~Annual~~ Renewal of license.—All licenses required under this chapter shall be renewed annually, biennially, or triennially, as elected by the licensee, subject to the license fees prescribed in s. 527.02. All renewals must meet the same requirements and conditions as an annual license for each licensed year ~~All licenses, except Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses, shall be renewed for the period beginning September 1 and shall expire on the following August 31 unless sooner suspended, revoked, or otherwise terminated. Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses shall be renewed for the period beginning April 1 and shall expire on the following March 31 unless sooner suspended, revoked, or otherwise terminated~~. Any license allowed to expire will ~~shall~~ become inoperative because of failure to renew. The fee for restoration of a license is equal to the original license fee and must be paid before the licensee may resume operations.

Section 23. Section 527.04, Florida Statutes, is amended to read:

527.04 Proof of insurance required.—

(1) Before any license is issued, except to a category IV


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dealer in appliances and equipment ~~for use of liquefied petroleum gas~~ or a category III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to such business and is issued by an insurer authorized to do business in this state for an amount not less than $1 million and that the premium on such insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy, the applicant may deliver a good and sufficient bond in the amount of $1 million, payable to the Commissioner of Agriculture ~~Governor of Florida~~, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant’s compliance with this chapter and the rules of the department with respect to the conduct of such business and shall indemnify and hold harmless all persons from loss or damage by reason of the applicant’s failure to comply. However, the aggregated liability of the surety may not exceed $1 million. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to be filed, and if the licenseholder fails to comply, the department shall cancel the license issued and give the licenseholder written notice that it is unlawful to engage in business without a license. A new bond is not required as long as the original bond remains sufficient and in force. If the


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licenseholder's insurance coverage as required by this subsection is canceled or otherwise terminated, the insurer must notify the department within 30 days after the cancellation or termination.

(2) Before any license is issued to a category ~~class~~ III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to the business and is issued by an insurer authorized to do business in this state for an amount not less than $300,000 and that the premium on the insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy, the applicant may deliver a good and sufficient bond in the amount of $300,000, payable to the Commissioner of Agriculture ~~Governor~~, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant's compliance with this chapter and the rules of the department with respect to the conduct of such business and must indemnify and hold harmless all persons from loss or damage by reason of the applicant's failure to comply. However, the aggregated liability of the surety may not exceed $300,000. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to be filed, and if the licenseholder fails to comply, the department shall cancel the license issued


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and give the licenseholder written notice that it is unlawful to engage in business without a license. A new bond is not required as long as the original bond remains sufficient and in force. If the licenseholder's insurance coverage required by this subsection is canceled or otherwise terminated, the insurer must notify the department within 30 days after the cancellation or termination.

(3) Any person having a cause of action on the bond may bring suit against the principal and surety, and a copy of such bond duly certified by the department shall be received in evidence in the courts of this state without further proof. The department shall furnish a certified copy of the ~~such~~ bond upon payment to it of its lawful fee for making and certifying such copy.

Section 24. Section 527.0605, Florida Statutes, is amended to read:

527.0605 Liquefied petroleum gas bulk storage locations; jurisdiction.—

(1) The provisions of this chapter ~~shall~~ apply to liquefied petroleum gas bulk storage locations when:

(a) A single container in the bulk storage location has a capacity of 2,000 gallons or more;

(b) The aggregate container capacity of the bulk storage location is 4,000 gallons or more; or

(c) A container or containers are installed for the purpose of serving the public the liquid product.

~~(2) Prior to the installation of any bulk storage container, the licensee must submit to the department a site plan of the facility which shows the proposed location of the~~


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~~container and must obtain written approval of such location from the department.~~

~~(3) A fee of $200 shall be assessed for each site plan reviewed by the division. The review shall include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.~~

(2)~~(4)~~ No newly installed container may be placed in operation until it has been inspected and approved by the department.

Section 25. Subsection (1) of section 527.065, Florida Statutes, is amended to read:

527.065 Notification of accidents; leak calls.—

(1) Immediately upon discovery, all liquefied petroleum gas licensees shall notify the department of any liquefied petroleum gas-related accident involving a liquefied petroleum gas licensee or customer account:

(a) Which caused a death or personal injury requiring professional medical treatment;

(b) Where uncontrolled ignition of liquefied petroleum gas resulted in death, personal injury, or property damage exceeding $3,000 ~~$1,000~~; or

(c) Which caused estimated damage to property exceeding $3,000 ~~$1,000~~.

Section 26. Subsection (3) is added to section 527.067, Florida Statutes, to read:

527.067 Responsibilities of persons engaged in servicing liquefied petroleum gas equipment and systems and consumers, end users, or owners of liquefied petroleum gas equipment or systems.—

(3) A category I liquefied petroleum gas dealer may not render a consumer's liquefied petroleum gas equipment or system inoperable or discontinue service without providing written or electronic notification to the consumer at least 5 business days before rendering the liquefied petroleum gas equipment or system inoperable or discontinuing service. This notification does not apply in the event of a hazardous condition known to the category I liquefied petroleum gas dealer.

Section 27. Section 527.10, Florida Statutes, is amended to read:

527.10 Restriction on use of unsafe container or system.—No liquefied petroleum gas shall be introduced into or removed from any container or system in this state that has been identified by the department or its duly authorized inspectors as not complying with the rules pertaining to such container or system, until such violations as specified have been satisfactorily corrected and authorization for continued service or removal granted by the department. A statement of violations of the rules that render such a system unsafe for use shall be furnished in writing by the department to the ~~ultimate~~ consumer or dealer in liquefied petroleum gas.

Section 28. Subsections (3) and (17) of section 527.21, Florida Statutes, are amended to read:

527.21 Definitions relating to Florida Propane Gas Education, Safety, and Research Act.—As used in ss. 527.20-527.23, the term:

(3) "Dealer" means a business engaged primarily in selling propane gas and its appliances and equipment to the ~~ultimate~~ consumer or to retail propane gas dispensers.


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(17) "Wholesaler" or "reseller" means a seller of propane gas who is not a producer and who does not sell propane gas to the ~~ultimate~~ consumer.

Section 29. Paragraph (a) of subsection (2) of section 527.22, Florida Statutes, is amended to read:

527.22 Florida Propane Gas Education, Safety, and Research Council established; membership; duties and responsibilities.—

(2)(a) ~~Within 90 days after the effective date of this act, the commissioner shall make a call to qualified industry organizations for nominees to the council.~~ The commissioner shall appoint members of the council from a list of nominees submitted by qualified industry organizations. The commissioner may require such reports or documentation as is necessary to document the nomination process for members of the council. Qualified industry organizations, in making nominations, and the commissioner, in making appointments, shall give due regard to selecting a council that is representative of the industry and the geographic regions of the state. Other than the public member, council members must be full-time employees or owners of propane gas producers or dealers doing business in this state.

Section 30. Section 531.67, Florida Statutes, is amended to read:

531.67 Expiration of sections.—Sections 531.60, 531.61, 531.62, 531.63, 531.64, 531.65, and 531.66 shall expire July 1, 2025 ~~2020~~.

Section 31. Section 534.47, Florida Statutes, is amended to read:

534.47 Definitions.—As used in ss. 534.48-534.54, the term ~~ss. 534.48-534.53~~:

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(1) "Dealer" means a person, not a market agency, engaged in the business of buying or selling in commerce livestock either on his or her own account or as the employee or agent of a vendor or purchaser.

(2) ~~(1)~~ "Department" means the Department of Agriculture and Consumer Services.

(3) "Livestock" has the same meaning as in s. 585.01(13).

(4) ~~(2)~~ "Livestock market" means any location in the state where livestock is assembled and sold at public auction or on a commission basis during regularly scheduled or special sales. The term "livestock market" does ~~shall~~ not include private farms or ranches or sales made at livestock shows, fairs, exhibitions, or special breed association sales.

(5) "Packer" means a person engaged in the business of buying livestock in commerce for purposes of slaughter, or of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesaler broker, dealer, or distributor in commerce.

(6) "Purchaser" means a person, partnership, firm, corporation, or other organization owning, managing, producing, or dealing in livestock, including, but not limited to, a packer or dealer, that buys livestock for breeding, feeding, reselling, slaughter, or other purpose.

(7) "Registered and approved livestock market" means a livestock market fully registered, bonded, and approved as a market agency pursuant to the Stockyards Act and governing regulations of the United States Department of Agriculture Grain Inspection, Packers and Stockyards Administration.

(8) "Seller" means a person, partnership, firm, corporation, or other organization owning, managing, producing, financing, or dealing in livestock, including, but not limited to, a registered and approved livestock market as consignee or a dealer, that sells livestock for breeding, feeding, reselling, slaughter, or other purpose.

(9) "Stockyards Act" means the Packers and Stockyards Act of 1921, 7 U.S.C. ss. 181-229 and the regulations promulgated pursuant to that act under 9 C.F.R. part 201.

~~(3) "Buyer" means the party to whom title of livestock passes or who is responsible for the purchase price of livestock, including, but not limited to, producers, dealers, meat packers, or order buyers.~~

Section 32. Section 534.49, Florida Statutes, is amended to read:

534.49 Livestock drafts; effect.—For the purposes of this section, a livestock draft given as payment at a livestock auction market for a livestock purchase shall not be deemed an express extension of credit to the purchaser ~~buyer~~ and shall not defeat the creation of a lien on such ~~an~~ animal and its carcass, ~~and~~ all products therefrom, and all proceeds thereof, to secure all or a part of its sales price, as provided in s. 534.54(3) ~~s. 534.54(4)~~.

Section 33. Section 534.50, Florida Statutes, is repealed.

Section 34. Section 534.501, Florida Statutes, is amended to read:

534.501 ~~Livestock draft;~~ Unlawful ~~to~~ delay or failure in payment.—It is ~~shall be~~ unlawful for the purchaser of livestock to delay or fail in rendering payment for livestock to a seller


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of cattle as provided in s. 534.54. A person who violates this section commits an unfair or deceptive act or practice as specified in s. 501.204 ~~payment of the livestock draft upon presentation of said draft at the payor's bank. Nothing contained in this section shall be construed to preclude a payor's right to refuse payment of an unauthorized draft~~.

Section 35. Section 534.51, Florida Statutes, is repealed.

Section 36. Section 534.54, Florida Statutes, is amended to read:

534.54 Cattle or hog processors; prompt payment; penalty; lien.—

~~(1) As used in this section:~~

~~(a) "Livestock" means cattle or hogs.~~

~~(b) "Meat processor" means a person, corporation, association, or other legal entity engaged in the business of slaughtering cattle or hogs.~~

(1)~~(2)~~(a) A purchaser that ~~meat processor who~~ purchases livestock from a seller~~, or any person, corporation, association, or other legal entity who purchases livestock from a seller for slaughter,~~ shall make payment by cash or check for the purchase price of the livestock and actually deliver the cash or check to the seller or her or his representative at the location where the purchaser takes physical possession of the livestock on the day the transfer of possession occurs or by ~~shall~~ wire transfer of funds on the business day within which the possession of the ~~said~~ livestock is transferred. However, if the transfer of possession is accomplished after normal banking hours, ~~said~~ payment shall be made in the manner ~~herein~~ provided in this subsection no ~~not~~ later than the close of the first


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business day following the ~~said~~ transfer of possession. In the case of ~~"~~grade and yield~~"~~ selling, the purchaser shall make payment by wire transfer of funds or by personal or cashier's check by registered mail postmarked no ~~not~~ later than the close of the first business day following determination of ~~"~~grade and yield.~~"~~

(b) All instruments issued in payment as required by this section ~~hereunder~~ shall be drawn on banking institutions which are so located as not artificially to delay collection of funds through the mail or otherwise cause an undue lapse of time in the clearance process.

(2)~~(3) In all cases in which~~ A purchaser of ~~who purchases~~ livestock that ~~for slaughter from a seller~~ fails to comply with subsection (1) ~~make payment for the livestock as required by this section~~ or artificially delays collection of funds for the payment of the livestock~~, the purchaser~~ shall be liable to pay the seller ~~owner~~ of the livestock, in addition to the price of the livestock:

(a) Twelve percent damages on the amount of the price.

(b) Interest on the purchase price of the livestock at the highest legal rate from and after the transfer of possession until payment is made as required by this section.

(c) ~~A~~ Reasonable attorney fees, court costs, and expenses ~~attorney's fee~~ for the prosecution of collection of the payment.

(3)~~(4)~~(a) A seller that ~~Any person, partnership, firm, corporation, or other organization which~~ sells livestock to a purchaser shall have a lien on such animal and its carcass, all products therefrom, and all proceeds thereof to secure all or a part of its sales price.

(b) The lien provided in this subsection shall be deemed to have attached and to be perfected upon delivery of the livestock to the purchaser without further action, and such lien shall continue in the livestock and its carcass, all products therefrom, and all proceeds thereof without regard to possession thereof by the party entitled to such lien without further perfection.

(c) If the livestock or its carcass or products therefrom are so commingled with other livestock, carcasses, or products so that the identity thereof is lost, then the lien granted in this subsection shall extend to the same effect as if same had been perfected originally in all such animals, carcasses, and products with which it has become commingled. However, all liens so extended under this paragraph to such commingled livestock, carcasses, and products shall be on a parity with one another, and, with respect to such commingled carcasses or products upon which a lien or liens have been so extended under this paragraph, no such lien shall be enforceable as against any purchaser without actual knowledge thereof purchasing one or more of such carcasses or products in the ordinary course of trade or business from the party having commingled such carcasses or products or against any subsequent transferee from such purchaser, but in the event of such sale, such lien shall instead extend to the proceeds of such sale.

Section 37. Subsection (46) is added to section 570.07, Florida Statutes, to read:

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


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(46) During a state of emergency declared pursuant to s. 252.36, to waive fees by emergency order for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations during a period specified by the commissioner.

Section 38. Section 573.111, Florida Statutes, is amended to read:

573.111 Notice of effective date of marketing order.—Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice must ~~shall~~ be posted ~~on a public bulletin board to be maintained by the department in the Division of Marketing and Development of the department in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice shall be posted~~ on the department website ~~the same date that the notice is posted on the bulletin board~~. A ~~No~~ marketing order, or any suspension, amendment, or termination thereof, may not ~~shall~~ become effective until ~~the termination of a period of~~ 5 days after ~~from~~ the date of posting and publication.

Section 39. Section 578.011, Florida Statutes, is amended to read:

578.011 Definitions; Florida Seed Law.—When used in this chapter, the term:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this law.

(2) "Agricultural seed" includes the seed of grass, forage, cereal and fiber crops, and chufas and any other seed commonly recognized within the state as agricultural seed, lawn seed, and


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combinations of such seed, and may include identified noxious weed seed when the department determines that such seed is being used as agricultural seed ~~or field seed and mixtures of such seed~~.

(3) "Blend" means seed consisting of more than one variety of one kind, each present in excess of 5 percent by weight of the whole.

(4) "Buyer" means a person who purchases agricultural, vegetable, flower, tree, or shrub seed in packaging of 1,000 seeds or more by count.

(5) "Brand" means a distinguishing word, name, symbol, number, or design used to identify seed produced, packaged, advertised, or offered for sale by a particular person.

(6) ~~(3)~~ "Breeder seed" means a class of certified seed directly controlled by the originating or sponsoring plant breeding institution or person, or designee thereof, and is the source for the production of seed of the other classes of certified seed ~~that are released directly from the breeder or experiment station that develops the seed. These seed are one class above foundation seed~~.

(7) ~~(4)~~ "Certified seed~~,~~" means a class of seed which is the progeny of breeder, foundation, or registered seed ~~"registered seed," and "foundation seed" mean seed that have been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of any agency authorized by the laws of this state or the laws of another state~~.

(8) "Certifying agency" means:

(a) An agency authorized under the laws of a state, territory, or possession of the United States to officially

certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country that the United States Secretary of Agriculture has determined as adhering to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under paragraph (a).

(9) "Coated seed" means seed that has been covered by a layer of materials that obscures the original shape and size of the seed and substantially increases the weight of the product. The addition of biologicals, pesticides, identifying colorants or dyes, or other active ingredients including polymers may be included in this process.

(10) ~~(5)~~ "Date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(11) ~~(6)~~ "Dealer" means any person who sells or offers for sale any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed for seeding purposes, and includes farmers who sell cleaned, processed, packaged, and labeled seed.

(12) ~~(7)~~ "Department" means the Department of Agriculture and Consumer Services or its authorized representative.

(13) ~~(8)~~ "Dormant seed" refers to viable seed, other than hard seed, which neither germinate nor decay during the prescribed test period and under the prescribed test conditions.

(14) ~~(9)~~ "Flower seed" includes seed of herbaceous plants grown for blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or

wildflower seed in this state.

~~(10) "Forest tree seed" includes seed of woody plants commonly known and sold as forest tree seed.~~

(15) "Foundation seed" means a class of certified seed which is the progeny of breeder or other foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing foundation seed, for the purpose of maintaining genetic purity and identity.

(16)~~(11)~~ "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions ~~percentage of seed capable of producing normal seedlings under ordinarily favorable conditions. Broken seedlings and weak, malformed and obviously abnormal seedlings shall not be considered to have germinated~~.

(17)~~(12)~~ "Hard seed" means seeds that remain hard at the end of a prescribed test period because they have not absorbed water due to an impermeable seed coat ~~the percentage of seed which because of hardness or impermeability did not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned~~.

(18)~~(13)~~ "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) Two or more inbred lines;

(b) One inbred or a single cross with an open-pollinated variety; or


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(c) Two varieties or species, except open-pollinated varieties of corn (*Zea mays*).

The second generation or subsequent generations from such crosses may ~~shall~~ not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(19) ~~(14)~~ "Inert matter" means all matter that is not a full seed ~~includes broken seed when one-half in size or less; seed of legumes or crucifers with the seed coats removed; undeveloped and badly injured weed seed such as sterile dodder which, upon visual examination, are clearly incapable of growth; empty glumes of grasses; attached sterile glumes of grasses (which must be removed from the fertile glumes except in Rhodes grass); dirt, stone, chaff, nematode, fungus bodies, and any matter other than seed~~.

(20) ~~(15)~~ "Kind" means one or more related species or subspecies which singly or collectively is known by one common name; e.g., corn, beans, lespedeza.

(21) "Label" means the display or displays of written or printed material upon or attached to a container of seed.

(22) ~~(16)~~ "Labeling" includes all labels and other written, printed, or graphic representations, in any form, accompanying and pertaining to any seed, whether in bulk or in containers, and includes invoices and other bills of shipment when sold in bulk.

(23) ~~(17)~~ "Lot ~~of seed~~" means a definite quantity of seed identified by a lot number or other mark ~~identification~~, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling~~, for the factors~~


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~~which appear in the labeling, within permitted tolerances~~.

(24)~~(18)~~ "Mix," "mixed," or "mixture" means seed consisting of more than one kind ~~or variety~~, each present in excess of 5 percent by weight of the whole.

(25) "Mulch" means a protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aid in the prevention of the evaporation of soil moisture, the control of weeds, and the prevention of erosion.

(26) "Noxious weed seed" means seed in one of two classes of seed:

(a) "Prohibited noxious weed seed" means the seed of weeds that are highly destructive and difficult to control by good cultural practices and the use of herbicides.

(b) "Restricted noxious weed seed" means weed seeds that are objectionable in agricultural crops, lawns, and gardens of this state and which can be controlled by good agricultural practices or the use of herbicides.

(27)~~(19)~~ "Origin" means the state, District of Columbia, Puerto Rico, or possession of the United States, or the foreign country where the seed were grown, except for native species, where the term means the county or collection zone and the state where the seed were grown ~~for forest tree seed, with respect to which the term "origin" means the county or state forest service seed collection zone and the state where the seed were grown~~.

(28)~~(20)~~ "Other crop seed" includes all seed of plants grown in this state as crops, other than the kind or kind and variety included in the pure seed, when not more than 5 percent of the whole of a single kind or variety is present, unless


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designated as weed seed.

(29) "Packet seed" means seed prepared for use in home gardens and household plantings packaged in labeled, sealed containers of less than 8 ounces and typically sold from seed racks or displays in retail establishments, via the Internet, or through mail order.

(30) ~~(21)~~ "Processing" means conditioning, cleaning, scarifying, or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and, therefore, require retesting to determine the quality of the seed.

~~(22) "Prohibited noxious weed seed" means the seed and bulblets of perennial weeds such as not only reproduce by seed or bulblets, but also spread by underground roots or stems and which, when established, are highly destructive and difficult to control in this state by ordinary good cultural practice.~~

(31) ~~(23)~~ "Pure seed" means the seed, exclusive of inert matter, of the kind or kind and variety of seed declared on the label or tag ~~includes all seed of the kind or kind and variety or strain under consideration, whether shriveled, cracked, or otherwise injured, and pieces of broken seed larger than one-half the original size~~.

(32) ~~(24)~~ "Record" includes the symbol identifying the seed as to origin, amount, processing, testing, labeling, and distribution, ~~file sample of the seed,~~ and any other document or instrument pertaining to the purchase, sale, or handling of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed. Such information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking,


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treatment, handling, storage, analyses, tests, and examinations.

(33) "Registered seed" means a class of certified seed which is the progeny of breeder or foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for the purpose of maintaining genetic purity and identity.

~~(25) "Restricted noxious weed seed" means the seed of such weeds as are very objectionable in fields, lawns, or gardens of this state, but can be controlled by good cultural practice. Seed of poisonous plants may be included.~~

(34) "Shrub seed" means seed of a woody plant that is smaller than a tree and has several main stems arising at or near the ground.

(35)~~(26)~~ "Stop-sale" means any written or printed notice or order issued by the department to the owner or custodian of any lot of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed in the state, directing the owner or custodian not to sell or offer for sale seed designated by the order within the state until the requirements of this law are complied with and a written release has been issued; except that the seed may be released to be sold for feed.

(36)~~(27)~~ "Treated" means that the seed has been given an application of a material or subjected to a process designed to control or repel disease organisms, insects, or other pests attacking seed or seedlings grown therefrom to improve its planting value or to serve any other purpose.

(37) "Tree seed" means seed of a woody perennial plant typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some

distance from the ground.

(38)~~(28)~~ "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(39)~~(29)~~ "Variety" means a subdivision of a kind which is distinct in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; uniform in the sense that the variations in essential and distinctive characteristics are describable; and stable in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted ~~characterized by growth, plant fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind; e.g., Whatley's Prolific corn, Bountiful beans, Kobe lespedeza~~.

(40)~~(30)~~ "Vegetable seed" means the seed of those crops that ~~which~~ are grown in gardens or on truck farms, and are generally known and sold under the name of vegetable seed or herb seed in this state.

(41)~~(31)~~ "Weed seed" includes the seed of all plants generally recognized as weeds within this state, and includes prohibited and restricted noxious weed seed, bulblets, ~~and~~ tubers, and any other vegetative propagules.

Section 40. Section 578.012, Florida Statutes, is created to read:

578.012 Preemption.—

(1) It is the intent of the Legislature to eliminate duplication of regulation of seed. As such, this chapter is


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intended as comprehensive and exclusive and occupies the whole field of regulation of seed.

(2) The authority to regulate seed or matters relating to seed in this state is preempted to the state. A local government or political subdivision of the state may not enact or enforce an ordinance that regulates seed, including the power to assess any penalties provided for violation of this chapter.

Section 41. Section 578.08, Florida Statutes, is amended to read:

578.08 Registrations.—

(1) Every person, except as provided in subsection (4) ~~and s. 578.14~~, before selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed or mixture thereof, shall first register with the department as a seed dealer. The application for registration must include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The application must ~~for registration shall~~ be filed with the department by using a form prescribed by the department or by using the department's website and shall be accompanied by an annual registration fee for each such place of business based on the gross receipts from the sale of such seed for the last preceding license year as follows:

(a)1. Receipts of less than $500, a fee of $10.

2. Receipts of $500 or more but less than $1,000, a fee of $25.

3. Receipts of $1,000 or more but less than $2,500, a fee


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of $100.

4. Receipts of $2,500 or more but less than $5,000, a fee of $200.

5. Receipts of $5,000 or more but less than $10,000, a fee of $350.

6. Receipts of $10,000 or more but less than $20,000, a fee of $800.

7. Receipts of $20,000 or more but less than $40,000, a fee of $1,000.

8. Receipts of $40,000 or more but less than $70,000, a fee of $1,200.

9. Receipts of $70,000 or more but less than $150,000, a fee of $1,600.

10. Receipts of $150,000 or more but less than $400,000, a fee of $2,400.

11. Receipts of $400,000 or more, a fee of $4,600.

(b) For places of business not previously in operation, the fee shall be based on anticipated receipts for the first license year.

(2) A ~~written~~ receipt from the department of the registration and payment of the fee shall constitute a sufficient permit for the dealer to engage in or continue in the business of selling, distributing for sale, offering or exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed within the state. However, the department has ~~shall have~~ authority to suspend or revoke any permit for the violation of any provision of this law or of any rule adopted under authority hereof. The registration shall expire on June 30

of the next calendar year and shall be renewed on July 1 of each year. If any person subject to the requirements of this section fails to comply, the department may issue a stop-sale notice or order which shall prohibit the person from selling or causing to be sold any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed until the requirements of this section are met.

(3) Every person selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed in the state other than as provided in subsection (4) ~~s. 578.14~~, shall be subject to the requirements of this section~~; except that agricultural experiment stations of the State University System shall not be subject to the requirements of this section~~.

(4) ~~The provisions of~~ This chapter does ~~shall~~ not apply to farmers who sell only uncleaned, unprocessed, unpackaged, and unlabeled seed, but shall apply to farmers who sell cleaned, processed, packaged, and labeled seed in amounts in excess of $10,000 in any one year.

(5) When packet seed is sold, offered for sale, or exposed for sale, the company who packs seed for retail sale must register and pay fees as provided under subsection (1).

Section 42. Section 578.09, Florida Statutes, is amended to read:

578.09 Label requirements for agricultural, vegetable, flower, tree, or shrub seeds.—Each container of agricultural, vegetable, ~~or~~ flower, tree, or shrub seed which is sold, offered for sale, exposed for sale, or distributed for sale within this state for sowing ~~or planting~~ purposes must ~~shall~~ bear thereon or

have attached thereto, in a conspicuous place~~,~~ a ~~label or labels containing all information required under this section,~~ plainly written or printed label or tag in the English language~~, in Century type~~. All data pertaining to analysis must ~~shall~~ appear on a single label. Language setting forth the requirements for filing and serving complaints as described in s. 578.26(1)(c) must ~~s. 578.26(1)(b) shall~~ be included on the analysis label or be otherwise attached to the package, except for packages containing less than 1,000 seeds by count.

(1) ~~FOR TREATED SEED.-~~ For all treated agricultural, vegetable, ~~or~~ flower, tree, or shrub seed ~~treated~~ as defined in this chapter:

(a) A word or statement indicating that the seed has been treated ~~or description of process used~~.

(b) The commonly accepted coined, chemical, or abbreviated chemical (generic) name of the applied substance or description of the process used ~~and the words "poison treated" in red letters, in not less than 1/4-inch type~~.

(c) If the substance in the amount present with the seed is harmful to humans or other vertebrate animals, a caution statement such as "Do not use for food, feed, or oil purposes." The caution for mercurials, Environmental Protection Agency Toxicity Category 1 as referenced in 7 C.F.R. 201.31a(c)(2), and similarly toxic substances shall be designated by a poison statement or symbol.

~~(d) Rate of application or statement "Treated at manufacturer's recommended rate."~~

(d)~~(e)~~ If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective

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(date of expiration).

A label separate from other labels required by this section or other law may be used to identify seed treatments as required by this subsection.

(2) For agricultural seed, including lawn and turf grass seed and mixtures thereof: ~~AGRICULTURAL SEED.—~~

(a) ~~Commonly accepted~~ The name of the kind and variety of each ~~agricultural seed~~ component present in excess of 5 percent of the whole, and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixed," "mixture," or "blend" must ~~the word "mixed" shall~~ be shown conspicuously on the label. Hybrids must be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Net weight or seed count.

(d) Origin, if known. If the origin is ~~; if~~ unknown, that fact must ~~shall~~ be stated.

(e) Percentage by weight of all weed seed.

(f) ~~The~~ Name and number of noxious weed seed per pound, if present ~~per pound of each kind of restricted noxious weed seed~~.

(g) Percentage by weight of agricultural seed which may be designated as other crop seed, other than those required to be named on the label.

(h) Percentage by weight of inert matter.

(i) For each named agricultural seed, including lawn and turf grass seed:

1. Percentage of germination, exclusive of hard or dormant seed;


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2. Percentage of hard or dormant seed, if ~~when~~ present~~, if desired~~; and

3. The calendar month and year the test was completed to determine such percentages, provided that the germination test must have been completed within the previous 9 months, exclusive of the calendar month of test.

(j) Name and address of the person who labeled said seed or who sells, distributes, offers, or exposes said seed for sale within this state.

The sum total of the percentages listed pursuant to paragraphs (a),(e),(g), and (h) must be equal to 100 percent.

(3) For seed that is coated:

(a) Percentage by weight of pure seed with coating material removed. The percentage of coating material may be included with the inert matter percentage or may be listed separately.

(b) Percentage of germination. This percentage must be determined based on an examination of 400 coated units with or without seed.

In addition to the requirements of this subsection, labeling of coated seed must also comply with the requirements of any other subsection pertaining to that type of seed. ~~FOR VEGETABLE SEED IN CONTAINERS OF 8 OUNCES OR MORE.—~~

~~(a) Name of kind and variety of seed.~~

~~(b) Net weight or seed count.~~

~~(c) Lot number or other lot identification.~~

~~(d) Percentage of germination.~~

~~(e) Calendar month and year the test was completed to~~


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~~determine such percentages.~~

~~(f) Name and address of the person who labeled said seed or who sells, distributes, offers or exposes said seed for sale within this state.~~

~~(g) For seed which germinate less than the standard last established by the department the words "below standard," in not less than 8-point type, must be printed or written in ink on the face of the tag, in addition to the other information required. Provided, that no seed marked "below standard" shall be sold which falls more than 20 percent below the standard for such seed which has been established by the department, as authorized by this law.~~

~~(h) The name and number of restricted noxious weed seed per pound.~~

(4) For combination mulch, seed, and fertilizer products:

(a) The word "combination" followed, as appropriate, by the words "mulch - seed – fertilizer" must appear prominently on the principal display panel of the package.

(b) If the product is an agricultural seed placed in a germination medium, mat, tape, or other device or is mixed with mulch or fertilizer, it must also be labeled with all of the following:

1. Product name.

2. Lot number or other lot identification.

3. Percentage by weight of pure seed of each kind and variety named which may be less than 5 percent of the whole.

4. Percentage by weight of other crop seed.

5. Percentage by weight of inert matter.

6. Percentage by weight of weed seed.

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7. Name and number of noxious weed seeds per pound, if present.

8. Percentage of germination, and hard or dormant seed if appropriate, of each kind or kind and variety named. The germination test must have been completed within the previous 12 months exclusive of the calendar month of test.

9. The calendar month and year the test was completed to determine such percentages.

10. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within the state.

The sum total of the percentages listed pursuant to subparagraphs 3., 4., 5., and 6. must be equal to 100 percent.

(5) For vegetable seed in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices: ~~FOR VEGETABLE SEED IN CONTAINERS OF LESS THAN 8 OUNCES.—~~

(a) Name of kind and variety of seed. Hybrids must be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Germination test date identified in the following manner:

1. The calendar month and year the germination test was completed and the statement "Sell by ...(month/year)...", which may be no more than 12 months from the date of test, beginning with the month after the test date;

2. The month and year the germination test was completed, provided that the germination test must have been completed

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within the previous 12 months, exclusive of the calendar month of test; or

3. The year for which the seed was packaged for sale as "Packed for ...(year)..." and the statement "Sell by ...(year)..." which shall be one year after the seed was packaged for sale.

(d) ~~(b)~~ Name and address of the person who labeled the seed or who sells, ~~distributes,~~ offers, or exposes said seed for sale within this state.

(e) ~~(c)~~ For seed which germinate less than standard last established by the department~~, the additional information must be shown~~:

1. Percentage of germination, exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed ~~when present~~, if present ~~desired~~.

~~3. Calendar month and year the test was completed to determine such percentages.~~

3.~~4.~~ The words "Below Standard" prominently displayed ~~in not less than 8-point type~~.

(f) ~~(d)~~ No seed marked "below standard" may ~~shall~~ be sold that falls ~~which fall~~ more than 20 percent below the established standard for such seed. For seeds that do not have an established standard, the minimum germination standard shall be 50 percent, and no such seed may be sold that is 20 percent below this standard.

(g) For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine

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the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.

(6) For vegetable seed in containers, other than packets prepared for use in home gardens or household plantings, and other than preplanted containers, mats, tapes, or other planting devices:

(a) The name of each kind and variety present of any seed in excess of 5 percent of the total weight in the container, and the percentage by weight of each type of seed in order of its predominance. Hybrids must be labeled as hybrids.

(b) Net weight or seed count.

(c) Lot number or other lot identification.

(d) For each named vegetable seed:

1. Percentage germination, exclusive of hard or dormant seed;

2. Percentage of hard or dormant seed, if present;

3. Listed below the requirements of subparagraphs 1. and 2., the "total germination and hard or dormant seed" may be stated as such, if desired; and

4. The calendar month and year the test was completed to determine the percentages specified in subparagraphs 1. and 2., provided that the germination test must have been completed within 9 months, exclusive of the calendar month of test.

(e) Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

(f) For seed which germinate less than the standard last established by the department, the words "Below Standard"


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prominently displayed.

1. No seed marked "Below Standard" may be sold if the seed is more than 20 percent below the established standard for such seed.

2. For seeds that do not have an established standard, the minimum germination standard shall be 50 percent, and no such seed may be sold that is 20 percent below this standard.

(7)~~(5)~~ For flower seed in packets prepared for use in home gardens or household plantings or flower seed in preplanted containers, mats, tapes, or other planting devices: ~~FOR FLOWER SEED IN PACKETS PREPARED FOR USE IN HOME GARDENS OR HOUSEHOLD PLANTINGS OR FLOWER SEED IN PREPLANTED CONTAINERS, MATS, TAPES, OR OTHER PLANTING DEVICES.—~~

(a) For all kinds of flower seed:

1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules and regulations adopted ~~promulgated~~ under the provisions of this chapter.

2. Germination test date, identified in the following manner:

a. The calendar month and year the germination test was completed and the statement "Sell by ...(month/year)...". The sell by date must be no more than 12 months from the date of test, beginning with the month after the test date;

b. The year for which the seed was packed for sale as "Packed for ...(year)..." and the statement "Sell by ...(year)..." which shall be for a calendar year; or

c. The calendar month and year the test was completed, provided that the germination test must have been completed


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within the previous 12 months, exclusive of the calendar month of test.

~~2. The calendar month and year the seed was tested or the year for which the seed was packaged.~~

3. The name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this state.

(b) For seed of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under the provisions of this chapter:

1. The percentage of germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. The words "Below Standard" prominently displayed ~~in not less than 8-point type~~.

(c) For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seed from the medium, mat, tape, or device, a statement to indicate the minimum number of seed in the container.

(8) ~~(6)~~ For flower seed in containers other than packets and other than preplanted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings: ~~FOR FLOWER SEED IN CONTAINERS OTHER THAN PACKETS PREPARED FOR USE IN HOME FLOWER GARDENS OR HOUSEHOLD PLANTINGS AND OTHER THAN PREPLANTED CONTAINERS, MATS, TAPES, OR OTHER PLANTING DEVICES.~~

(a) The name of the kind and variety, and for wildflowers,


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the genus and species and subspecies, if appropriate ~~or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this chapter~~.

(b) Net weight or seed count.

(c) ~~(b) The~~ Lot number or other lot identification.

(d) For flower seed with a pure seed percentage of less than 90 percent:

1. Percentage, by weight, of each component listed in order of its predominance.

2. Percentage by weight of weed seed, if present.

3. Percentage by weight of other crop seed.

4. Percentage by weight of inert matter.

(e) For those kinds of seed for which standard testing procedures are prescribed:

1. Percentage germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. ~~(c)~~ The calendar month and year that the test was completed. The germination test must have been completed within the previous 9 months, exclusive of the calendar month of test.

(f) For those kinds of seed for which standard testing procedures are not available, the year of production or collection ~~seed were tested or the year for which the seed were packaged~~.

(g) ~~(d)~~ The name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

~~(e) For those kinds of seed for which standard testing~~

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~~procedures are prescribed:~~

~~1. The percentage germination exclusive of hard seed.~~

~~2. The percentage of hard seed, if present.~~

(h) ~~(f)~~ For ~~those~~ seed~~s~~ which germinate less than the standard last established by the department, the words "Below Standard" prominently displayed ~~in not less than 8-point type must be printed or written in ink on the face of the tag~~.

(9) For tree or shrub seed:

(a) Common name of the species of seed and, if appropriate, subspecies.

(b) The scientific name of the genus, species, and, if appropriate, subspecies.

(c) Lot number or other lot identification.

(d) Net weight or seed count.

(e) Origin, indicated in the following manner:

1. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude or geographic description, or political subdivision, such as state or county.

2. For seed collected from other than a predominantly indigenous stand, the area of collection and the origin of the stand or the statement "Origin not Indigenous".

3. The elevation or the upper and lower limits of elevations within which the seed was collected.

(f) Purity as a percentage of pure seed by weight.

(g) For those species for which standard germination testing procedures are prescribed by the department:

1. Percentage germination exclusive of hard or dormant seed.


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2. Percentage of hard or dormant seed, if present.

3. The calendar month and year test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test.

(h) In lieu of subparagraphs (g)1., 2., and 3., the seed may be labeled "Test is in progress; results will be supplied upon request."

(i) For those species for which standard germination testing procedures have not been prescribed by the department, the calendar year in which the seed was collected.

(j) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

~~(7) DEPARTMENT TO PRESCRIBE UNIFORM ANALYSIS TAG.—The department shall have the authority to prescribe a uniform analysis tag required by this section.~~

The information required by this section to be placed on labels attached to seed containers may not be modified or denied in the labeling or on another label attached to the container. However, labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number displayed on the bag or other container. Each bag or container that is not so identified must carry complete labeling.

Section 43. Section 578.091, Florida Statutes, is repealed.

Section 44. Subsections (2) and (3) of section 578.10, Florida Statutes, are amended to read:

578.10 Exemptions.—

(2) The provisions of ss. 578.09 and 578.13 do not apply to:

(a) ~~To~~ Seed or grain not intended for sowing or planting purposes.

(b) ~~To~~ Seed stored ~~in storage~~ in, consigned to, or being transported to seed cleaning or processing establishments for cleaning or processing only. Any labeling or other representation which may be made with respect to the unclean seed is ~~shall be~~ subject to this law.

(c) Seed under development or maintained exclusively for research purposes.

(3) If seeds cannot be identified by examination thereof, a person is not subject to the criminal penalties of this chapter for having sold or offered for sale seeds subject to this chapter which were incorrectly labeled or represented as to kind, species, and, if appropriate, subspecies, variety, type, or origin, elevation, and, if required, year of collection unless he or she has failed to obtain an invoice, genuine grower's or tree seed collector's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity of the seeds to be as stated by the grower. A genuine grower's declaration of variety must affirm that the grower holds records of proof of identity concerning parent seed, such as invoice and labels ~~No person shall be subject to the criminal penalties of this law for having sold, offered, exposed, or distributed for sale in this state any agricultural, vegetable, or forest tree seed which were incorrectly labeled or represented as to kind and variety~~


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~~or origin, which seed cannot be identified by examination thereof, unless she or he has failed to obtain an invoice or grower's declaration giving kind and variety and origin~~.

Section 45. Section 578.11, Florida Statutes, is amended to read:

578.11 Duties, authority, and rules of the department.—

(1) The duty of administering this law and enforcing its provisions and requirements shall be vested in the Department of Agriculture and Consumer Services, which is hereby authorized to employ such agents and persons as in its judgment shall be necessary therefor. It shall be the duty of the department, which may act through its authorized agents, to sample, inspect, make analyses of, and test agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed transported, sold, offered or exposed for sale, or distributed within this state for sowing or planting purposes, at such time and place and to such extent as it may deem necessary to determine whether said agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed are in compliance with the provisions of this law, and to notify promptly the person who transported, distributed, sold, offered or exposed the seed for sale, of any violation.

(2) The department is authorized to:

(a) ~~To~~ Enforce this chapter ~~act~~ and prescribe the methods of sampling, inspecting, testing, and examining agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed.

(b) ~~To~~ Establish standards and tolerances to be followed in the administration of this law, which shall be in general accord with officially prescribed practices in interstate commerce.

(c) ~~To~~ Prescribe uniform labels.


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(d) ~~To~~ Adopt prohibited and restricted noxious weed seed lists.

(e) ~~To~~ Prescribe limitations for each restricted noxious weed to be used in enforcement of this chapter ~~act~~ and to add or subtract therefrom from time to time as the need may arise.

(f) ~~To~~ Make commercial tests of seed and to fix and collect charges for such tests.

(g) ~~To~~ List the kinds of flower, ~~and forest~~ tree, and shrub seed subject to this law.

(h) ~~To~~ Analyze samples, as requested by a consumer. The department shall establish, by rule, a fee schedule for analyzing samples at the request of a consumer. The fees shall be sufficient to cover the costs to the department for taking the samples and performing the analysis, not to exceed $150 per sample.

(i) ~~To~~ Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this chapter ~~act~~.

(j) ~~To~~ Establish, by rule, requirements governing aircraft used for the aerial application of seed, including requirements for recordkeeping, annual aircraft registration, secure storage when not in use, area-of-application information, and reporting any sale, lease, purchase, rental, or transfer of such aircraft to another person.

(3) For the purpose of carrying out ~~the provisions of~~ this law, the department, through its authorized agents, is authorized to:

(a) ~~To~~ Enter upon any public or private premises, where agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed is sold, offered, exposed, or distributed for sale during

regular business hours, in order to have access to seed subject to this law and the rules and regulations hereunder.

(b) ~~To~~ Issue and enforce a stop-sale notice or order to the owner or custodian of any lot of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed~~,~~ which the department finds or has good reason to believe is in violation of any provisions of this law, which shall prohibit further sale, barter, exchange, or distribution of such seed until the department is satisfied that the law has been complied with and has issued a written release or notice to the owner or custodian of such seed. After a stop-sale notice or order has been issued against or attached to any lot of seed and the owner or custodian of such seed has received confirmation that the seed does not comply with this law, she or he has ~~shall have~~ 15 days beyond the normal test period within which to comply with the law and obtain a written release of the seed. ~~The provisions of~~ This paragraph may ~~shall~~ not be construed as limiting the right of the department to proceed as authorized by other sections of this law.

(c) ~~To~~ Establish and maintain a seed laboratory, employ seed analysts and other personnel, and incur such other expenses as may be necessary to comply with these provisions.

Section 46. Section 578.12, Florida Statutes, is amended to read:

578.12 Stop-sale, stop-use, removal, or hold orders.—When agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed is being offered or exposed for sale or held in violation of any of the provisions of this chapter, the department, through its authorized representative, may issue and enforce a stop-sale,

stop-use, removal, or hold order to the owner or custodian of said seed ordering it to be held at a designated place until the law has been complied with and said seed is released in writing by the department or its authorized representative. If seed is not brought into compliance with this law it shall be destroyed within 30 days or disposed of by the department in such a manner as it shall by regulation prescribe.

Section 47. Section 578.13, Florida Statutes, is amended to read:

578.13 Prohibitions.—

(1) It shall be unlawful for any person to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub, seed within this state:

(a) Unless the test to determine the percentage of germination required by s. 578.09 has ~~shall have~~ been completed ~~within a period of 7 months, exclusive of the calendar month in which the test was completed,~~ immediately prior to sale, exposure for sale, offering for sale, or transportation, except for a germination test for seed in hermetically sealed containers which is provided for in s. 578.092 ~~s. 578.28~~.

(b) Not labeled in accordance with ~~the provisions of~~ this law, or having false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement.

(d) Containing noxious weed seeds subject to tolerances and methods of determination prescribed in the rules and regulations under this law.

(e) Unless a seed license has been obtained in accordance


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with ~~the provisions of~~ this law.

(f) Unless such seed conforms to the definition of a "lot ~~of seed~~."

(2) It shall be unlawful for a ~~any~~ person within this state to:

(a) ~~To~~ Detach, deface, destroy, or use a second time any label or tag provided for in this law or in the rules and regulations made and promulgated hereunder or to alter or substitute seed in a manner that may defeat the purpose of this law.

(b) ~~To~~ Disseminate any false or misleading advertisement concerning agricultural, vegetable, flower, ~~or forest~~ tree ,or shrub seed in any manner or by any means.

(c) ~~To~~ Hinder or obstruct in any way any authorized person in the performance of her or his duties under this law.

(d) ~~To~~ Fail to comply with a stop-sale order or to move, handle, or dispose of any lot of seed, or tags attached to such seed, held under a "stop-sale" order, except with express permission of the department and for the purpose specified by the department ~~or seizure order~~.

(e) Label, advertise, or otherwise represent seed subject to this chapter to be certified seed or any class thereof, including classes such as "registered seed," "foundation seed," "breeder seed" or similar representations, unless:

1. A seed certifying agency determines that such seed conformed to standards of purity and identify as to the kind, variety, or species and, if appropriate, subspecies and the seed certifying agency also determines that tree or shrub seed was found to be of the origin and elevation claimed, in compliance


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with the rules and regulations of such agency pertaining to such seed; and

2. The seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and specified to the kind, variety, or species and, if appropriate, subspecies.

(f) Label, by variety name, seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the United States Plant Variety Protection Act, 7 U.S.C. 2321 et. seq., specifies sale only as a class of certified seed, except that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the written approval of, the owner of the variety. ~~To sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed labeled "certified seed," "registered seed," "foundation seed," "breeder seed," or similar terms, unless it has been produced and labeled under seal in compliance with the rules and regulations of any agency authorized by law.~~

(g) ~~(f) To~~ Fail to keep a complete record, including a file sample which shall be retained for 1 year after seed is sold, of each lot of seed and to make available for inspection such records to the department or its duly authorized agents.

(h) ~~(g) To~~ Use the name of the Department of Agriculture and Consumer Services or Florida State Seed Laboratory in connection with analysis tag, labeling advertisement, or sale of any seed in any manner whatsoever.

Section 48. Section 578.14, Florida Statutes, is repealed.

Section 49. Subsection (1) of section 578.181, Florida Statutes, is amended to read:

578.181 Penalties; administrative fine.—

(1) The department may enter an order imposing one or more of the following penalties against a person who violates this chapter or the rules adopted under this chapter or who impedes, obstructs, ~~or~~ hinders, or otherwise attempts to prevent the department from performing its duty in connection with ~~performing its duties under~~ this chapter:

(a) For a minor violation, issuance of a warning letter.

(b) For violations other than a minor violation:

1. Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each occurrence ~~after the issuance of a warning letter~~.

2.~~(c)~~ Revocation or suspension of the registration as a seed dealer.

Section 50. Section 578.23, Florida Statutes, is amended to read:

578.23 ~~Dealers'~~ Records ~~to be kept available~~.—Each person who allows his or her name or brand to appear on the label as handling agricultural, vegetable, flower, tree, or shrub seeds subject to this chapter must keep, for 2 years, complete records of each lot of agricultural, vegetable, flower, tree, or shrub seed handled, and keep for 1 year after final disposition a file sample of each lot of seed. All such records and samples pertaining to the shipment or shipments involved must be accessible for inspection by the department or its authorized representative during normal business hours ~~Every seed dealer shall make and keep for a period of 3 years satisfactory records~~


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~~of all agricultural, vegetable, flower, or forest tree seed bought or handled to be sold, which records shall at all times be made readily available for inspection, examination, or audit by the department. Such records shall also be maintained by persons who purchase seed for production of plants for resale~~.

Section 51. Section 578.26, Florida Statutes, is amended to read:

578.26 Complaint, investigation, hearings, findings, and recommendation prerequisite to legal action.—

(1)(a) When any buyer ~~farmer~~ is damaged by the failure of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed planted in this state to produce or perform as represented by the labeling of such ~~label attached to the~~ seed as required by s. 578.09, as a prerequisite to her or his right to maintain a legal action against the dealer from whom the seed was purchased, the buyer must ~~farmer shall~~ make a sworn complaint against the dealer alleging damages sustained. The complaint shall be filed with the department, and a copy of the complaint shall be served by the department on the dealer by certified mail, within such time as to permit inspection of the property, crops, plants, or trees referenced in, or related to, the buyer's complaint by the seed investigation and conciliation council or its representatives and by the dealer from whom the seed was purchased.

(b) For types of claims specified in paragraph (a), the buyer may not commence legal proceedings against the dealer or assert such a claim as a counterclaim or defense in any action brought by the dealer until the findings and recommendations of the seed investigation and conciliation council are transmitted


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to the complainant and the dealer.

(c) ~~(b)~~ Language setting forth the requirement for filing and serving the complaint shall be legibly typed or printed on the analysis label or be attached to the package containing the seed at the time of purchase by the buyer ~~farmer~~.

(d) ~~(c)~~ A nonrefundable filing fee of $100 shall be paid to the department with each complaint filed. However, the complainant may recover the filing fee cost from the dealer upon the recommendation of the seed investigation and conciliation council.

(2) Within 15 days after receipt of a copy of the complaint, the dealer shall file with the department her or his answer to the complaint and serve a copy of the answer on the buyer ~~farmer~~ by certified mail. ~~Upon receipt of the findings and recommendation of the arbitration council, the department shall transmit them to the farmer and to the dealer by certified mail.~~

(3) The department shall refer the complaint and the answer thereto to the seed investigation and conciliation council provided in s. 578.27 for investigation, informal hearing, findings, and recommendation on the matters complained of.

(a) Each party must ~~shall~~ be allowed to present its side of the dispute at an informal hearing before the seed investigation and conciliation council. Attorneys may be present at the hearing to confer with their clients. However, no attorney may participate directly in the proceeding.

(b) Hearings, including the deliberations of the seed investigation and conciliation council, must ~~shall~~ be open to the public.

(c) Within 30 days after completion of a hearing, the seed

investigation and conciliation council shall transmit its findings and recommendations to the department. Upon receipt of the findings and recommendation of the seed investigation and conciliation council, the department shall transmit them to the buyer ~~farmer~~ and to the dealer by certified mail.

(4) The department shall provide administrative support for the seed investigation and conciliation council and shall mail a copy of the council's procedures to each party upon receipt of a complaint by the department.

Section 52. Subsections (1), (2), and (4) of section 578.27, Florida Statutes, are amended to read:

578.27 Seed investigation and conciliation council; composition; purpose; meetings; duties; expenses.—

(1) The Commissioner of Agriculture shall appoint a seed investigation and conciliation council composed of seven members ~~and seven alternate members~~, one member ~~and one alternate~~ to be appointed upon the recommendation of each of the following: the deans of extension and research, Institute of Food and Agricultural Sciences, University of Florida; president of the Florida Seed ~~Seedsmen and Garden Supply~~ Association; president of the Florida Farm Bureau Federation; and the president of the Florida Fruit and Vegetable Association. The Commissioner of Agriculture shall appoint a representative ~~and an alternate~~ from the agriculture industry at large and from the Department of Agriculture and Consumer Services. Each member shall be appointed for a term of 4 years or less and shall serve until his or her successor is appointed ~~Initially, three members and their alternates shall be appointed for 4-year terms and four members and their alternates shall be appointed for 2-year~~

~~terms. Thereafter, members and alternates shall be appointed for 4-year terms. Each alternate member shall serve only in the absence of the member for whom she or he is an alternate~~. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment. The council shall annually elect a chair from its membership. It shall be the duty of the chair to conduct all meetings and deliberations held by the council and to direct all other activities of the council. The department representative shall serve as secretary of the council. It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the council as directed by the chair.

(2) The purpose of the seed investigation and conciliation council is to assist buyers ~~farmers~~ and ~~agricultural~~ seed dealers in determining the validity of seed complaints made by buyers ~~farmers~~ against dealers and recommend a settlement, when appropriate, ~~cost damages~~ resulting from the alleged failure of the seed to produce or perform as represented by the label of such ~~on the~~ seed ~~package~~.

(4)(a) When the department refers to the seed investigation and conciliation council any complaint made by a buyer ~~farmer~~ against a dealer, the ~~said~~ council must ~~shall~~ make a full and complete investigation of the matters complained of and at the conclusion of the ~~said~~ investigation must ~~shall~~ report its findings and make its recommendation ~~of cost damages~~ and file same with the department.

(b) In conducting its investigation, the seed investigation and conciliation council or any representative, member, or

members thereof are authorized to examine the buyer's property, crops, plants, or trees referenced in or relating to the complaint ~~farmer on her or his farming operation of which she or he complains~~ and the dealer on her or his packaging, labeling, and selling operation of the seed alleged to be faulty; to grow to production a representative sample of the alleged faulty seed through the facilities of the state, under the supervision of the department when such action is deemed to be necessary; to hold informal hearings at a time and place directed by the department or by the chair of the council upon reasonable notice to the buyer ~~farmer~~ and the dealer.

(c) Any investigation made by less than the whole membership of the council must ~~shall~~ be by authority of a written directive by the department or by the chair, and such investigation must ~~shall~~ be summarized in writing and considered by the council in reporting its findings and making its recommendation.

Section 53. Section 578.28, Florida Statutes, is renumbered as section 578.092, Florida Statutes, and amended to read:

578.092 ~~578.28~~ Seed in hermetically sealed containers.—The period of validity of germination tests is extended to the following periods for seed packaged in hermetically sealed containers, under conditions and label requirements set forth in this section:

(1) GERMINATION TESTS.—The germination test for agricultural and vegetable seed must ~~shall~~ have been completed within the following periods, exclusive of the calendar month in which the test was completed, immediately prior to shipment, delivery, transportation, or sale:

(a) In the case of agricultural or vegetable seed shipped, delivered, transported, or sold to a dealer for resale, 18 months;

(b) In the case of agricultural or vegetable seed for sale or sold at retail, 24 months.

(2) CONDITIONS OF PACKAGING.—The following conditions are considered as minimum:

(a) *Hermetically sealed packages or containers.*—A container, to be acceptable under the provisions of this section, shall not allow water vapor penetration through any wall, including the wall seals, greater than 0.05 gram of water per 24 hours per 100 square inches of surface at 100 °F. with a relative humidity on one side of 90 percent and on the other of 0 percent. Water vapor penetration (WVP) is measured by the standards of the National Institute of Standards and Technology as: gm H_2O/24 hr./100 sq. in./100 °F/90 percent RH V. 0 percent RH.

(b) *Moisture of seed packaged.*—The moisture of agricultural or vegetable seed subject to the provisions of this section shall be established by rule of the department.

(3) LABELING REQUIRED.—In addition to the labeling required by s. 578.09, seed packaged under the provisions of this section shall be labeled with the following information:

(a) Seed has been preconditioned as to moisture content.

(b) Container is hermetically sealed.

(c) "Germination test valid until (month, year)" may be used. (Not to exceed 24 months from date of test).

Section 54. Section 578.29, Florida Statutes, is created to read:

578.29 Prohibited noxious weed seed.—Seeds meeting the definition of prohibited noxious weed seed under s. 578.011, may not be present in agricultural, vegetable, flower, tree, or shrub seed offered or exposed for sale in this state.

Section 55. Subsection (1) of section 590.02, Florida Statutes, is amended to read:

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

(1) The Florida Forest Service has the following powers, authority, and duties to:

(a) ~~To~~ Enforce the provisions of this chapter;

(b) ~~To~~ Prevent, detect, and suppress wildfires wherever they may occur on public or private land in this state and to do all things necessary in the exercise of such powers, authority, and duties;

(c) ~~To~~ Provide firefighting crews, who shall be under the control and direction of the Florida Forest Service and its designated agents;

(d) ~~To~~ Appoint center managers, forest area supervisors, forestry program administrators, a forest protection bureau chief, a forest protection assistant bureau chief, a field operations bureau chief, deputy chiefs of field operations, district managers, forest operations administrators, senior forest rangers, investigators, forest rangers, firefighter rotorcraft pilots, and other employees who may, at the Florida Forest Service's discretion, be certified as forestry firefighters pursuant to s. 633.408(8). Other law notwithstanding, center managers, district managers, forest

protection assistant bureau chief, and deputy chiefs of field operations have ~~shall have~~ Selected Exempt Service status in the state personnel designation;

(e) ~~To~~ Develop a training curriculum for forestry firefighters which must contain the basic volunteer structural fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training;

(f) Pay the cost of the initial commercial driver license examination fee for those employees whose position requires them to operate equipment requiring a license. This paragraph is intended to be an authorization to the department to pay such costs, not an obligation ~~To make rules to accomplish the purposes of this chapter~~;

(g) ~~To~~ Provide fire management services and emergency response assistance and to set and charge reasonable fees for performance of those services. Moneys collected from such fees shall be deposited into the Incidental Trust Fund of the Florida Forest Service;

(h) ~~To~~ Require all state, regional, and local government agencies operating aircraft in the vicinity of an ongoing wildfire to operate in compliance with the applicable state Wildfire Aviation Plan; ~~and~~

(i) ~~To~~ Authorize broadcast burning, prescribed burning, pile burning, and land clearing debris burning to carry out the duties of this chapter and the rules adopted thereunder; and

(j) Make rules to accomplish the purposes of this chapter.

Section 56. Section 817.417, Florida Statutes, is created to read:


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817.417 Government Impostor and Deceptive Advertisement Act.—

(1) SHORT TITLE.—This act may be cited as the "Government Impostor and Deceptive Advertisements Act."

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

(a) "Advertisement" means any representation disseminated in any manner or by any means, other than by a label, for the purpose of inducing, or which is reasonably likely to induce, directly or indirectly, a purchase.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Governmental entity" means a political subdivision or agency of any state, possession, or territory of the United States, or the Federal Government, including, but not limited to, a board, a department, an office, an agency, a military veteran entity, or a military or veteran service organization by whatever name known.

(3) DUTIES AND RESPONSIBILITIES.—The department has the duty and responsibility to:

(a) Investigate potential violations of this section.

(b) Request and obtain information regarding potential violations of this section.

(c) Seek compliance with this section.

(d) Enforce this section.

(e) Adopt rules necessary to administer this section.

(4) VIOLATIONS.—Each occurrence of the following acts or practices constitute a violation of this section:

(a) Disseminating an advertisement that:

1. Simulates a summons, complaint, jury notice, or other

court, judicial, or administrative process of any kind.

2. Represents, implies, or otherwise engages in an action that may reasonably cause confusion that the person using or employing the advertisement is a part of or associated with a governmental entity, when such is not true.

(b) Representing, implying, or otherwise reasonably causing confusion that goods, services, an advertisement, or an offer was disseminated by or has been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when such is not true.

(c) Using or employing language, symbols, logos, representations, statements, titles, names, seals, emblems, insignia, trade or brand names, business or control tracking numbers, website or e-mail addresses, or any other term, symbol, or other content that represents or implies or otherwise reasonably causes confusion that goods, services, an advertisement, or an offer is from a governmental entity, when such is not true.

(d) Failing to provide the disclosures as required in subsections (5) or (6).

(e) Failing to timely submit to the department written responses and answers to its inquiries concerning alleged practices inconsistent with, or in violation of, this section. Responses or answers may include, but are not limited to, copies of customer lists, invoices, receipts, or other business records.

(5) NOTICE REGARDING DOCUMENT AVAILABILITY.—

(a) Any person offering documents that are available free of charge or at a lesser price from a governmental entity must

provide the notice specified in paragraph (b) on advertisements as follows:

1. For printed or written advertisements, notice must be in the same font size, color, style, and visibility as primarily used elsewhere on the page or envelope and displayed as follows:

a. On the outside front of any mailing envelope used in disseminating the advertisement.

b. At the top of each printed or written page used in the advertisement.

2. For electronic advertisements, notice must be in the same font size, color, style, and visibility as the body text primarily used in the e-mail or web page and displayed as follows:

a. At the beginning of each e-mail message, before any offer or other substantive information.

b. In a prominent location on each web page, such as the top of each page or immediately following the offer or other substantive information on the page.

(b) Advertisements specified in paragraph (a) must include the following disclosure:

"IMPORTANT NOTICE:

The documents offered by this advertisement are available to Florida consumers free of charge or for a lesser price from ...(insert name, telephone number, and mailing address of the applicable governmental entity).... You are NOT required to purchase anything from this company and the company is NOT affiliated, endorsed, or approved by any governmental entity.

The item offered in this advertisement has NOT been approved or endorsed by any governmental agency, and this offer is NOT being made by an agency of the government."

(6) NOTICE REGARDING CLAIM OF LEGAL COMPLIANCE.—

(a) Any person disseminating an advertisement that includes a form or template to be completed by the consumer with the claim that such form or template will assist the consumer in complying with a legal filing or record retention requirement must provide the notice specified in paragraph (b) on advertisements as follows:

1. For printed or written advertisements, the notice must be in the same font size, color, style, and visibility as primarily used elsewhere on the page or envelope and displayed as follows:

a. On the outside front of any mailing envelope used in disseminating the advertisement.

b. At the top of each printed or written page used in the advertisement.

2. For electronic advertisements, the notice must be in the same font size, color, style, and visibility as the body text primarily used in the e-mail or web page and displayed as follows:

a. At the beginning of each e-mail message, before any offer or other substantive information.

b. In a prominent location on each web page, such as the top of each page or immediately following the offer or other substantive information on the page.

(b) Advertisements specified in paragraph (a) must include

the following disclosure:

"IMPORTANT NOTICE:

You are NOT required to purchase anything from this company and the company is NOT affiliated, endorsed, or approved by any governmental entity. The item offered in this advertisement has NOT been approved or endorsed by any governmental agency, and this offer is NOT being made by an agency of the government."

(7) PENALTIES.—

(a) Any person substantially affected by a violation of this section may bring an action in a court of proper jurisdiction to enforce the provisions of this section. A person prevailing in a civil action for a violation of this section shall be awarded costs, including reasonable attorney fees, and may be awarded punitive damages in addition to actual damages proven. This provision is in addition to any other remedies prescribed by law.

(b) The department may bring one or more of the following for a violation of this section:

1. A civil action in circuit court for:

a. Temporary or permanent injunctive relief to enforce this section.

b. For printed advertisements and e-mail, a fine of up to $1,000 for each separately addressed advertisement or message containing content in violation of paragraphs (4)(a)-(d) received by or addressed to a state resident.

c. For websites, a fine of up to $5,000 for each day a

website, with content in violation of paragraphs (4)(a)-(d), is published and made available to the general public.

d. For violations of paragraph (4)(e), a fine of up to $5,000 for each violation.

e. Recovery of restitution and damages on behalf of persons substantially affected by a violation of this section.

f. The recovery of court costs and reasonable attorney fees.

2. An action for an administrative fine in the Class III category pursuant to s. 570.971 for each act or omission which constitutes a violation under this section.

(c) The department may terminate any investigation or action upon agreement by the alleged offender to pay a stipulated fine, make restitution, pay damages to customers, or satisfy any other relief authorized by this section.

(d) In addition to any remedies or penalties set forth in this section, any person who violates paragraphs (4) (a)-(d) also commits an unfair or deceptive trade practice in violation of part II of chapter 501 and is subject to the penalties and remedies imposed for such violation.

Section 57. Paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is 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 compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or

structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also

includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6) and does not require certification or registration under this part as a category I liquefied petroleum gas dealer, or category V LP gas installer, as defined in s. 527.01, ~~or specialty installer~~ who is licensed under chapter 527 or an authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 58. Subsection (3) of section 527.06, Florida Statutes, is reenacted to read:

527.06 Rules.—

(3) Rules in substantial conformity with the published standards of the National Fire Protection Association (NFPA) are deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

Section 59. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 193.461, F.S.; specifying a methodology for the assessment of certain structures used in citrus production; amending s. 379.361, F.S.; transferring authority to issue licenses for oyster harvesting in Apalachicola Bay from the department to the City of Apalachicola; revising the disposition and permitted uses of license proceeds; amending s. 487.041, F.S.; deleting obsolete provisions; deleting a requirement that all pesticide registration fees be submitted electronically; amending s. 496.415, F.S.; prohibiting the comingling of funds in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion; amending s. 496.418, F.S.; revising

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recordkeeping and accounting requirements for solicitations of funds; specifying a rebuttable presumption under certain circumstances; amending s. 500.459, F.S.; revising permitting requirements and operating standards for water vending machines; amending s. 501.059, F.S.; revising the term "telephonic sales call" to include voicemail transmissions; defining the term "voicemail transmission"; prohibiting the transmission of voicemails to specified persons who communicate to a telephone solicitor that they would not like to receive certain voicemail solicitations or requests for donations; requiring a solicitor to ensure that if a telephone number is available through a caller identification system, that telephone number must be capable of receiving calls and must connect the original call recipient to the solicitor; revising civil penalties; creating s. 501.6175, F.S.; specifying recordkeeping requirements for commercial telephone sellers; amending s. 501.912, F.S.; revising terms; amending s. 501.913, F.S.; authorizing antifreeze brands to be registered for a specified period; deleting a provision relating to the registration of brands that are no longer in production; specifying a certified report requirement for first-time applications; amending s. 501.917, F.S.; revising department sampling and analysis requirements for antifreeze; specifying that the certificate of analysis is prima facie evidence of the

facts stated therein; amending s. 501.92, F.S.; revising when the department may require an antifreeze formula for analysis; amending s. 525.07, F.S.; authorizing the department to seize skimming devices without a warrant; amending s. 526.304, F.S.; authorizing the department to temporarily suspend enforcement, for specified purposes during states of emergency, of certain provisions relating to predatory practices in the retail sale of motor fuel; amending s. 526.305, F.S.; authorizing the department to temporarily suspend enforcement, for specified purposes during states of emergency, of certain provisions relating to discriminatory practices in sale of motor fuel; amending s. 526.51, F.S.; revising application requirements and fees for brake fluid brands; deleting a provision relating to the registration of brands that are no longer in production; amending s. 526.53, F.S.; revising department sampling and analysis requirements for brake fluid; specifying that the certificate of analysis is prima facie evidence of the facts stated therein; amending s. 527.01, F.S.; revising terms; amending s. 527.02, F.S.; revising the persons subject to liquefied petroleum business licensing provisions; revising such licensing fees and requirements; revising reporting and fee requirements for certain material changes to license information; deleting a provision authorizing license transfers; amending s. 527.0201, F.S.; revising the persons subject to

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liquefied petroleum qualifier competency examination, registry, supervisory, and employment requirements; revising the expiration of qualifier registrations; revising the persons subject to master qualifier requirements; revising master qualifier application requirements; deleting provisions specifying that a failure to replace master qualifiers within certain periods constitutes grounds for license revocation; deleting a provision relating to facsimile transmission of duplicate licenses; amending s. 527.021, F.S.; revising the circumstances under which liquefied petroleum gas bulk delivery vehicles must be registered with the department; amending s. 527.03, F.S.; authorizing certain liquefied petroleum gas registrations to be renewed for 2 or 3 years; deleting certain renewal period requirements; amending s. 527.04, F.S.; revising the persons required to provide the department with proof of insurance; revising the required payee for a bond in lieu of such insurance; amending s. 527.0605, F.S.; deleting provisions requiring licensees to submit a site plan and review fee for liquefied petroleum bulk storage container locations; amending s. 527.065, F.S.; revising the circumstances under which a liquefied petroleum gas licensee must notify the department of an accident; amending s. 527.067, F.S.; requiring certain liquefied petroleum gas dealers to provide notice within a specified period before rendering a consumer’s liquefied petroleum gas equipment or system inoperable

or discontinuing service; providing an exception; amending ss. 527.10 and 527.21, F.S.; conforming provisions to changes made by the act; amending s. 527.22, F.S.; deleting an obsolete provision; amending s. 531.67, F.S.; extending the expiration date of certain provisions relating to permits for commercially operated or tested weights or measures instruments or devices; amending s. 534.47, F.S.; revising and providing definitions; amending s. 534.49, F.S.; conforming provisions to changes made by the act; repealing s. 534.50, F.S., relating to reporting and notice requirements for dishonored checks and drafts for payment of livestock purchases; amending s. 534.501, F.S.; providing that delaying or failing to make payment for certain livestock is an unfair and deceptive act; repealing s. 534.51, F.S., relating to the prohibition of the filing of complaints by certain livestock markets; amending s. 534.54, F.S.; providing that purchasers who delay or fail to render payment for purchased livestock are liable for certain fees, costs, and expenses; conforming provisions to changes made by the act; amending s. 570.07, F.S.; authorizing the department to waive certain fees during a state of emergency; amending s. 573.111, F.S.; revising the required posting location for the issuance of an agricultural commodity marketing order; amending s. 578.011, F.S.; revising and defining terms; creating s. 578.012, F.S.; providing legislative intent; creating a

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preemption of local law relating to regulation of seed; amending s. 578.08, F.S.; revising application requirements for the registration of seed dealers; conforming provisions to changes made by the act; specifying that a receipt from the department need not be written to constitute a permit; deleting an exception to registration requirements for certain experiment stations; requiring the payment of fees when packet seed is placed into commerce; amending s. 578.09, F.S.; revising labeling requirements for agricultural, vegetable, flower, tree, and shrub seeds; conforming a cross-reference; repealing s. 578.091, F.S., relating to labeling of forest tree seed; amending s. 578.10, F.S.; revising exemptions to seed labeling, sale, and solicitation requirements; amending s. 578.11, F.S.; conforming provisions to changes made by the act; making technical changes; amending s. 578.12, F.S.; conforming provisions to changes made by the act; amending s. 578.13, F.S.; conforming provisions to changes made by the act; specifying that it is unlawful to move, handle, or dispose of seeds or tags under a stop-sale notice or order without permission from the department; specifying that it is unlawful to represent seed as certified except under specified conditions or to label seed with a variety name under certain conditions; repealing s. 578.14, F.S., relating to packet vegetable and flower seed; amending s. 578.181, F.S.; revising penalties; amending s. 578.23, F.S.;

revising recordkeeping requirements relating to seed labeling; amending s. 578.26, F.S.; conforming provisions to changes made by the act; specifying that certain persons may not commence legal proceedings or make certain claims against a seed dealer before certain findings and recommendations are transmitted by the seed investigation and conciliation council to the complainant and dealer; deleting a requirement that the department transmit such findings and recommendations to complainants and dealers; requiring the department to mail a copy of the council's procedures to both parties upon receipt of a complaint; amending s. 578.27, F.S.; removing alternate membership from the seed investigation and conciliation council; revising the terms of members of the council; conforming provisions to changes made by the act; revising the purpose of the council; revising the council's investigatory process; renumbering and amending s. 578.28, F.S.; making a technical change; creating s. 578.29, F.S.; prohibiting certain noxious weed seed from being offered or exposed for sale; amending s. 590.02, F.S.; authorizing the Florida Forest Service to pay certain employees' initial commercial driver license examination fees; creating s. 817.417, F.S.; providing a short title; defining terms; specifying department duties and responsibilities relating to government impostor and deceptive advertisements; requiring rulemaking by the department; specifying that it is a violation to

disseminate certain misleading or confusing advertisements, to make certain misleading or confusing representations, to use content implying or leading to confusion that such content is from a governmental entity when such is not true, to fail to provide certain disclosures, and to fail to provide certain responses and answers to the department; requiring a person offering documents that are available free of charge or at a lesser price from a governmental entity to provide a certain disclosure; providing penalties; amending s. 489.105, F.S.; conforming provisions to changes made by the act; reenacting s. 527.06(3), F.S., relating to published standards of the National Fire Protection Association; providing an effective date.

106924

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment to Amendment (350294) (with title amendment)

Delete lines 5 - 26
and insert:
Section 1. Section 193.461, Florida Statutes, is amended to read:
193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program; natural disasters.—
(1) The property appraiser shall, on an annual basis,

classify for assessment purposes all lands within the county as either agricultural or nonagricultural.

(2) Any landowner whose land is denied agricultural classification by the property appraiser may appeal to the value adjustment board. The property appraiser shall notify the landowner in writing of the denial of agricultural classification on or before July 1 of the year for which the application was filed. The notification shall advise the landowner of his or her right to appeal to the value adjustment board and of the filing deadline. The property appraiser shall have available at his or her office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

(3)(a) Lands may not be classified as agricultural lands unless a return is filed on or before March 1 of each year. Before classifying such lands as agricultural lands, the property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish that such lands were actually used for a bona fide agricultural purpose. Failure to make timely application by March 1 constitutes a waiver for 1 year of the privilege granted in this section for agricultural assessment. However, an applicant who is qualified to receive an agricultural classification who fails to file an application by March 1 must file an application for the classification with the property appraiser on or before the 25th day after the mailing by the property appraiser of the notice

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required under s. 194.011(1). Upon receipt of sufficient evidence, as determined by the property appraiser, that demonstrates that the applicant was unable to apply for the classification in a timely manner or that otherwise demonstrates extenuating circumstances that warrant the granting of the classification, the property appraiser may grant the classification. If the applicant files an application for the classification and fails to provide sufficient evidence to the property appraiser as required, the applicant may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the classification be granted. The petition may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding s. 194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the classification and demonstrates particular extenuating circumstances judged by the value adjustment board to warrant granting the classification, the value adjustment board may grant the classification for the current year. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department. The lessee of property may make original application or reapply using the short form if the lease, or an affidavit executed by the owner, provides that the lessee is empowered to make application for the agricultural classification on behalf of the owner and a copy of the lease or affidavit accompanies the application. A county may, at the request of the property

appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for classification of property within the county after an initial application is made and the classification granted by the property appraiser. Such waiver may be revoked by a majority vote of the governing body of the county.

(b) Subject to the restrictions specified in this section, only lands that are used primarily for bona fide agricultural purposes shall be classified agricultural. The term "bona fide agricultural purposes" means good faith commercial agricultural use of the land.

1. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

a. The length of time the land has been so used.

b. Whether the use has been continuous.

c. The purchase price paid.

d. Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.

e. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices.

f. Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.

g. Such other factors as may become applicable.

2. Offering property for sale does not constitute a primary use of land and may not be the basis for denying an agricultural


106924

classification if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale.

(c) The maintenance of a dwelling on part of the lands used for agricultural purposes does ~~shall~~ not in itself preclude an agricultural classification.

(d) When property receiving an agricultural classification contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage must be assessed separately, pursuant to s. 193.011, to qualify for the assessment limitation set forth in s. 193.155. The remaining property may be classified under the provisions of paragraphs (a) and (b).

(e) Notwithstanding the provisions of paragraph (a), land that has received an agricultural classification from the value adjustment board or a court of competent jurisdiction pursuant to this section is entitled to receive such classification in any subsequent year until such agricultural use of the land is abandoned or discontinued, the land is diverted to a nonagricultural use, or the land is reclassified as nonagricultural pursuant to subsection (4). The property appraiser must, no later than January 31 of each year, provide notice to the owner of land that was classified agricultural in the previous year informing the owner of the requirements of this paragraph and requiring the owner to certify that neither the ownership nor the use of the land has changed. The department shall, by administrative rule, prescribe the form of the notice to be used by the property appraiser under this paragraph. If a county has waived the requirement that an annual

application or statement be made for classification of property pursuant to paragraph (a), the county may, by a majority vote of its governing body, waive the notice and certification requirements of this paragraph and shall provide the property owner with the same notification provided to owners of land granted an agricultural classification by the property appraiser. Such waiver may be revoked by a majority vote of the county's governing body. This paragraph does not apply to any property if the agricultural classification of that property is the subject of current litigation.

(4) The property appraiser shall reclassify the following lands as nonagricultural:

(a) Land diverted from an agricultural to a nonagricultural use.

(b) Land no longer being utilized for agricultural purposes.

(5) For the purpose of this section, the term "agricultural purposes" includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, if the land is used principally for the production of tropical fish; aquaculture, including algaculture; sod farming; and all forms of farm products as defined in s. 823.14(3) and farm production.

(6)(a) In years in which proper application for agricultural assessment has been made and granted pursuant to this section, the assessment of land shall be based solely on its agricultural use. The property appraiser shall consider the following use factors only:

1. The quantity and size of the property;

2. The condition of the property;

3. The present market value of the property as agricultural land;

4. The income produced by the property;

5. The productivity of land in its present use;

6. The economic merchantability of the agricultural product; and

7. Such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production.

(b) Notwithstanding any provision relating to annual assessment found in s. 192.042, the property appraiser shall rely on 5-year moving average data when utilizing the income methodology approach in an assessment of property used for agricultural purposes.

(c)1. For purposes of the income methodology approach to assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection, which are consistent with the interim measures or best management practices adopted by the Department of Agriculture and Consumer Services pursuant

to s. 570.93 or s. 403.067(7)(c), shall be assessed by the methodology described in subparagraph 1.

4. Screened enclosed structures used in horticultural production for protection from pests and diseases or to comply with state or federal eradication or compliance agreements shall be assessed by the methodology described in subparagraph 1.

(d) In years in which proper application for agricultural assessment has not been made, the land shall be assessed under the provisions of s. 193.011.

(7)(a) Lands classified for assessment purposes as agricultural lands which are taken out of production by a state or federal eradication or quarantine program, including the Citrus Health Response Program, shall continue to be classified as agricultural lands for 5 years after the date of execution of a compliance agreement between the landowner and the Department of Agriculture and Consumer Services or a federal agency, as applicable, pursuant to such program or successor programs. Lands under these programs which are converted to fallow or otherwise nonincome-producing uses shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of up to $50 per acre on a single-year assessment methodology while fallow or otherwise used for nonincome-producing purposes. Lands under these programs which are replanted in citrus pursuant to the requirements of the compliance agreement shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of up to $50 per acre, on a single-year assessment methodology, during the 5-year term of agreement. However, lands converted to other income-producing agricultural uses permissible under such

programs shall be assessed pursuant to this section. Land under a mandated eradication or quarantine program which is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

(b) Lands classified for assessment purposes as agricultural lands that participate in a dispersed water storage program pursuant to a contract with the Department of Environmental Protection or a water management district which requires flooding of land shall continue to be classified as agricultural lands for the duration of the inclusion of the lands in such program or successor programs and shall be assessed as nonproductive agricultural lands. Land that participates in a dispersed water storage program that is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

(c) Lands classified for assessment purposes as agricultural lands which are not being used for agricultural production as a result of a natural disaster for which a state of emergency is declared pursuant to s. 252.36, when such disaster results in the halting of agricultural production, must continue to be classified as agricultural lands for 5 years after termination of the emergency declaration. However, if such lands are diverted from agricultural use to nonagricultural use during or after the 5-year recovery period, such lands must be assessed under s. 193.011. This paragraph applies retroactively to natural disasters that occurred on or after July 1, 2017.

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

And the title is amended as follows:

Delete lines 2724 - 2726

and insert:

Consumer Services; amending s. 193.461, F.S.; specifying the methodology for the assessment of certain structures in horticultural production; specifying, subject to certain conditions, that land classified as agricultural remains classified as such for a specified period if such lands are damaged by certain natural disasters and agricultural production is halted or reduced; providing for retroactive application; amending s.

844272

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment to Amendment (350294) (with title amendment)

Between lines 26 and 27
insert:

Section 2. Section 252.3569, Florida Statutes, is created to read:

252.3569 Florida state agricultural response team.—The Legislature finds that the Department of Agriculture and Consumer Services is the lead agency for animal, agricultural,

844272

and vector issues in the state during an emergency or disaster situations, as described by the Florida Comprehensive Emergency Management Plan. Pursuant to this responsibility, there is established within the department a state agricultural response team. Duties of the team include, but are not limited to:

(1) Oversight of the emergency management functions of preparedness, recovery, mitigation, and response with all agencies and organizations that are involved with the state's response activities related to animal, agricultural, and vector issues;

(2) Development, training, and support of county agricultural response teams; and

(3) Staffing the Emergency Support Function 17 at the State Emergency Operations Center and staffing, as necessary, at county emergency operations centers.

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

And the title is amended as follows:

Delete line 2726

and insert:

structures used in citrus production; creating s. 252.3569, F.S.; providing a legislative finding; establishing a state agricultural response team within the department; specifying the duties of the team; amending s.

322238

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2018	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment to Amendment (350294) (with title amendment)

Between lines 26 and 27
insert:

Section 2. Section 316.565, Florida Statutes, is amended to read:

316.565 Emergency transportation, agricultural products ~~perishable food~~; establishment of weight loads, etc.—

(1) The Governor may declare an emergency to exist when

322238

there is a breakdown in the normal public transportation facilities necessary in moving agricultural products, as defined in s. 604.60, ~~perishable food crops~~ grown in the state. The Department of Transportation is authorized during such emergency to establish such weight loads for hauling over the highways ~~from the fields or packinghouses to the nearest available public transportation facility~~ as circumstances demand. The Department of Transportation may issue, and any law enforcement officer authorized to enforce the traffic laws of this state may accept, electronic verification of permits during such an emergency. A permit issued pursuant to this section is valid for up to 60 days; however, the validity of the permit may not exceed the period of the declared state of emergency or any extension thereof. The Department of Transportation shall designate special highway routes, excluding the interstate highway system, to facilitate the trucking and render any other assistance needed to expedite moving the agricultural products ~~perishables~~.

(2) It is the intent of the Legislature in this chapter to supersede any existing laws when necessary to protect and save any agricultural products ~~perishable food crops~~ grown in the state and give authority for agencies to provide necessary temporary assistance requested during any such emergency. The department shall consult with the Department of Agriculture and Consumer Services and stakeholders in the agricultural industry in implementing this section.

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

And the title is amended as follows:

Delete line 2726

322238

and insert:

structures used in citrus production; amending s. 316.565, F.S.; revising the Governor's authority, to include agricultural products instead of only perishable food, in declaring an emergency relating to the transport of such products when there is a breakdown in the normal public transportation facilities necessary to move such products; authorizing the Department of Transportation to issue, and specified law enforcement officers to accept, electronic verification of permits during a declared state of emergency; providing that such permits are valid for up to a specified period of time, but no longer than the duration of the declared state of emergency or any extension thereof; requiring the Department of Transportation to consult with the Department of Agriculture and Consumer Services and stakeholders in the agricultural industry in implementing emergency transportation assistance for agricultural products; amending s.

591144

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment to Amendment (350294) (with title amendment)

Between lines 26 and 27
insert:

Section 2. Section 316.565, Florida Statutes, is amended to read:

316.565 Emergency transportation, agricultural products ~~perishable food~~; establishment of weight loads, etc.—

(1) The Governor may declare an emergency to exist when

591144

there is a breakdown in the normal public transportation facilities necessary in moving agricultural products, as defined in s. 604.60, ~~perishable food crops~~ grown in the state. The Department of Transportation is authorized during such emergency to establish such weight loads for hauling over the highways ~~from the fields or packinghouses to the nearest available public transportation facility~~ as circumstances demand. The Department of Transportation may issue, and any law enforcement officer authorized to enforce the traffic laws of this state must accept, electronic verification of permits during such an emergency. A permit issued pursuant to this section is valid for up to 60 days; however, the validity of the permit may not exceed the period of the declared state of emergency or any extension thereof. The Department of Transportation shall designate special highway routes, excluding the interstate highway system, to facilitate the trucking and render any other assistance needed to expedite moving the agricultural products ~~perishables~~.

(2) It is the intent of the Legislature in this chapter to supersede any existing laws when necessary to protect and save any agricultural products ~~perishable food crops~~ grown in the state and give authority for agencies to provide necessary temporary assistance requested during any such emergency. The department shall consult with the Department of Agriculture and Consumer Services and stakeholders in the agricultural industry in implementing this section.

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

And the title is amended as follows:

591144

Delete line 2726

and insert:

structures used in citrus production; amending s. 316.565, F.S.; revising the Governor's authority, to include agricultural products instead of only perishable food, in declaring an emergency relating to the transport of such products when there is a breakdown in the normal public transportation facilities necessary to move such products; authorizing the Department of Transportation to issue, and specifying that certain law enforcement officers must accept, electronic verification of permits during a declared state of emergency; providing that such permits are valid for up to a specified period, but no longer than the duration of the declared state of emergency or any extension thereof; requiring the Department of Transportation to consult with the Department of Agriculture and Consumer Services and stakeholders in the agricultural industry in implementing emergency transportation assistance for agricultural products; amending s.

318746

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2018	.	
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The Committee on Appropriations (Braynon) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2472 - 2512.

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

And the title is amended as follows:

Delete lines 152 - 157

and insert:

s. 790.0625, F.S.; revising required tax

By the Committee on Agriculture; and Senator Stargel

575-02009-18 2018740c1

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 193.461, F.S.; specifying a methodology for the assessment of certain structures in citrus production; amending s. 379.361, F.S.; transferring authority to issue licenses for oyster harvesting in Apalachicola Bay from the department to the City of Apalachicola; revising the disposition and permitted uses of license proceeds; amending s. 487.041, F.S.; deleting obsolete provisions; deleting a requirement that all pesticide registration fees be submitted electronically; amending s. 493.6105, F.S.; revising the submission requirements for a Class "K" firearm license application; amending s. 493.6113, F.S.; revising submission requirements for a Class "K" firearm license renewal; amending s. 496.415, F.S.; prohibiting the comingling of funds in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion; amending s. 496.418, F.S.; revising recordkeeping and accounting requirements for solicitations of funds; amending s. 500.459, F.S.; revising permitting requirements and operating standards for water vending machines; amending s. 501.059, F.S.; revising the term "telephonic sales call"; prohibiting telephone solicitors from initiating certain contact with businesses who previously communicated that they did not wish to be so contacted; creating s. 501.6175,

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F.S.; specifying recordkeeping requirements for commercial telephone sellers; amending s. 501.912, F.S.; revising terms; amending s. 501.913, F.S.; authorizing antifreeze brands to be registered for a specified period; deleting a provision relating to the registration of brands that are no longer in production; specifying a certified report requirement for first-time applications; amending s. 501.917, F.S.; revising department sampling and analysis requirements for antifreeze; specifying that the certificate of analysis is prima facie evidence of the facts stated therein; amending s. 501.92, F.S.; revising when the department may require an antifreeze formula for analysis; amending s. 525.07, F.S.; authorizing the department to seize skimming devices without a warrant; amending s. 526.51, F.S.; revising application requirements and fees for brake fluid brands; deleting a provision relating to the registration of brands that are no longer in production; amending s. 526.53, F.S.; revising department sampling and analysis requirements for brake fluid; specifying that the certificate of analysis is prima facie evidence of the facts stated therein; amending s. 527.01, F.S.; revising terms; amending s. 527.02, F.S.; revising the persons subject to liquefied petroleum business licensing provisions; revising such licensing fees and requirements; revising reporting and fee requirements for certain material changes to license information; deleting a

provision authorizing license transfers; amending s. 527.0201, F.S.; revising the persons subject to liquefied petroleum qualifier competency examination, registry, supervisory, and employment requirements; revising the expiration of qualifier registrations; revising the persons subject to master qualifier requirements; revising master qualifier application requirements; deleting provisions specifying that a failure to replace master qualifiers within certain periods constitutes grounds for license revocation; deleting a provision relating to facsimile transmission of duplicate licenses; amending s. 527.021, F.S.; revising the circumstances under which liquefied petroleum gas bulk delivery vehicles must be registered with the department; amending s. 527.03, F.S.; authorizing certain liquefied petroleum gas registrations to be renewed for 2 or 3 years; deleting certain renewal period requirements; amending s. 527.04, F.S.; revising the persons required to provide the department with proof of insurance; revising the required payee for a bond in lieu of such insurance; amending s. 527.0605, F.S.; deleting provisions requiring licensees to submit a site plan and review fee for liquefied petroleum bulk storage container locations; amending s. 527.065, F.S.; revising the circumstances under which a liquefied petroleum gas licensee must notify the department of an accident; amending ss. 527.10 and 527.21, F.S.; conforming provisions to changes made by the act; amending s.

527.22, F.S.; deleting an obsolete provision; amending s. 531.67, F.S.; extending the expiration date of certain provisions relating to permits for commercially operated or tested weights or measures instruments or devices; amending s. 570.07, F.S.; authorizing the department to waive certain fees during a state of emergency; amending s. 573.111, F.S.; revising the required posting location for the issuance of an agricultural commodity marketing order; amending s. 578.011, F.S.; revising and defining terms; creating s. 578.012, F.S.; providing legislative intent; creating a preemption of local law relating to regulation of seed; amending s. 578.08, F.S.; revising application requirements for the registration of seed dealers; conforming provisions to changes made by the act; specifying that a receipt from the department need not be written to constitute a permit; deleting an exception to registration requirements for certain experiment stations; requiring the payment of fees when packet seed is placed into commerce; amending s. 578.09, F.S.; revising labeling requirements for agricultural, vegetable, flower, tree, and shrub seeds; conforming a cross-reference; repealing s. 578.091, F.S., relating to labeling of forest tree seed; amending s. 578.10, F.S.; revising exemptions to seed labeling, sale, and solicitation requirements; amending s. 578.11, F.S.; conforming provisions to changes made by the act; making technical changes; amending s. 578.12, F.S.;

conforming provisions to changes made by the act; amending s. 578.13, F.S.; conforming provisions to changes made by the act; specifying that it is unlawful to move, handle, or dispose of seeds or tags under a stop-sale notice or order without permission from the department; specifying that it is unlawful to represent seed as certified except under specified conditions or to label seed with a variety name under certain conditions; repealing s. 578.14, F.S., relating to packet vegetable and flower seed; amending s. 578.181, F.S.; revising penalties; amending s. 578.23, F.S.; revising recordkeeping requirements relating to seed labeling; amending s. 578.26, F.S.; conforming provisions to changes made by the act; specifying that certain persons may not commence legal proceedings or make certain claims against a seed dealer before certain findings and recommendations are transmitted by the seed investigation and conciliation council to the complainant and dealer; deleting a requirement that the department transmit such findings and recommendations to complainants and dealers; requiring the department to mail a copy of the council's procedures to both parties upon receipt of a complaint; amending s. 578.27, F.S.; removing alternate membership from the seed investigation and conciliation council; revising the terms of members of the council; conforming provisions to changes made by the act; revising the purpose of the council; revising the council's investigatory process; renumbering and

amending s. 578.28, F.S.; making a technical change; creating s. 578.29, F.S.; prohibiting certain noxious weed seed from being offered or exposed for sale; amending s. 590.02, F.S.; authorizing the Florida Forest Service to pay certain employees' initial commercial driver license examination fees; amending s. 790.06, F.S.; revising required department handling of incomplete criminal history information in relation to licensure to carry concealed firearms; revising the required furnished statement to obtain a duplicate or substitute concealed weapon or firearm license; amending s. 790.0625, F.S.; revising required tax collector collection and remittance of firearm license fees; revising the fees which a tax collector may retain; authorizing certain tax collectors to print and deliver certain replacement licenses under certain conditions; authorizing certain tax collectors to offer fingerprinting and photographing services to aid license applicants; creating s. 817.417, F.S.; providing a short title; defining terms; specifying department duties and responsibilities relating to government impostor and deceptive advertisements; requiring rulemaking by the department; specifying that it is a violation to disseminate certain misleading or confusing advertisements, to make certain misleading or confusing representations, to use content implying or leading to confusion that such content is from a governmental entity when such is not true, to fail to provide certain disclosures, and to

fail to provide certain responses and answers to the department; requiring a person offering documents that are available free of charge or at a lesser price from a governmental entity to provide a certain disclosure; providing penalties; amending s. 489.105, F.S.; conforming provisions to changes made by the act; reenacting s. 527.06(3), F.S., relating to published standards of the National Fire Protection Association; providing an effective date.

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

Section 1. Paragraph (c) of subsection (6) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(6)

(c)1. For purposes of the income methodology approach to assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, which are physically attached to the land are ~~shall be~~ considered a part of the average yields per acre and do not ~~shall~~ have any ~~no~~ separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms must ~~shall~~ be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection and screen enclosed

structures used in citrus production for pest exclusion, which are consistent with the interim measures or best management practices adopted by the Department of Agriculture and Consumer Services pursuant to s. 570.93 or s. 403.067(7)(c), must ~~shall~~ be assessed by the methodology described in subparagraph 1.

Section 2. Paragraphs (b), (d), and (i) of subsection (5) of section 379.361, Florida Statutes, are amended to read:

379.361 Licenses.—

(5) APALACHICOLA BAY OYSTER HARVESTING LICENSE.—

(b) A ~~No~~ person may not ~~shall~~ harvest oysters from the Apalachicola Bay without a valid Apalachicola Bay oyster harvesting license issued by the City of Apalachicola ~~Department of Agriculture and Consumer Services~~. This requirement does ~~shall~~ not apply to anyone harvesting noncommercial quantities of oysters in accordance with commission rules, or to any person less than 18 years old.

(d) The City of Apalachicola ~~Department of Agriculture and Consumer Services~~ shall collect an annual fee of $100 from state residents and $500 from nonresidents for the issuance of an Apalachicola Bay oyster harvesting license. The license year shall begin on July 1 of each year and end on June 30 of the following year. The license shall be valid only for the licensee. Only bona fide residents of the state ~~Florida~~ may obtain a resident license pursuant to this subsection.

(i) The proceeds from Apalachicola Bay oyster harvesting license fees shall be deposited by the City of Apalachicola into a trust account ~~in the General Inspection Trust Fund~~ and, less reasonable administrative costs, must ~~shall~~ be used or distributed by the City of Apalachicola ~~Department of~~

~~Agriculture and Consumer Services~~ for the following purposes in Apalachicola Bay:

1. An Apalachicola Bay oyster shell recycling program ~~Relaying and transplanting live oysters~~.

2. Shell planting to construct or rehabilitate oyster bars.

3. Education programs for licensed oyster harvesters on oyster biology, aquaculture, boating and water safety, sanitation, resource conservation, small business management, marketing, and other relevant subjects.

4. Research directed toward the enhancement of oyster production in the bay and the water management needs of the bay.

Section 3. Paragraphs (a), (b), and (i) of subsection (1) of section 487.041, Florida Statutes, are amended to read:

487.041 Registration.—

(1)(a) ~~Effective January 1, 2009,~~ Each brand of pesticide, as defined in s. 487.021, which is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered in the office of the department, and such registration shall be renewed biennially. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1. The name, business mailing address, and street address of the registrant.

2. The name of the brand of pesticide.

3. An ingredient statement and a complete current copy of the labeling accompanying the brand of pesticide, which must

conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

(b) ~~Effective January 1, 2009,~~ For the purpose of defraying expenses of the department in connection with carrying out the provisions of this part, each registrant shall pay a biennial registration fee for each registered brand of pesticide. The registration of each brand of pesticide shall cover a designated 2-year period beginning on January 1 of each odd-numbered year and expiring on December 31 of the following year.

~~(i) Effective January 1, 2013, all payments of any pesticide registration fees, including late fees, shall be submitted electronically using the department's Internet website for registration of pesticide product brands.~~

Section 4. Paragraph (a) of subsection (6) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

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

(a) Submit one of the following:

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

2. A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than 3 years

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

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

4. A valid DD form 214 issued by the United States Department of Defense, an acceptable form as specified by the Department of Veterans' Affairs, or other official military documentation. Such form or documentation must be issued not more than 3 years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and has served as a military firearms instructor within the last 3 years of service.

Section 5. Paragraph (d) of subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

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

of a new set of fingerprints.

(d) Each Class "K" licensee shall additionally submit:

1. One of the certificates specified under s. 493.6105(6) as proof that he or she remains certified to provide firearms instruction; or

2. Proof of having taught no less than six 28-hour firearms instruction courses to Class "G" applicants, as specified in s. 493.6105(5), during the previous triennial licensure period.

Section 6. Subsection (19) is added to section 496.415, Florida Statutes, to read:

496.415 Prohibited acts.—It is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to:

(19) Commingle charitable contributions with noncharitable funds.

Section 7. Section 496.418, Florida Statutes, is amended to read:

496.418 Recordkeeping and accounting ~~Records~~.—

(1) Each charitable organization, sponsor, professional fundraising consultant, and professional solicitor that collects or takes control or possession of contributions made for a charitable purpose must keep records to permit accurate reporting and auditing as required by law, must not commingle contributions with noncharitable funds as specified in s. 496.415(19), and must be able to account for the funds. When expenditures are not properly documented and disclosed by records, there exists a presumption that the charitable organization, sponsor, professional fundraising consultant, or professional solicitor did not properly expend such funds.

Noncharitable funds include any funds that are not used or intended to be used for the operation of the charity or for charitable purposes.

(2) Each charitable organization, sponsor, professional fundraising consultant, and professional solicitor must keep for a period of at least 3 years true and accurate records as to its activities in this state which are covered by ss. 496.401-496.424. The records must be made available, without subpoena, to the department for inspection and must be furnished no later than 10 working days after requested.

Section 8. Paragraph (b) of subsection (3) and paragraph (i) of subsection (5) of section 500.459, Florida Statutes, are amended to read:

500.459 Water vending machines.—

(3) PERMITTING REQUIREMENTS.—

(b) An application for an operating permit must be made ~~in writing~~ to the department on forms provided by the department and must be accompanied by a fee as provided in subsection (4). The application must state the location of each water vending machine, the source of the water to be vended, the treatment the water will receive prior to being vended, and any other information considered necessary by the department.

(5) OPERATING STANDARDS.—

(i) The operator shall place on each water vending machine, in a position clearly visible to customers, the following information: the name and address of the operator; ~~the operating permit number;~~ the fact that the water is obtained from a public water supply; the method of treatment used; the method of postdisinfection used; and a local or toll-free telephone number

that may be called for obtaining further information, reporting problems, or making complaints.

Section 9. Paragraph (g) of subsection (1) and subsection (5) of section 501.059, Florida Statutes, are amended to read:

501.059 Telephone solicitation.—

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

(g) "Telephonic sales call" means a telephone call, ringless direct-to-voicemail delivery, or text message to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(5) A telephone solicitor or other person may not initiate an outbound telephone call or text message to a consumer, business, or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call or text message:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

Section 10. Section 501.6175, Florida Statutes, is created to read:

501.6175 Recordkeeping.—A commercial telephone seller shall keep all of the following information for 2 years after the date the information first becomes part of the seller's business records:

(1) The name and telephone number of each consumer contacted by a telephone sales call.

(2) All express requests authorizing the telephone solicitor to contact the consumer.

(3) Any script, outline, or presentation the applicant requires or suggests a salesperson use when soliciting; sales information or literature to be provided by the commercial telephone seller to a salesperson; and sales information or literature to be provided by the commercial telephone seller to a consumer in connection with any solicitation.

Within 10 days of an oral or written request by the department, including a written request transmitted by electronic mail, a commercial telephone seller must make the records it keeps pursuant to this section available for inspection and copying by the department during the department's normal business hours. This section does not limit the department's ability to inspect and copy material pursuant to any other law.

Section 11. Section 501.912, Florida Statutes, is amended to read:

501.912 Definitions.—As used in ss. 501.91-501.923:

(1) "Antifreeze" means any substance or preparation, including, but not limited to, antifreeze-coolant, antifreeze and summer coolant, or summer coolant, that is sold, distributed, or intended for use:

(a) As the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines of motor vehicles to prevent freezing of the cooling liquid or to lower its freezing point; or

(b) To raise the boiling point of water or for the prevention of engine overheating, whether or not the liquid is used as a year-round cooling system fluid.

~~(2) "Antifreeze-coolant," "antifreeze and summer coolant," or "summer coolant" means any substance as defined in subsection (1) which also is sold, distributed, or intended for raising the boiling point of water or for the prevention of engine overheating whether or not used as a year-round cooling system fluid. Unless otherwise stated, the term "antifreeze" includes "antifreeze," "antifreeze-coolant," "antifreeze and summer coolant," and "summer coolant."~~

(2) ~~(3)~~ "Department" means the Department of Agriculture and Consumer Services.

(3) ~~(4)~~ "Distribute" means to hold with an intent to sell, offer for sale, sell, barter, or otherwise supply to the consumer.

(4) ~~(5)~~ "Package" means a sealed, tamperproof retail package, drum, or other container designed for the sale of antifreeze directly to the consumer or a container from which the antifreeze may be installed directly by the seller into the cooling system. However, this term~~, but~~ does not include shipping containers containing properly labeled inner containers.

(5) ~~(6)~~ "Label" means any display of written, printed, or graphic matter on, or attached to, a package or to the outside individual container or wrapper of the package.

(6) ~~(7)~~ "Labeling" means the labels and any other written, printed, or graphic matter accompanying a package.

Section 12. Section 501.913, Florida Statutes, is amended

to read:

501.913 Registration.—

(1) Each brand of antifreeze to be distributed in this state must ~~shall~~ be registered with the department before distribution. The person whose name appears on the label, the manufacturer, or the packager shall make application annually or biennially to the department on forms provided by the department. The registration certificate expires ~~shall expire~~ 12 or 24 months after the date of issue, as indicated on the registration certificate. The registrant assumes, by application to register the brand, full responsibility for the registration, quality, and quantity of the product sold, offered, or exposed for sale in this state. ~~If a registered brand is not in production for distribution in this state and to ensure any remaining product that is still available for sale in the state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying that:~~

~~(a) The stated brand is no longer in production;~~

~~(b) The stated brand will not be distributed in this state; and~~

~~(c) All existing product of the stated brand will be removed by the registrant from the state within 30 days after expiration of the registration or the registrant will reregister the brand for two subsequent registration periods.~~

~~If production resumes, the brand must be reregistered before it is distributed in this state.~~

(2) The completed application shall be accompanied by:

(a) Specimens or copies ~~facsimiles~~ of the label for each brand of antifreeze;

(b) An application fee of $200 for a 12-month registration or $400 for a 24-month registration for each brand of antifreeze; and

(c) For first-time applications, a certified report from an independent testing laboratory, dated no more than 6 months before the registration application, providing analysis showing that the antifreeze conforms to minimum standards required for antifreeze by this part or rules of the department and is not adulterated ~~A properly labeled sample of between 1 and 2 gallons for each brand of antifreeze~~.

(3) The department may analyze or inspect the antifreeze to ensure that it:

(a) Meets the labeling claims;

(b) Conforms to minimum standards required for antifreeze by this part ~~chapter~~ or rules of the department; and

(c) Is not adulterated as prescribed for antifreeze by this part ~~chapter~~.

(4)(a) If the registration requirements are met, and, if the antifreeze meets the minimum standards, is not adulterated, and meets the labeling claims, the department shall issue a certificate of registration authorizing the distribution of that antifreeze in the state for the permit period ~~year~~.

(b) If registration requirements are not met, or, if the antifreeze fails to meet the minimum standards, is adulterated, or fails to meet the labeling claims, the department shall refuse to register the antifreeze.

Section 13. Section 501.917, Florida Statutes, is amended

to read:

501.917 Inspection by department; sampling and analysis.—The department has ~~shall have~~ the right to have access at reasonable hours to all places and property where antifreeze is stored, distributed, or offered or intended to be offered for sale, including the right to inspect and examine all antifreeze and to take reasonable samples of antifreeze for analysis together with specimens of labeling. Collected samples must be analyzed by the department. The certificate of analysis by the department shall be prima facie evidence of the facts stated therein in any legal proceeding in this state ~~All samples taken shall be properly sealed and sent to a laboratory designated by the department for examination together with all labeling pertaining to such samples. It shall be the duty of said laboratory to examine promptly all samples received in connection with the administration and enforcement of this act~~.

Section 14. Section 501.92, Florida Statutes, is amended to read:

501.92 Formula may be required.—The department may, if required for the analysis of antifreeze by ~~the laboratory designated by~~ the department ~~for the purpose of registration~~, require the applicant to furnish a statement of the formula of such antifreeze, unless the applicant can furnish other satisfactory evidence that such antifreeze is not adulterated or misbranded. Such statement need not include inhibitor or other minor ingredients which total less than 5 percent by weight of the antifreeze; and, if over 5 percent, the composition of the inhibitor and such other ingredients may be given in generic terms.

Section 15. Paragraph (e) of subsection (10) of section 525.07, Florida Statutes, is redesignated as paragraph (f), and a new paragraph (e) is added to that subsection, to read:

525.07 Powers and duties of department; inspections; unlawful acts.—

(10)

(e) The department may seize without warrant any skimming device, as defined in s. 817.625, for use as evidence.

Section 16. Subsection (1) of section 526.51, Florida Statutes, is amended to read:

526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.—

(1)(a) Application for registration of each brand of brake fluid shall be made on forms supplied by the department. The applicant shall give his or her name and address and the brand name of the brake fluid, state that he or she owns the brand name and has complete control over the product sold thereunder in this state, and provide the name and address of the resident agent in this state. If the applicant does not own the brand name but wishes to register the product with the department, a notarized affidavit that gives the applicant full authorization to register the brand name and that is signed by the owner of the brand name must accompany the application for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name shall maintain complete control over each product sold under that brand name in this

state.

(b) The completed application must be accompanied by the following:

1. Specimens or copies of the label for each brand of brake fluid.

2. An application fee of $50 for a 12-month registration or $100 for a 24-month registration for each brand of brake fluid.

3. For ~~All~~ first-time applications for a brand and formula combination, ~~must be accompanied by~~ a certified report from an independent testing laboratory, dated no more than 6 months before the registration application, setting forth the analysis of the brake fluid which shows its quality to be not less than the specifications established by the department for brake fluids. ~~A sample of not less than 24 fluid ounces of brake fluid shall be submitted, in a container with a label printed in the same manner that it will be labeled when sold, and the sample and container shall be analyzed and inspected by the department in order that compliance with the department's specifications and labeling requirements may be verified.~~

Upon approval of the application, the department shall register the brand name of the brake fluid and issue to the applicant a permit authorizing the registrant to sell the brake fluid in this state. The registration certificate expires ~~shall expire~~ 12 or 24 months after the date of issue, as indicated on the registration certificate.

(c) ~~(b) Each applicant shall pay a fee of $100 with each application.~~ A permit may be renewed by application to the department, accompanied by a renewal fee of $50 for a 12-month

registration, or $100 for a 24-month registration, on or before the expiration of the previously issued permit. To reregister a previously registered brand and formula combination, an applicant must submit a completed application and all materials as required in this section to the department before the expiration of the previously issued permit. A brand and formula combination for which a completed application and all materials required in this section are not received before the expiration of the previously issued permit may not be registered with the department until a completed application and all materials required in this section have been received and approved. If the brand and formula combination was previously registered with the department and a fee, application, or materials required in this section are received after the expiration of the previously issued permit, a penalty of $25 accrues, which shall be added to the fee. Renewals shall be accepted only on brake fluids that have no change in formula, composition, or brand name. Any change in formula, composition, or brand name of a brake fluid constitutes a new product that must be registered in accordance with this part.

~~(c) If a registered brand and formula combination is no longer in production for distribution in this state, in order to ensure that any remaining product still available for sale in this state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying that:~~

~~1. The stated brand and formula combination is no longer in production;~~

~~2. The stated brand and formula combination will not be~~

~~distributed in this state; and~~

~~3. Either all existing product of the stated brand and formula combination will be removed by the registrant from the state within 30 days after the expiration of the registration or that the registrant will reregister the brand and formula combination for 2 subsequent years.~~

~~If production resumes, the brand and formula combination must be reregistered before it is again distributed in this state.~~

Section 17. Subsection (1) of section 526.53, Florida Statutes, is amended to read:

526.53 Enforcement; inspection and analysis, stop-sale and disposition, regulations.—

(1) The department shall enforce ~~the provisions of~~ this part through the department, and may sample, inspect, analyze, and test any brake fluid manufactured, packed, or sold within this state. Collected samples must be analyzed by the department. The certificate of analysis by the department shall be prima facie evidence of the facts stated therein in any legal proceeding in this state. The department has ~~shall have~~ free access during business hours to all premises, buildings, vehicles, cars, or vessels used in the manufacture, packing, storage, sale, or transportation of brake fluid, and may open any box, carton, parcel, or container of brake fluid and take samples for inspection and analysis or for evidence.

Section 18. Section 527.01, Florida Statutes, is amended to read:

527.01 Definitions.—As used in this chapter:

(1) "Liquefied petroleum gas" means any material which is

composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(2) "Person" means any individual, firm, partnership, corporation, company, association, organization, or cooperative.

(3) "~~Ultimate~~ Consumer" means the person last purchasing liquefied petroleum gas in its liquid or vapor state for industrial, commercial, or domestic use.

(4) "Department" means the Department of Agriculture and Consumer Services.

(5) "Qualifier" means any person who has passed a competency examination administered by the department and is employed by a licensed category I, category II, or category V business. ~~in one or more of the following classifications:~~

~~(a) Category I liquefied petroleum gas dealer.~~

~~(b) Category II liquefied petroleum gas dispenser.~~

~~(c) LP gas installer.~~

~~(d) Specialty installer.~~

~~(e) Requalifier of cylinders.~~

~~(f) Fabricator, repairer, and tester of vehicles and cargo tanks.~~

~~(g) Category IV liquefied petroleum gas dispensing unit operator and recreational vehicle servicer.~~

~~(h) Category V liquefied petroleum gases dealer for industrial uses only.~~

(6) "Category I liquefied petroleum gas dealer" means any person selling or offering to sell by delivery or at a stationary location any liquefied petroleum gas to the ~~ultimate~~ consumer for industrial, commercial, or domestic use; any person

leasing or offering to lease, or exchanging or offering to exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders.

(7) "Category II liquefied petroleum gas dispenser" means any person engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid products to the ~~ultimate~~ consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, including maintaining a cylinder storage rack at the licensed business location for the purpose of storing cylinders filled by the licensed business for sale or use at a later date.

(8) "Category III liquefied petroleum gas cylinder exchange operator" means any person operating a storage facility used for the purpose of storing filled propane cylinders of not more than 43.5 pounds propane capacity or 104 pounds water capacity, while awaiting sale to the ~~ultimate~~ consumer, or a facility used for the storage of empty or filled containers which have been offered for exchange.

(9) "Category IV dealer in appliances and equipment ~~liquefied petroleum gas dispenser and recreational vehicle servicer~~" means any person selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas ~~engaging in the~~

~~business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid product to the ultimate consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment~~.

(10) "Category V LP gas installer" means any person who is engaged in the liquefied petroleum gas business and whose services include the installation, servicing, altering, or modifying of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum or natural gas.

(11) "Category VI miscellaneous operator" means any person who is engaged in operation as a manufacturer of LP gas appliances and equipment; a fabricator, repairer, and tester of vehicles and cargo tanks; a requalifier of LP gas cylinders; or a pipeline system operator ~~Specialty installer" means any person involved in the installation, service, or repair of liquefied petroleum or natural gas appliances and equipment, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, whose activities are limited to specific types of appliances and equipment as designated by department rule~~.

~~(12) "Dealer in appliances and equipment for use of liquefied petroleum gas" means any person selling or offering to~~

~~sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas.~~

(12)~~(13)~~ "Manufacturer of liquefied petroleum gas appliances and equipment" means any person in this state manufacturing and offering for sale or selling tanks, cylinders, or other containers and necessary appurtenances for use in the storage, transportation, or delivery of such gas to the ~~ultimate~~ consumer, or manufacturing and offering for sale or selling apparatus, appliances, and equipment for the use of liquefied petroleum gas to the ~~ultimate~~ consumer.

(13)~~(14)~~ "Wholesaler" means any person, as defined by subsection (2), selling or offering to sell any liquefied petroleum gas for industrial, commercial, or domestic use to any person except the ~~ultimate~~ consumer.

(14)~~(15)~~ "Requalifier of cylinders" means any person involved in the retesting, repair, qualifying, or requalifying of liquefied petroleum gas tanks or cylinders manufactured under specifications of the United States Department of Transportation ~~or former Interstate Commerce Commission~~.

(15)~~(16)~~ "Fabricator, repairer, and tester of vehicles and cargo tanks" means any person involved in the hydrostatic testing, fabrication, repair, or requalifying of any motor vehicles or cargo tanks used for the transportation of liquefied petroleum gases, when such tanks are permanently attached to or forming a part of the motor vehicle.

~~(17) "Recreational vehicle" means a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use, which has its own propulsion or is mounted on or towed by another motor vehicle.~~

(16)~~(18)~~ "Pipeline system operator" means any person who owns or operates a liquefied petroleum gas pipeline system that is used to transmit liquefied petroleum gas from a common source to the ~~ultimate~~ customer and that serves 10 or more customers.

~~(19) "Category V liquefied petroleum gases dealer for industrial uses only" means any person engaged in the business of filling, selling, and transporting liquefied petroleum gas containers for use in welding, forklifts, or other industrial applications.~~

(17)~~(20)~~ "License period ~~year~~" means the period 1 to 3 years from the issuance of the license ~~from September 1 through the following August 31, or April 1 through the following March 31, depending upon the type of license~~.

Section 19. Section 527.02, Florida Statutes, is amended to read:

527.02 License; penalty; fees.—

(1) It is unlawful for any person to engage in this state in the activities defined in s. 527.01(6) through (11) ~~of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category III liquefied petroleum gas cylinder exchange operator, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gas dealer for industrial uses only, LP gas installer, specialty installer, dealer in liquefied petroleum gas appliances and equipment, manufacturer of liquefied petroleum gas appliances and equipment, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks~~ without first obtaining from the department a license to engage in one or more of these

businesses. The sale of liquefied petroleum gas cylinders with a volume of 10 pounds water capacity or 4.2 pounds liquefied petroleum gas capacity or less is exempt from the requirements of this chapter. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to intentionally or willfully engage in any of said activities without first obtaining appropriate licensure from the department.

(2) Each business location of a person having multiple locations must ~~shall~~ be separately licensed and must meet the requirements of this section. Such license shall be granted to any applicant determined by the department to be competent, qualified, and trustworthy who files with the department a surety bond, insurance affidavit, or other proof of insurance, as hereinafter specified, and pays for such license the following annual license ~~original application~~ fee ~~for new licenses and annual renewal fees for existing licenses~~:

License Category	License ~~Original Application~~ Fee Per Year	~~Renewal Fee~~
Category I liquefied petroleum gas dealer	$400 ~~$525~~	~~$425~~
Category II liquefied petroleum gas dispenser	$400 ~~525~~	~~375~~

Category III liquefied petroleum gas cylinder exchange unit operator	$65 ~~100~~	~~65~~
Category IV dealer in appliances and equipment~~liquefied petroleum gas dispenser and recreational vehicle servicer~~	$65 ~~525~~	~~400~~
Category V LP gas installer ~~liquefied petroleum gases dealer for industrial uses only~~	$200 ~~300~~	~~200~~
Category VI miscellaneous operator ~~LP gas installer~~	$200 ~~300~~	~~200~~
~~Specialty installer~~	~~300~~	~~200~~

~~Dealer in appliances and equipment for use of liquefied petroleum gas~~	~~50~~	~~45~~
~~Manufacturer of liquefied petroleum gas appliances and equipment~~	~~525~~	~~375~~
~~Requalifier of cylinders~~	~~525~~	~~375~~
~~Fabricator, repairer, and tester of vehicles and cargo tanks~~	~~525~~	~~375~~

(3)(a) ~~An applicant for an original license who submits an application during the last 6 months of the license year may have the original license fee reduced by one-half for the 6-month period. This provision applies only to those companies applying for an original license and may not be applied to licensees who held a license during the previous license year and failed to renew the license.~~ The department may refuse to issue an initial license to an applicant who is under investigation in any jurisdiction for an action that would constitute a violation of this chapter until such time as the investigation is complete.

(b) The department shall waive the initial license fee for 1 year for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense or another acceptable form of identification as specified by the Department of Veterans' Affairs; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

(4) Any licensee submitting a material change in their information for licensing, before the date for renewal, must submit such change to the department in the manner prescribed by

the department, along with a fee in the amount of $10 ~~Any person applying for a liquefied petroleum gas license as a specialty installer, as defined by s. 527.01(11), shall upon application to the department identify the specific area of work to be performed. Upon completion of all license requirements set forth in this chapter, the department shall issue the applicant a license specifying the scope of work, as identified by the applicant and defined by rule of the department, for which the person is authorized~~.

~~(5) The license fee for a pipeline system operator shall be $100 per system owned or operated by the person, not to exceed $400 per license year. Such license fee applies only to a pipeline system operator who owns or operates a liquefied petroleum gas pipeline system that is used to transmit liquefied petroleum gas from a common source to the ultimate customer and that serves 10 or more customers.~~

(5) ~~(6)~~ The department shall adopt ~~promulgate~~ rules specifying acts deemed by the department to demonstrate a lack of trustworthiness to engage in activities requiring a license or qualifier identification card under this section.

~~(7) Any license issued by the department may be transferred to any person, firm, or corporation for the remainder of the current license year upon written request to the department by the original licenseholder. Prior to approval of any transfer, all licensing requirements of this chapter must be met by the transferee. A license transfer fee of $50 shall be charged for each such transfer.~~

Section 20. Section 527.0201, Florida Statutes, is amended to read:

527.0201 Qualifiers; master qualifiers; examinations.—

(1) In addition to the requirements of s. 527.02, any person applying for a license to engage in category I, category II, or category V ~~the~~ activities ~~of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gases dealer for industrial uses only, LP gas installer, specialty installer, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks~~ must prove competency by passing a written examination administered by the department or its agent with a grade of 70 ~~75~~ percent or above in each area tested. Each applicant for examination shall submit a $20 nonrefundable fee. The department shall by rule specify the general areas of competency to be covered by each examination and the relative weight to be assigned in grading each area tested.

(2) Application for examination for competency may be made by an individual or by an owner, a partner, or any person employed by the license applicant. Upon successful completion of the competency examination, the department shall register ~~issue a qualifier identification card to~~ the examinee.

(a) Qualifier registration automatically expires if ~~identification cards, except those issued to category I liquefied petroleum gas dealers and liquefied petroleum gas installers, shall remain in effect as long as the individual shows to the department proof of active employment in the area of examination and all continuing education requirements are met. Should~~ the individual terminates ~~terminate~~ active

employment in the area of examination for a period exceeding 24 months, or fails ~~fail~~ to provide documentation of continuing education~~, the individual's qualifier status shall automatically expire~~. If the qualifier registration ~~status~~ has expired, the individual must apply for and successfully complete an examination by the department in order to reestablish qualifier status.

(b) Every business organization in license category I, category II, or category V shall employ at all times a full-time qualifier who has successfully completed an examination in the corresponding category of the license held by the business organization. A person may not act as a qualifier for more than one licensed location.

(3) Qualifier registration expires ~~cards issued to category I liquefied petroleum gas dealers and liquefied petroleum gas installers shall expire~~ 3 years after the date of issuance. ~~All category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer qualifiers holding a valid qualifier card upon the effective date of this act shall retain their qualifier status until July 1, 2003, and may sit for the master qualifier examination at any time during that time period.~~ All such ~~category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer~~ qualifiers may renew their qualification ~~on or before July 1, 2003,~~ upon application to the department, payment of a $20 renewal fee, and documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by department rule, during the previous 3-year period. Applications for renewal must be made 30 calendar days before expiration. Persons

failing to renew before the expiration date must reapply and take a qualifier competency examination in order to reestablish ~~category I liquefied petroleum gas dealer qualifier and liquefied petroleum gas installer~~ qualifier status. ~~If a category I liquefied petroleum gas qualifier or liquefied petroleum gas installer qualifier becomes a master qualifier at any time during the effective date of the qualifier card, the card shall remain in effect until expiration of the master qualifier certification.~~

(4) A qualifier for a business ~~organization involved in installation, repair, maintenance, or service of liquefied petroleum gas appliances, equipment, or systems~~ must actually function in a supervisory capacity of other company employees performing licensed activities ~~installing, repairing, maintaining, or servicing liquefied petroleum gas appliances, equipment, or systems~~. A separate qualifier shall be required for every 10 such employees. ~~Additional qualifiers are required for those business organizations employing more than 10 employees that install, repair, maintain, or service liquefied petroleum gas equipment and systems.~~

(5) In addition to all other licensing requirements, each category I and category V licensee ~~liquefied petroleum gas dealer and liquefied petroleum gas installer~~ must, at the time of application for licensure, identify to the department one master qualifier who is a full-time employee at the licensed location. This person shall be a manager, owner, or otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to the department as provided by rule. The master qualifier requirement

shall be in addition to the requirements of subsection (1).

(a) In order to apply for certification as a master qualifier, each applicant must have been a registered ~~be a category I liquefied petroleum gas dealer qualifier or liquefied petroleum gas installer~~ qualifier for a minimum of 3 years immediately preceding submission of the application, must be employed by a licensed category I or category V licensee ~~liquefied petroleum gas dealer, liquefied petroleum gas installer~~, or applicant for such license, ~~must provide documentation of a minimum of 1 year's work experience in the gas industry,~~ and must pass a master qualifier competency examination. Master qualifier examinations shall be based on Florida's laws, rules, and adopted codes governing liquefied petroleum gas safety, general industry safety standards, and administrative procedures. The applicant must successfully pass the examination with a grade of 70 ~~75~~ percent or above. Each applicant for master qualifier registration ~~status~~ must submit to the department a nonrefundable $30 examination fee before the examination.

(b) Upon successful completion of the master qualifier examination, the department shall issue the examinee a ~~certificate of~~ master qualifier registration ~~status which shall include the name of the licensed company for which the master qualifier is employed~~. A master qualifier may transfer from one licenseholder to another upon becoming employed by the company and providing a written request to the department.

(c) A master qualifier registration expires ~~status shall expire~~ 3 years after the date of issuance ~~of the certificate~~ and may be renewed by submission to the department of documentation

of completion of at least 16 hours of approved continuing education courses during the 3-year period; proof of employment ~~with a licensed category I liquefied petroleum gas dealer, liquefied petroleum gas installer, or applicant~~; and a $30 certificate renewal fee. The department shall define~~,~~ by rule~~,~~ approved courses of continuing education.

~~(d) Each category I liquefied petroleum gas dealer or liquefied petroleum gas installer licensed as of August 31, 2000, shall identify to the department one current category I liquefied petroleum gas dealer qualifier or liquefied petroleum gas installer qualifier who will be the designated master qualifier for the licenseholder. Such individual must provide proof of employment for 3 years or more within the liquefied petroleum gas industry, and shall, upon approval of the department, be granted a master qualifier certificate. All other requirements with regard to master qualifier certificate expiration, renewal, and continuing education shall apply.~~

(6) A vacancy in a qualifier or master qualifier position in a business organization which results from the departure of the qualifier or master qualifier shall be immediately reported to the department by the departing qualifier or master qualifier and the licensed company.

(a) If a business organization no longer possesses a duly designated qualifier, as required by this section, its liquefied petroleum gas licenses shall be suspended by order of the department after 20 working days. The license shall remain suspended until a competent qualifier has been employed, the order of suspension terminated by the department, and the license reinstated. A vacancy in the qualifier position for a

period of more than 20 working days shall be deemed to constitute an immediate threat to the public health, safety, and welfare. ~~Failure to obtain a replacement qualifier within 60 days after the vacancy occurs shall be grounds for revocation of licensure or eligibility for licensure.~~

(b) Any category I or category V licensee ~~liquefied petroleum gas dealer or LP gas installer~~ who no longer possesses a master qualifier but currently employs a ~~category I liquefied petroleum gas dealer or LP gas installer~~ qualifier as required by this section~~,~~ has ~~shall have~~ 60 days within which to replace the master qualifier. If the company fails to replace the master qualifier within the 60-day ~~time~~ period, the license of the company shall be suspended by order of the department. The license shall remain suspended until a competent master qualifier has been employed, the order of suspension has been terminated by the department, and the license reinstated. ~~Failure to obtain a replacement master qualifier within 90 days after the vacancy occurs shall be grounds for revocation of licensure or eligibility for licensure.~~

(7) The department may deny, refuse to renew, suspend, or revoke any qualifier ~~card~~ or master qualifier registration ~~certificate~~ for any of the following causes:

(a) Violation of any provision of this chapter or any rule or order of the department;

(b) Falsification of records relating to the qualifier ~~card~~ or master qualifier registration ~~certificate~~; or

(c) Failure to meet any of the renewal requirements.

(8) Any individual having competency qualifications on file with the department may request the transfer of such

qualifications to any existing licenseholder by making a written request to the department for such transfer. Any individual having a competency examination on file with the department may use such examination for a new license application after making application in writing to the department. All examinations are confidential and exempt from the provisions of s. 119.07(1).

(9) If a duplicate license, qualifier ~~card~~, or master qualifier registration certificate is requested by the licensee, a fee of $10 must be received before issuance of the duplicate license or certificate ~~card~~. ~~If a facsimile transmission of an original license is requested, upon completion of the transmission a fee of $10 must be received by the department before the original license may be mailed to the requester.~~

(10) All revenues collected herein shall be deposited in the General Inspection Trust Fund for the purpose of administering the provisions of this chapter.

Section 21. Section 527.021, Florida Statutes, is amended to read:

527.021 Registration of transport vehicles.—

(1) Each liquefied petroleum gas bulk delivery vehicle owned or leased by a liquefied petroleum gas licensee must be registered with the department as part of the licensing application or when placed into service ~~annually~~.

(2) For the purposes of this section, a "liquefied petroleum gas bulk delivery vehicle" means any vehicle that is used to transport liquefied petroleum gas on any public street or highway as liquid cargo in a cargo tank, which tank is mounted on a conventional truck chassis or is an integral part of a transporting vehicle in which the tank constitutes, in

whole or in part, the stress member used as a frame and is a permanent part of the transporting vehicle.

(3) ~~Vehicle registrations shall be submitted by the vehicle owner or lessee in conjunction with the annual renewal of his or her liquefied petroleum gas license, but no later than August 31 of each year.~~ A dealer who fails to register a vehicle with the department ~~does not submit the required vehicle registration by August 31 of each year~~ is subject to the penalties in s. 527.13.

(4) The department shall issue a decal to be placed on each vehicle that is inspected by the department and found to be in compliance with applicable codes.

Section 22. Section 527.03, Florida Statutes, is amended to read:

527.03 ~~Annual~~ Renewal of license.—All licenses required under this chapter shall be renewed annually, biennially, or triennially, as elected by the licensee, subject to the license fees prescribed in s. 527.02. All renewals must meet the same requirements and conditions as an annual license for each licensed year ~~All licenses, except Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses, shall be renewed for the period beginning September 1 and shall expire on the following August 31 unless sooner suspended, revoked, or otherwise terminated. Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses shall be renewed for the period beginning April 1 and shall expire on the following March 31 unless sooner suspended, revoked, or otherwise terminated~~.

Any license allowed to expire will ~~shall~~ become inoperative because of failure to renew. The fee for restoration of a license is equal to the original license fee and must be paid before the licensee may resume operations.

Section 23. Section 527.04, Florida Statutes, is amended to read:

527.04 Proof of insurance required.—

(1) Before any license is issued, except to a category IV dealer in appliances and equipment ~~for use of liquefied petroleum gas~~ or a category III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to such business and is issued by an insurer authorized to do business in this state for an amount not less than $1 million and that the premium on such insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy, the applicant may deliver a good and sufficient bond in the amount of $1 million, payable to the Commissioner of Agriculture ~~Governor of Florida~~, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant’s compliance with this chapter and the rules of the department with respect to the conduct of such business and shall indemnify and hold harmless all persons from loss or damage by reason of the applicant’s failure to comply. However, the aggregated liability of the surety may not

exceed $1 million. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to be filed, and if the licenseholder fails to comply, the department shall cancel the license issued and give the licenseholder written notice that it is unlawful to engage in business without a license. A new bond is not required as long as the original bond remains sufficient and in force. If the licenseholder's insurance coverage as required by this subsection is canceled or otherwise terminated, the insurer must notify the department within 30 days after the cancellation or termination.

(2) Before any license is issued to a category ~~class~~ III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to the business and is issued by an insurer authorized to do business in this state for an amount not less than $300,000 and that the premium on the insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy, the applicant may deliver a good and sufficient bond in the amount of $300,000, payable to the Commissioner of Agriculture ~~Governor~~, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant's compliance with this chapter and the rules of the department

with respect to the conduct of such business and must indemnify and hold harmless all persons from loss or damage by reason of the applicant's failure to comply. However, the aggregated liability of the surety may not exceed $300,000. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to be filed, and if the licenseholder fails to comply, the department shall cancel the license issued and give the licenseholder written notice that it is unlawful to engage in business without a license. A new bond is not required as long as the original bond remains sufficient and in force. If the licenseholder's insurance coverage required by this subsection is canceled or otherwise terminated, the insurer must notify the department within 30 days after the cancellation or termination.

(3) Any person having a cause of action on the bond may bring suit against the principal and surety, and a copy of such bond duly certified by the department shall be received in evidence in the courts of this state without further proof. The department shall furnish a certified copy of the ~~such~~ bond upon payment to it of its lawful fee for making and certifying such copy.

Section 24. Section 527.0605, Florida Statutes, is amended to read:

527.0605 Liquefied petroleum gas bulk storage locations; jurisdiction.—

(1) The provisions of this chapter ~~shall~~ apply to liquefied petroleum gas bulk storage locations when:

(a) A single container in the bulk storage location has a

capacity of 2,000 gallons or more;

(b) The aggregate container capacity of the bulk storage location is 4,000 gallons or more; or

(c) A container or containers are installed for the purpose of serving the public the liquid product.

~~(2) Prior to the installation of any bulk storage container, the licensee must submit to the department a site plan of the facility which shows the proposed location of the container and must obtain written approval of such location from the department.~~

~~(3) A fee of $200 shall be assessed for each site plan reviewed by the division. The review shall include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.~~

(2)~~(4)~~ No newly installed container may be placed in operation until it has been inspected and approved by the department.

Section 25. Subsection (1) of section 527.065, Florida Statutes, is amended to read:

527.065 Notification of accidents; leak calls.—

(1) Immediately upon discovery, all liquefied petroleum gas licensees shall notify the department of any liquefied petroleum gas-related accident involving a liquefied petroleum gas licensee or customer account:

(a) Which caused a death or personal injury requiring professional medical treatment;

(b) Where uncontrolled ignition of liquefied petroleum gas resulted in death, personal injury, or property damage exceeding $3,000 ~~$1,000~~; or

(c) Which caused estimated damage to property exceeding $3,000 ~~$1,000~~.

Section 26. Section 527.10, Florida Statutes, is amended to read:

527.10 Restriction on use of unsafe container or system.—No liquefied petroleum gas shall be introduced into or removed from any container or system in this state that has been identified by the department or its duly authorized inspectors as not complying with the rules pertaining to such container or system, until such violations as specified have been satisfactorily corrected and authorization for continued service or removal granted by the department. A statement of violations of the rules that render such a system unsafe for use shall be furnished in writing by the department to the ~~ultimate~~ consumer or dealer in liquefied petroleum gas.

Section 27. Subsections (3) and (17) of section 527.21, Florida Statutes, are amended to read:

527.21 Definitions relating to Florida Propane Gas Education, Safety, and Research Act.—As used in ss. 527.20-527.23, the term:

(3) "Dealer" means a business engaged primarily in selling propane gas and its appliances and equipment to the ~~ultimate~~ consumer or to retail propane gas dispensers.

(17) "Wholesaler" or "reseller" means a seller of propane gas who is not a producer and who does not sell propane gas to the ~~ultimate~~ consumer.

Section 28. Paragraph (a) of subsection (2) of section 527.22, Florida Statutes, is amended to read:

527.22 Florida Propane Gas Education, Safety, and Research

Council established; membership; duties and responsibilities.—

(2)(a) ~~Within 90 days after the effective date of this act, the commissioner shall make a call to qualified industry organizations for nominees to the council.~~ The commissioner shall appoint members of the council from a list of nominees submitted by qualified industry organizations. The commissioner may require such reports or documentation as is necessary to document the nomination process for members of the council. Qualified industry organizations, in making nominations, and the commissioner, in making appointments, shall give due regard to selecting a council that is representative of the industry and the geographic regions of the state. Other than the public member, council members must be full-time employees or owners of propane gas producers or dealers doing business in this state.

Section 29. Section 531.67, Florida Statutes, is amended to read:

531.67 Expiration of sections.—Sections 531.60, 531.61, 531.62, 531.63, 531.64, 531.65, and 531.66 shall expire July 1, 2025 ~~2020~~.

Section 30. Subsection (46) is added to section 570.07, Florida Statutes, to read:

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

(46) During a state of emergency declared pursuant to s. 252.36, to waive fees by emergency order for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations during a period specified by the commissioner.

Section 31. Section 573.111, Florida Statutes, is amended to read:

573.111 Notice of effective date of marketing order.—Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice must ~~shall~~ be posted ~~on a public bulletin board to be maintained by the department in the Division of Marketing and Development of the department in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice shall be posted~~ on the department website ~~the same date that the notice is posted on the bulletin board~~. A ~~No~~ marketing order, or any suspension, amendment, or termination thereof, may not ~~shall~~ become effective until ~~the termination of a period of~~ 5 days after ~~from~~ the date of posting and publication.

Section 32. Section 578.011, Florida Statutes, is amended to read:

578.011 Definitions; Florida Seed Law.—When used in this chapter, the term:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this law.

(2) "Agricultural seed" includes the seed of grass, forage, cereal and fiber crops, and chufas and any other seed commonly recognized within the state as agricultural seed, lawn seed, and combinations of such seed, and may include identified noxious weed seed when the department determines that such seed is being used as agricultural seed ~~or field seed and mixtures of such seed~~.

(3) "Blend" means seed consisting of more than one variety

of one kind, each present in excess of 5 percent by weight of the whole.

(4) "Buyer" means a person who purchases agricultural, vegetable, flower, tree, or shrub seed in packaging of 1,000 seeds or more by count.

(5) "Brand" means a distinguishing word, name, symbol, number, or design used to identify seed produced, packaged, advertised, or offered for sale by a particular person.

(6) ~~(3)~~ "Breeder seed" means a class of certified seed directly controlled by the originating or sponsoring plant breeding institution or person, or designee thereof, and is the source for the production of seed of the other classes of certified seed ~~that are released directly from the breeder or experiment station that develops the seed. These seed are one class above foundation seed~~.

(7) ~~(4)~~ "Certified seed~~,~~" means a class of seed which is the progeny of breeder, foundation, or registered seed ~~"registered seed," and "foundation seed" mean seed that have been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of any agency authorized by the laws of this state or the laws of another state~~.

(8) "Certifying agency" means:

(a) An agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country that the United States Secretary of Agriculture has determined as adhering to

procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under paragraph (a).

(9) "Coated seed" means seed that has been covered by a layer of materials that obscures the original shape and size of the seed and substantially increases the weight of the product. The addition of biologicals, pesticides, identifying colorants or dyes, or other active ingredients including polymers may be included in this process.

(10) ~~(5)~~ "Date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(11) ~~(6)~~ "Dealer" means any person who sells or offers for sale any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed for seeding purposes, and includes farmers who sell cleaned, processed, packaged, and labeled seed.

(12) ~~(7)~~ "Department" means the Department of Agriculture and Consumer Services or its authorized representative.

(13) ~~(8)~~ "Dormant seed" refers to viable seed, other than hard seed, which neither germinate nor decay during the prescribed test period and under the prescribed test conditions.

(14) ~~(9)~~ "Flower seed" includes seed of herbaceous plants grown for blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or wildflower seed in this state.

~~(10) "Forest tree seed" includes seed of woody plants commonly known and sold as forest tree seed.~~

(15) "Foundation seed" means a class of certified seed which is the progeny of breeder or other foundation seed and is

produced and handled under procedures established by the certifying agency, in accordance with this part, for producing foundation seed, for the purpose of maintaining genetic purity and identity.

(16) ~~(11)~~ "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions ~~percentage of seed capable of producing normal seedlings under ordinarily favorable conditions. Broken seedlings and weak, malformed and obviously abnormal seedlings shall not be considered to have germinated~~.

(17) ~~(12)~~ "Hard seed" means seeds that remain hard at the end of a prescribed test period because they have not absorbed water due to an impermeable seed coat ~~the percentage of seed which because of hardness or impermeability did not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned~~.

(18) ~~(13)~~ "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) Two or more inbred lines;

(b) One inbred or a single cross with an open-pollinated variety; or

(c) Two varieties or species, except open-pollinated varieties of corn (*Zea mays*).

The second generation or subsequent generations from such crosses may ~~shall~~ not be regarded as hybrids. Hybrid

designations shall be treated as variety names.

(19) ~~(14)~~ "Inert matter" means all matter that is not a full seed ~~includes broken seed when one-half in size or less; seed of legumes or crucifers with the seed coats removed; undeveloped and badly injured weed seed such as sterile dodder which, upon visual examination, are clearly incapable of growth; empty glumes of grasses; attached sterile glumes of grasses (which must be removed from the fertile glumes except in Rhodes grass); dirt, stone, chaff, nematode, fungus bodies, and any matter other than seed~~.

(20) ~~(15)~~ "Kind" means one or more related species or subspecies which singly or collectively is known by one common name; e.g., corn, beans, lespedeza.

(21) "Label" means the display or displays of written or printed material upon or attached to a container of seed.

(22) ~~(16)~~ "Labeling" includes all labels and other written, printed, or graphic representations, in any form, accompanying and pertaining to any seed, whether in bulk or in containers, and includes invoices and other bills of shipment when sold in bulk.

(23) ~~(17)~~ "Lot ~~of seed~~" means a definite quantity of seed identified by a lot number or other mark ~~identification~~, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling~~, for the factors which appear in the labeling, within permitted tolerances~~.

(24) ~~(18)~~ "Mix," "mixed," or "mixture" means seed consisting of more than one kind ~~or variety~~, each present in excess of 5 percent by weight of the whole.

(25) "Mulch" means a protective covering of any suitable

substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aid in the prevention of the evaporation of soil moisture, the control of weeds, and the prevention of erosion.

(26) "Noxious weed seed" means seed in one of two classes of seed:

(a) "Prohibited noxious weed seed" means the seed of weeds that are highly destructive and difficult to control by good cultural practices and the use of herbicides.

(b) "Restricted noxious weed seed" means weed seeds that are objectionable in agricultural crops, lawns, and gardens of this state and which can be controlled by good agricultural practices or the use of herbicides.

(27)~~(19)~~ "Origin" means the state, District of Columbia, Puerto Rico, or possession of the United States, or the foreign country where the seed were grown, except for native species, where the term means the county or collection zone and the state where the seed were grown ~~for forest tree seed, with respect to which the term "origin" means the county or state forest service seed collection zone and the state where the seed were grown~~.

(28)~~(20)~~ "Other crop seed" includes all seed of plants grown in this state as crops, other than the kind or kind and variety included in the pure seed, when not more than 5 percent of the whole of a single kind or variety is present, unless designated as weed seed.

(29) "Packet seed" means seed prepared for use in home gardens and household plantings packaged in labeled, sealed containers of less than 8 ounces and typically sold from seed racks or displays in retail establishments, via the Internet, or

through mail order.

(30)~~(21)~~ "Processing" means conditioning, cleaning, scarifying, or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and, therefore, require retesting to determine the quality of the seed.

~~(22) "Prohibited noxious weed seed" means the seed and bulblets of perennial weeds such as not only reproduce by seed or bulblets, but also spread by underground roots or stems and which, when established, are highly destructive and difficult to control in this state by ordinary good cultural practice.~~

(31)~~(23)~~ "Pure seed" means the seed, exclusive of inert matter, of the kind or kind and variety of seed declared on the label or tag ~~includes all seed of the kind or kind and variety or strain under consideration, whether shriveled, cracked, or otherwise injured, and pieces of broken seed larger than one-half the original size~~.

(32)~~(24)~~ "Record" includes the symbol identifying the seed as to origin, amount, processing, testing, labeling, and distribution, ~~file sample of the seed,~~ and any other document or instrument pertaining to the purchase, sale, or handling of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed. Such information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

(33) "Registered seed" means a class of certified seed which is the progeny of breeder or foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for the purpose

of maintaining genetic purity and identity.

~~(25) "Restricted noxious weed seed" means the seed of such weeds as are very objectionable in fields, lawns, or gardens of this state, but can be controlled by good cultural practice. Seed of poisonous plants may be included.~~

(34) "Shrub seed" means seed of a woody plant that is smaller than a tree and has several main stems arising at or near the ground.

(35)~~(26)~~ "Stop-sale" means any written or printed notice or order issued by the department to the owner or custodian of any lot of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed in the state, directing the owner or custodian not to sell or offer for sale seed designated by the order within the state until the requirements of this law are complied with and a written release has been issued; except that the seed may be released to be sold for feed.

(36)~~(27)~~ "Treated" means that the seed has been given an application of a material or subjected to a process designed to control or repel disease organisms, insects, or other pests attacking seed or seedlings grown therefrom to improve its planting value or to serve any other purpose.

(37) "Tree seed" means seed of a woody perennial plant typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

(38)~~(28)~~ "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(39)~~(29)~~ "Variety" means a subdivision of a kind which is

distinct in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; uniform in the sense that the variations in essential and distinctive characteristics are describable; and stable in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted ~~characterized by growth, plant fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind; e.g., Whatley's Prolific corn, Bountiful beans, Kobe lespedeza~~.

(40)~~(30)~~ "Vegetable seed" means the seed of those crops that ~~which~~ are grown in gardens or on truck farms, and are generally known and sold under the name of vegetable seed or herb seed in this state.

(41)~~(31)~~ "Weed seed" includes the seed of all plants generally recognized as weeds within this state, and includes prohibited and restricted noxious weed seed, bulblets, ~~and~~ tubers, and any other vegetative propagules.

Section 33. Section 578.012, Florida Statutes, is created to read:

578.012 Preemption.—

(1) It is the intent of the Legislature to eliminate duplication of regulation of seed. As such, this chapter is intended as comprehensive and exclusive and occupies the whole field of regulation of seed.

(2) The authority to regulate seed or matters relating to seed in this state is preempted to the state. A local government or political subdivision of the state may not enact or enforce

an ordinance that regulates seed, including the power to assess any penalties provided for violation of this chapter.

Section 34. Section 578.08, Florida Statutes, is amended to read:

578.08 Registrations.—

(1) Every person, except as provided in subsection (4) ~~and s. 578.14~~, before selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed or mixture thereof, shall first register with the department as a seed dealer. The application for registration must include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The application must ~~for registration shall~~ be filed with the department by using a form prescribed by the department or by using the department's website and shall be accompanied by an annual registration fee for each such place of business based on the gross receipts from the sale of such seed for the last preceding license year as follows:

(a)1. Receipts of less than $500, a fee of $10.

2. Receipts of $500 or more but less than $1,000, a fee of $25.

3. Receipts of $1,000 or more but less than $2,500, a fee of $100.

4. Receipts of $2,500 or more but less than $5,000, a fee of $200.

5. Receipts of $5,000 or more but less than $10,000, a fee of $350.

6. Receipts of $10,000 or more but less than $20,000, a fee of $800.

7. Receipts of $20,000 or more but less than $40,000, a fee of $1,000.

8. Receipts of $40,000 or more but less than $70,000, a fee of $1,200.

9. Receipts of $70,000 or more but less than $150,000, a fee of $1,600.

10. Receipts of $150,000 or more but less than $400,000, a fee of $2,400.

11. Receipts of $400,000 or more, a fee of $4,600.

(b) For places of business not previously in operation, the fee shall be based on anticipated receipts for the first license year.

(2) A ~~written~~ receipt from the department of the registration and payment of the fee shall constitute a sufficient permit for the dealer to engage in or continue in the business of selling, distributing for sale, offering or exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed within the state. However, the department has ~~shall have~~ authority to suspend or revoke any permit for the violation of any provision of this law or of any rule adopted under authority hereof. The registration shall expire on June 30 of the next calendar year and shall be renewed on July 1 of each year. If any person subject to the requirements of this section fails to comply, the department may issue a stop-sale notice or order which shall prohibit the person from selling or causing to be sold any agricultural, vegetable, flower, ~~or forest~~ tree, or

shrub seed until the requirements of this section are met.

(3) Every person selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed in the state other than as provided in subsection (4) ~~s. 578.14~~, shall be subject to the requirements of this section~~; except that agricultural experiment stations of the State University System shall not be subject to the requirements of this section~~.

(4) ~~The provisions of~~ This chapter does ~~shall~~ not apply to farmers who sell only uncleaned, unprocessed, unpackaged, and unlabeled seed, but shall apply to farmers who sell cleaned, processed, packaged, and labeled seed in amounts in excess of $10,000 in any one year.

(5) When packet seed is sold, offered for sale, or exposed for sale, the company who packs seed for retail sale must register and pay fees as provided under subsection (1).

Section 35. Section 578.09, Florida Statutes, is amended to read:

578.09 Label requirements for agricultural, vegetable, flower, tree, or shrub seeds.—Each container of agricultural, vegetable, ~~or~~ flower, tree, or shrub seed which is sold, offered for sale, exposed for sale, or distributed for sale within this state for sowing ~~or planting~~ purposes must ~~shall~~ bear thereon or have attached thereto, in a conspicuous place~~,~~ a ~~label or labels containing all information required under this section,~~ plainly written or printed label or tag in the English language, in Century type. All data pertaining to analysis must ~~shall~~ appear on a single label. Language setting forth the requirements for

filing and serving complaints as described in s. 578.26(1)(c) must ~~s. 578.26(1)(b) shall~~ be included on the analysis label or be otherwise attached to the package, except for packages containing less than 1,000 seeds by count.

(1) ~~FOR TREATED SEED.~~ For all treated agricultural, vegetable, ~~or~~ flower, tree, or shrub seed ~~treated~~ as defined in this chapter:

(a) A word or statement indicating that the seed has been treated ~~or description of process used~~.

(b) The commonly accepted coined, chemical, or abbreviated chemical (generic) name of the applied substance or description of the process used ~~and the words "poison treated" in red letters, in not less than 1/4 inch type~~.

(c) If the substance in the amount present with the seed is harmful to humans or other vertebrate animals, a caution statement such as "Do not use for food, feed, or oil purposes." The caution for mercurials, Environmental Protection Agency Toxicity Category 1 as referenced in 7 C.F.R. 201.31a(c)(2), and similarly toxic substances shall be designated by a poison statement or symbol.

~~(d) Rate of application or statement "Treated at manufacturer's recommended rate."~~

(d) ~~(c)~~ If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).

A label separate from other labels required by this section or other law may be used to identify seed treatments as required by this subsection.

(2) For agricultural seed, including lawn and turf grass seed and mixtures thereof: ~~AGRICULTURAL SEED.—~~

(a) ~~Commonly accepted~~ The name of the kind and variety of each ~~agricultural seed~~ component present in excess of 5 percent of the whole, and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixed," "mixture," or "blend" ~~the word "mixed"~~ shall be shown conspicuously on the label. Hybrids must be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Net weight or seed count.

(d) Origin, if known. If the origin is ~~, if~~ unknown, that fact must ~~shall~~ be stated.

(e) Percentage by weight of all weed seed.

(f) ~~The~~ Name and number of noxious weed seed per pound, if present ~~per pound of each kind of restricted noxious weed seed~~.

(g) Percentage by weight of agricultural seed which may be designated as other crop seed, other than those required to be named on the label.

(h) Percentage by weight of inert matter.

(i) For each named agricultural seed, including lawn and turf grass seed:

1. Percentage of germination, exclusive of hard or dormant seed;

2. Percentage of hard or dormant seed, if ~~when~~ present~~, if desired~~; and

3. The calendar month and year the test was completed to determine such percentages, provided that the germination test must have been completed within the previous 9 months, exclusive

of the calendar month of test.

(j) Name and address of the person who labeled said seed or who sells, distributes, offers, or exposes said seed for sale within this state.

The sum total of the percentages listed pursuant to paragraphs (a),(e),(g), and (h) must be equal to 100 percent.

(3) For seed that is coated:

(a) Percentage by weight of pure seed with coating material removed. The percentage of coating material may be included with the inert matter percentage or may be listed separately.

(b) Percentage of germination. This percentage must be determined based on an examination of 400 coated units with or without seed.

In addition to the requirements of this subsection, labeling of coated seed must also comply with the requirements of any other subsection pertaining to that type of seed. ~~FOR VEGETABLE SEED IN CONTAINERS OF 8 OUNCES OR MORE.—~~

~~(a) Name of kind and variety of seed.~~

~~(b) Net weight or seed count.~~

~~(c) Lot number or other lot identification.~~

~~(d) Percentage of germination.~~

~~(e) Calendar month and year the test was completed to determine such percentages.~~

~~(f) Name and address of the person who labeled said seed or who sells, distributes, offers or exposes said seed for sale within this state.~~

~~(g) For seed which germinate less than the standard last~~

~~established by the department the words "below standard," in not less than 8-point type, must be printed or written in ink on the face of the tag, in addition to the other information required. Provided, that no seed marked "below standard" shall be sold which falls more than 20 percent below the standard for such seed which has been established by the department, as authorized by this law.~~

~~(h) The name and number of restricted noxious weed seed per pound.~~

(4) For combination mulch, seed, and fertilizer products:

(a) The word "combination" followed, as appropriate, by the words "mulch - seed - fertilizer" must appear prominently on the principal display panel of the package.

(b) If the product is an agricultural seed placed in a germination medium, mat, tape, or other device or is mixed with mulch or fertilizer, it must also be labeled with all of the following:

1. Product name.

2. Lot number or other lot identification.

3. Percentage by weight of pure seed of each kind and variety named which may be less than 5 percent of the whole.

4. Percentage by weight of other crop seed.

5. Percentage by weight of inert matter.

6. Percentage by weight of weed seed.

7. Name and number of noxious weed seeds per pound, if present.

8. Percentage of germination, and hard or dormant seed if appropriate, of each kind or kind and variety named. The germination test must have been completed within the previous 12

months exclusive of the calendar month of test.

9. The calendar month and year the test was completed to determine such percentages.

10. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within the state.

The sum total of the percentages listed pursuant to subparagraphs 3., 4., 5., and 6. must be equal to 100 percent.

(5) For vegetable seed in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices: ~~FOR VEGETABLE SEED IN CONTAINERS OF LESS THAN 8 OUNCES.~~

(a) Name of kind and variety of seed. Hybrids must be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Germination test date identified in the following manner:

1. The calendar month and year the germination test was completed and the statement "Sell by ...(month/year)...", which may be no more than 12 months from the date of test, beginning with the month after the test date;

2. The month and year the germination test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test; or

3. The year for which the seed was packaged for sale as "Packed for ...(year)..." and the statement "Sell by ...(year)..." which shall be one year after the seed was

packaged for sale.

(d) ~~(b)~~ Name and address of the person who labeled the seed or who sells, ~~distributes,~~ offers, or exposes said seed for sale within this state.

(e) ~~(c)~~ For seed which germinate less than standard last established by the department~~, the additional information must be shown~~:

1. Percentage of germination, exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed ~~when present~~, if present ~~desired~~.

~~3. Calendar month and year the test was completed to determine such percentages.~~

3.~~4.~~ The words "Below Standard" prominently displayed ~~in not less than 8-point type~~.

(f) ~~(d)~~ No seed marked "below standard" may ~~shall~~ be sold that falls ~~which fall~~ more than 20 percent below the established standard for such seed. For seeds that do not have an established standard, the minimum germination standard shall be 50 percent, and no such seed may be sold that is 20 percent below this standard.

(g) For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.

(6) For vegetable seed in containers, other than packets prepared for use in home gardens or household plantings, and

other than preplanted containers, mats, tapes, or other planting devices:

(a) The name of each kind and variety present of any seed in excess of 5 percent of the total weight in the container, and the percentage by weight of each type of seed in order of its predominance. Hybrids must be labeled as hybrids.

(b) Net weight or seed count.

(c) Lot number or other lot identification.

(d) For each named vegetable seed:

1. Percentage germination, exclusive of hard or dormant seed;

2. Percentage of hard or dormant seed, if present;

3. Listed below the requirements of subparagraphs 1. and 2., the "total germination and hard or dormant seed" may be stated as such, if desired; and

4. The calendar month and year the test was completed to determine the percentages specified in subparagraphs 1. and 2., provided that the germination test must have been completed within 9 months, exclusive of the calendar month of test.

(e) Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

(f) For seed which germinate less than the standard last established by the department, the words "Below Standard" prominently displayed.

1. No seed marked "Below Standard" may be sold if the seed is more than 20 percent below the established standard for such seed.

2. For seeds that do not have an established standard, the

minimum germination standard shall be 50 percent, and no such seed may be sold that is 20 percent below this standard.

(7) ~~(5)~~ For flower seed in packets prepared for use in home gardens or household plantings or flower seed in preplanted containers, mats, tapes, or other planting devices: ~~FOR FLOWER SEED IN PACKETS PREPARED FOR USE IN HOME GARDENS OR HOUSEHOLD PLANTINGS OR FLOWER SEED IN PREPLANTED CONTAINERS, MATS, TAPES, OR OTHER PLANTING DEVICES.~~

(a) For all kinds of flower seed:

1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules and regulations adopted ~~promulgated~~ under the provisions of this chapter.

2. Germination test date, identified in the following manner:

a. The calendar month and year the germination test was completed and the statement "Sell by_ ...(month/year)...". The sell by date must be no more than 12 months from the date of test, beginning with the month after the test date;

b. The year for which the seed was packed for sale as "Packed for ...(year)..." and the statement "Sell by ...(year)..." which shall be for a calendar year; or

c. The calendar month and year the test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test.

~~2. The calendar month and year the seed was tested or the year for which the seed was packaged.~~

3. The name and address of the person who labeled said

seed, or who sells, offers, or exposes said seed for sale within this state.

(b) For seed of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under the provisions of this chapter:

1. The percentage of germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. The words "Below Standard" prominently displayed ~~in not less than 8-point type~~.

(c) For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seed from the medium, mat, tape, or device, a statement to indicate the minimum number of seed in the container.

(8) ~~(6)~~ For flower seed in containers other than packets and other than preplanted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings: ~~FOR FLOWER SEED IN CONTAINERS OTHER THAN PACKETS PREPARED FOR USE IN HOME FLOWER GARDENS OR HOUSEHOLD PLANTINGS AND OTHER THAN PREPLANTED CONTAINERS, MATS, TAPES, OR OTHER PLANTING DEVICES.~~

(a) The name of the kind and variety, and for wildflowers, the genus and species and subspecies, if appropriate ~~or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this chapter~~.

(b) Net weight or seed count.

(c) ~~(b) The~~ Lot number or other lot identification.

(d) For flower seed with a pure seed percentage of less than 90 percent:

1. Percentage, by weight, of each component listed in order of its predominance.

2. Percentage by weight of weed seed, if present.

3. Percentage by weight of other crop seed.

4. Percentage by weight of inert matter.

(e) For those kinds of seed for which standard testing procedures are prescribed:

1. Percentage germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. ~~(c)~~ The calendar month and year that the test was completed. The germination test must have been completed within the previous 9 months, exclusive of the calendar month of test.

(f) For those kinds of seed for which standard testing procedures are not available, the year of production or collection ~~seed were tested or the year for which the seed were packaged~~.

(g) ~~(d)~~ The name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

~~(e) For those kinds of seed for which standard testing procedures are prescribed:~~

~~1. The percentage germination exclusive of hard seed.~~

~~2. The percentage of hard seed, if present.~~

(h) ~~(f)~~ For ~~those~~ seed~~s~~ which germinate less than the standard last established by the department, the words "Below

Standard" prominently displayed ~~in not less than 8-point type must be printed or written in ink on the face of the tag~~.

(9) For tree or shrub seed:

(a) Common name of the species of seed and, if appropriate, subspecies.

(b) The scientific name of the genus, species, and, if appropriate, subspecies.

(c) Lot number or other lot identification.

(d) Net weight or seed count.

(e) Origin, indicated in the following manner:

1. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude or geographic description, or political subdivision, such as state or county.

2. For seed collected from other than a predominantly indigenous stand, the area of collection and the origin of the stand or the statement "Origin not Indigenous".

3. The elevation or the upper and lower limits of elevations within which the seed was collected.

(f) Purity as a percentage of pure seed by weight.

(g) For those species for which standard germination testing procedures are prescribed by the department:

1. Percentage germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. The calendar month and year test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test.

(h) In lieu of subparagraphs (g)1., 2., and 3., the seed

may be labeled "Test is in progress; results will be supplied upon request."

(i) For those species for which standard germination testing procedures have not been prescribed by the department, the calendar year in which the seed was collected.

(j) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

~~(7) DEPARTMENT TO PRESCRIBE UNIFORM ANALYSIS TAG.—The department shall have the authority to prescribe a uniform analysis tag required by this section.~~

The information required by this section to be placed on labels attached to seed containers may not be modified or denied in the labeling or on another label attached to the container. However, labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number displayed on the bag or other container. Each bag or container that is not so identified must carry complete labeling.

Section 36. Section 578.091, Florida Statutes, is repealed.

Section 37. Subsections (2) and (3) of section 578.10, Florida Statutes, are amended to read:

578.10 Exemptions.—

(2) The provisions of ss. 578.09 and 578.13 do not apply to:

(a) ~~To~~ Seed or grain not intended for sowing or planting purposes.

(b) ~~To~~ Seed stored ~~in storage~~ in, consigned to, or being transported to seed cleaning or processing establishments for cleaning or processing only. Any labeling or other representation which may be made with respect to the unclean seed is ~~shall be~~ subject to this law.

(c) Seed under development or maintained exclusively for research purposes.

(3) If seeds cannot be identified by examination thereof, a person is not subject to the criminal penalties of this chapter for having sold or offered for sale seeds subject to this chapter which were incorrectly labeled or represented as to kind, species, and, if appropriate, subspecies, variety, type, or origin, elevation, and, if required, year of collection unless he or she has failed to obtain an invoice, genuine grower's or tree seed collector's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity of the seeds to be as stated by the grower. A genuine grower's declaration of variety must affirm that the grower holds records of proof of identity concerning parent seed, such as invoice and labels ~~No person shall be subject to the criminal penalties of this law for having sold, offered, exposed, or distributed for sale in this state any agricultural, vegetable, or forest tree seed which were incorrectly labeled or represented as to kind and variety or origin, which seed cannot be identified by examination thereof, unless she or he has failed to obtain an invoice or grower's declaration giving kind and variety and origin~~.

Section 38. Section 578.11, Florida Statutes, is amended to read:

578.11 Duties, authority, and rules of the department.—

(1) The duty of administering this law and enforcing its provisions and requirements shall be vested in the Department of Agriculture and Consumer Services, which is hereby authorized to employ such agents and persons as in its judgment shall be necessary therefor. It shall be the duty of the department, which may act through its authorized agents, to sample, inspect, make analyses of, and test agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed transported, sold, offered or exposed for sale, or distributed within this state for sowing or planting purposes, at such time and place and to such extent as it may deem necessary to determine whether said agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed are in compliance with the provisions of this law, and to notify promptly the person who transported, distributed, sold, offered or exposed the seed for sale, of any violation.

(2) The department is authorized to:

(a) ~~To~~ Enforce this chapter ~~act~~ and prescribe the methods of sampling, inspecting, testing, and examining agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed.

(b) ~~To~~ Establish standards and tolerances to be followed in the administration of this law, which shall be in general accord with officially prescribed practices in interstate commerce.

(c) ~~To~~ Prescribe uniform labels.

(d) ~~To~~ Adopt prohibited and restricted noxious weed seed lists.

(e) ~~To~~ Prescribe limitations for each restricted noxious weed to be used in enforcement of this chapter ~~act~~ and to add or subtract therefrom from time to time as the need may arise.

(f) ~~To~~ Make commercial tests of seed and to fix and collect charges for such tests.

(g) ~~To~~ List the kinds of flower, ~~and forest~~ tree, and shrub seed subject to this law.

(h) ~~To~~ Analyze samples, as requested by a consumer. The department shall establish, by rule, a fee schedule for analyzing samples at the request of a consumer. The fees shall be sufficient to cover the costs to the department for taking the samples and performing the analysis, not to exceed $150 per sample.

(i) ~~To~~ Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this chapter ~~act~~.

(j) ~~To~~ Establish, by rule, requirements governing aircraft used for the aerial application of seed, including requirements for recordkeeping, annual aircraft registration, secure storage when not in use, area-of-application information, and reporting any sale, lease, purchase, rental, or transfer of such aircraft to another person.

(3) For the purpose of carrying out ~~the provisions of~~ this law, the department, through its authorized agents, is authorized to:

(a) ~~To~~ Enter upon any public or private premises, where agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed is sold, offered, exposed, or distributed for sale during regular business hours, in order to have access to seed subject to this law and the rules and regulations hereunder.

(b) ~~To~~ Issue and enforce a stop-sale notice or order to the owner or custodian of any lot of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed~~,~~ which the department

finds or has good reason to believe is in violation of any provisions of this law, which shall prohibit further sale, barter, exchange, or distribution of such seed until the department is satisfied that the law has been complied with and has issued a written release or notice to the owner or custodian of such seed. After a stop-sale notice or order has been issued against or attached to any lot of seed and the owner or custodian of such seed has received confirmation that the seed does not comply with this law, she or he has ~~shall have~~ 15 days beyond the normal test period within which to comply with the law and obtain a written release of the seed. ~~The provisions of~~ This paragraph may ~~shall~~ not be construed as limiting the right of the department to proceed as authorized by other sections of this law.

(c) ~~To~~ Establish and maintain a seed laboratory, employ seed analysts and other personnel, and incur such other expenses as may be necessary to comply with these provisions.

Section 39. Section 578.12, Florida Statutes, is amended to read:

578.12 Stop-sale, stop-use, removal, or hold orders.—When agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed is being offered or exposed for sale or held in violation of any of the provisions of this chapter, the department, through its authorized representative, may issue and enforce a stop-sale, stop-use, removal, or hold order to the owner or custodian of said seed ordering it to be held at a designated place until the law has been complied with and said seed is released in writing by the department or its authorized representative. If seed is not brought into compliance with this law it shall be destroyed

within 30 days or disposed of by the department in such a manner as it shall by regulation prescribe.

Section 40. Section 578.13, Florida Statutes, is amended to read:

578.13 Prohibitions.—

(1) It shall be unlawful for any person to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub, seed within this state:

(a) Unless the test to determine the percentage of germination required by s. 578.09 has ~~shall have~~ been completed ~~within a period of 7 months, exclusive of the calendar month in which the test was completed,~~ immediately prior to sale, exposure for sale, offering for sale, or transportation, except for a germination test for seed in hermetically sealed containers which is provided for in s. 578.092 ~~s. 578.28~~.

(b) Not labeled in accordance with ~~the provisions of~~ this law, or having false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement.

(d) Containing noxious weed seeds subject to tolerances and methods of determination prescribed in the rules and regulations under this law.

(e) Unless a seed license has been obtained in accordance with ~~the provisions of~~ this law.

(f) Unless such seed conforms to the definition of a "lot ~~of seed~~."

(2) It shall be unlawful for a ~~any~~ person within this state to:

(a) ~~To~~ Detach, deface, destroy, or use a second time any label or tag provided for in this law or in the rules and regulations made and promulgated hereunder or to alter or substitute seed in a manner that may defeat the purpose of this law.

(b) ~~To~~ Disseminate any false or misleading advertisement concerning agricultural, vegetable, flower, ~~or forest~~ tree ,or shrub seed in any manner or by any means.

(c) ~~To~~ Hinder or obstruct in any way any authorized person in the performance of her or his duties under this law.

(d) ~~To~~ Fail to comply with a stop-sale order or to move, handle, or dispose of any lot of seed, or tags attached to such seed, held under a "stop-sale" order, except with express permission of the department and for the purpose specified by the department ~~or seizure order~~.

(e) Label, advertise, or otherwise represent seed subject to this chapter to be certified seed or any class thereof, including classes such as "registered seed," "foundation seed," "breeder seed" or similar representations, unless:

1. A seed certifying agency determines that such seed conformed to standards of purity and identify as to the kind, variety, or species and, if appropriate, subspecies and the seed certifying agency also determines that tree or shrub seed was found to be of the origin and elevation claimed, in compliance with the rules and regulations of such agency pertaining to such seed; and

2. The seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and specified to the kind, variety, or species

and, if appropriate, subspecies.

(f) Label, by variety name, seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the United States Plant Variety Protection Act, 7 U.S.C. 2321 et. seq., specifies sale only as a class of certified seed, except that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the written approval of, the owner of the variety. ~~To sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed labeled "certified seed," "registered seed," "foundation seed," "breeder seed," or similar terms, unless it has been produced and labeled under seal in compliance with the rules and regulations of any agency authorized by law.~~

(g) ~~(f)~~ ~~To~~ Fail to keep a complete record, including a file sample which shall be retained for 1 year after seed is sold, of each lot of seed and to make available for inspection such records to the department or its duly authorized agents.

(h) ~~(g)~~ ~~To~~ Use the name of the Department of Agriculture and Consumer Services or Florida State Seed Laboratory in connection with analysis tag, labeling advertisement, or sale of any seed in any manner whatsoever.

Section 41. Section 578.14, Florida Statutes, is repealed.

Section 42. Subsection (1) of section 578.181, Florida Statutes, is amended to read:

578.181 Penalties; administrative fine.—

(1) The department may enter an order imposing one or more of the following penalties against a person who violates this

chapter or the rules adopted under this chapter or who impedes, obstructs, ~~or~~ hinders, or otherwise attempts to prevent the department from performing its duty in connection with ~~performing its duties under~~ this chapter:

(a) For a minor violation, issuance of a warning letter.

(b) For violations other than a minor violation:

1. Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each occurrence ~~after the issuance of a warning letter~~.

2.~~(c)~~ Revocation or suspension of the registration as a seed dealer.

Section 43. Section 578.23, Florida Statutes, is amended to read:

578.23 ~~Dealers'~~ Records ~~to be kept available~~.—Each person who allows his or her name or brand to appear on the label as handling agricultural, vegetable, flower, tree, or shrub seeds subject to this chapter must keep, for 2 years, complete records of each lot of agricultural, vegetable, flower, tree, or shrub seed handled, and keep for 1 year after final disposition a file sample of each lot of seed. All such records and samples pertaining to the shipment or shipments involved must be accessible for inspection by the department or its authorized representative during normal business hours ~~Every seed dealer shall make and keep for a period of 3 years satisfactory records of all agricultural, vegetable, flower, or forest tree seed bought or handled to be sold, which records shall at all times be made readily available for inspection, examination, or audit by the department. Such records shall also be maintained by persons who purchase seed for production of plants for resale~~.

Section 44. Section 578.26, Florida Statutes, is amended to read:

578.26 Complaint, investigation, hearings, findings, and recommendation prerequisite to legal action.—

(1)(a) When any buyer ~~farmer~~ is damaged by the failure of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed planted in this state to produce or perform as represented by the labeling of such ~~label attached to the~~ seed as required by s. 578.09, as a prerequisite to her or his right to maintain a legal action against the dealer from whom the seed was purchased, the buyer must ~~farmer shall~~ make a sworn complaint against the dealer alleging damages sustained. The complaint shall be filed with the department, and a copy of the complaint shall be served by the department on the dealer by certified mail, within such time as to permit inspection of the property, crops, plants, or trees referenced in, or related to, the buyer's complaint by the seed investigation and conciliation council or its representatives and by the dealer from whom the seed was purchased.

(b) For types of claims specified in paragraph (a), the buyer may not commence legal proceedings against the dealer or assert such a claim as a counterclaim or defense in any action brought by the dealer until the findings and recommendations of the seed investigation and conciliation council are transmitted to the complainant and the dealer.

(c)~~(b)~~ Language setting forth the requirement for filing and serving the complaint shall be legibly typed or printed on the analysis label or be attached to the package containing the seed at the time of purchase by the buyer ~~farmer~~.

(d) ~~(c)~~ A nonrefundable filing fee of $100 shall be paid to the department with each complaint filed. However, the complainant may recover the filing fee cost from the dealer upon the recommendation of the seed investigation and conciliation council.

(2) Within 15 days after receipt of a copy of the complaint, the dealer shall file with the department her or his answer to the complaint and serve a copy of the answer on the buyer ~~farmer~~ by certified mail. ~~Upon receipt of the findings and recommendation of the arbitration council, the department shall transmit them to the farmer and to the dealer by certified mail.~~

(3) The department shall refer the complaint and the answer thereto to the seed investigation and conciliation council provided in s. 578.27 for investigation, informal hearing, findings, and recommendation on the matters complained of.

(a) Each party must ~~shall~~ be allowed to present its side of the dispute at an informal hearing before the seed investigation and conciliation council. Attorneys may be present at the hearing to confer with their clients. However, no attorney may participate directly in the proceeding.

(b) Hearings, including the deliberations of the seed investigation and conciliation council, must ~~shall~~ be open to the public.

(c) Within 30 days after completion of a hearing, the seed investigation and conciliation council shall transmit its findings and recommendations to the department. Upon receipt of the findings and recommendation of the seed investigation and conciliation council, the department shall transmit them to the buyer ~~farmer~~ and to the dealer by certified mail.

(4) The department shall provide administrative support for the seed investigation and conciliation council and shall mail a copy of the council's procedures to each party upon receipt of a complaint by the department.

Section 45. Subsections (1), (2), and (4) of section 578.27, Florida Statutes, are amended to read:

578.27 Seed investigation and conciliation council; composition; purpose; meetings; duties; expenses.—

(1) The Commissioner of Agriculture shall appoint a seed investigation and conciliation council composed of seven members ~~and seven alternate members~~, one member ~~and one alternate~~ to be appointed upon the recommendation of each of the following: the deans of extension and research, Institute of Food and Agricultural Sciences, University of Florida; president of the Florida Seed ~~Seedsmen and Garden Supply~~ Association; president of the Florida Farm Bureau Federation; and the president of the Florida Fruit and Vegetable Association. The Commissioner of Agriculture shall appoint a representative ~~and an alternate~~ from the agriculture industry at large and from the Department of Agriculture and Consumer Services. Each member shall be appointed for a term of 4 years or less and shall serve until his or her successor is appointed ~~Initially, three members and their alternates shall be appointed for 4-year terms and four members and their alternates shall be appointed for 2-year terms. Thereafter, members and alternates shall be appointed for 4-year terms. Each alternate member shall serve only in the absence of the member for whom she or he is an alternate~~. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment. The council

shall annually elect a chair from its membership. It shall be the duty of the chair to conduct all meetings and deliberations held by the council and to direct all other activities of the council. The department representative shall serve as secretary of the council. It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the council as directed by the chair.

(2) The purpose of the seed investigation and conciliation council is to assist buyers ~~farmers~~ and ~~agricultural~~ seed dealers in determining the validity of seed complaints made by buyers ~~farmers~~ against dealers and recommend a settlement, when appropriate, ~~cost damages~~ resulting from the alleged failure of the seed to produce or perform as represented by the label of such ~~on the~~ seed ~~package~~.

(4)(a) When the department refers to the seed investigation and conciliation council any complaint made by a buyer ~~farmer~~ against a dealer, the ~~said~~ council must ~~shall~~ make a full and complete investigation of the matters complained of and at the conclusion of the ~~said~~ investigation must ~~shall~~ report its findings and make its recommendation ~~of cost damages~~ and file same with the department.

(b) In conducting its investigation, the seed investigation and conciliation council or any representative, member, or members thereof are authorized to examine the buyer's property, crops, plants, or trees referenced in or relating to the complaint ~~farmer on her or his farming operation of which she or he complains~~ and the dealer on her or his packaging, labeling, and selling operation of the seed alleged to be faulty; to grow

to production a representative sample of the alleged faulty seed through the facilities of the state, under the supervision of the department when such action is deemed to be necessary; to hold informal hearings at a time and place directed by the department or by the chair of the council upon reasonable notice to the buyer ~~farmer~~ and the dealer.

(c) Any investigation made by less than the whole membership of the council must ~~shall~~ be by authority of a written directive by the department or by the chair, and such investigation must ~~shall~~ be summarized in writing and considered by the council in reporting its findings and making its recommendation.

Section 46. Section 578.28, Florida Statutes, is renumbered as section 578.092, Florida Statutes, and amended to read:

578.092 ~~578.28~~ Seed in hermetically sealed containers.—The period of validity of germination tests is extended to the following periods for seed packaged in hermetically sealed containers, under conditions and label requirements set forth in this section:

(1) GERMINATION TESTS.—The germination test for agricultural and vegetable seed must ~~shall~~ have been completed within the following periods, exclusive of the calendar month in which the test was completed, immediately prior to shipment, delivery, transportation, or sale:

(a) In the case of agricultural or vegetable seed shipped, delivered, transported, or sold to a dealer for resale, 18 months;

(b) In the case of agricultural or vegetable seed for sale or sold at retail, 24 months.

(2) CONDITIONS OF PACKAGING.—The following conditions are considered as minimum:

(a) *Hermetically sealed packages or containers.*—A container, to be acceptable under the provisions of this section, shall not allow water vapor penetration through any wall, including the wall seals, greater than 0.05 gram of water per 24 hours per 100 square inches of surface at 100 °F. with a relative humidity on one side of 90 percent and on the other of 0 percent. Water vapor penetration (WVP) is measured by the standards of the National Institute of Standards and Technology as: gm H_2O/24 hr./100 sq. in./100 °F/90 percent RH V. 0 percent RH.

(b) *Moisture of seed packaged.*—The moisture of agricultural or vegetable seed subject to the provisions of this section shall be established by rule of the department.

(3) LABELING REQUIRED.—In addition to the labeling required by s. 578.09, seed packaged under the provisions of this section shall be labeled with the following information:

(a) Seed has been preconditioned as to moisture content.

(b) Container is hermetically sealed.

(c) "Germination test valid until (month, year)" may be used. (Not to exceed 24 months from date of test).

Section 47. Section 578.29, Florida Statutes, is created to read:

578.29 Prohibited noxious weed seed.—Seeds meeting the definition of prohibited noxious weed seed under s. 578.011, may not be present in agricultural, vegetable, flower, tree, or shrub seed offered or exposed for sale in this state.

Section 48. Subsection (1) of section 590.02, Florida

Statutes, is amended to read:

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

(1) The Florida Forest Service has the following powers, authority, and duties to:

(a) ~~To~~ Enforce the provisions of this chapter;

(b) ~~To~~ Prevent, detect, and suppress wildfires wherever they may occur on public or private land in this state and to do all things necessary in the exercise of such powers, authority, and duties;

(c) ~~To~~ Provide firefighting crews, who shall be under the control and direction of the Florida Forest Service and its designated agents;

(d) ~~To~~ Appoint center managers, forest area supervisors, forestry program administrators, a forest protection bureau chief, a forest protection assistant bureau chief, a field operations bureau chief, deputy chiefs of field operations, district managers, forest operations administrators, senior forest rangers, investigators, forest rangers, firefighter rotorcraft pilots, and other employees who may, at the Florida Forest Service's discretion, be certified as forestry firefighters pursuant to s. 633.408(8). Other law notwithstanding, center managers, district managers, forest protection assistant bureau chief, and deputy chiefs of field operations have ~~shall have~~ Selected Exempt Service status in the state personnel designation;

(e) ~~To~~ Develop a training curriculum for forestry firefighters which must contain the basic volunteer structural

fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training;

(f) Pay the cost of the initial commercial driver license examination fee for those employees whose position requires them to operate equipment requiring a license. This paragraph is intended to be an authorization to the department to pay such costs, not an obligation;

~~(f) To make rules to accomplish the purposes of this chapter;~~

(g) ~~To~~ Provide fire management services and emergency response assistance and to set and charge reasonable fees for performance of those services. Moneys collected from such fees shall be deposited into the Incidental Trust Fund of the Florida Forest Service;

(h) ~~To~~ Require all state, regional, and local government agencies operating aircraft in the vicinity of an ongoing wildfire to operate in compliance with the applicable state Wildfire Aviation Plan; ~~and~~

(i) ~~To~~ Authorize broadcast burning, prescribed burning, pile burning, and land clearing debris burning to carry out the duties of this chapter and the rules adopted thereunder; and

(j) Make rules to accomplish the purposes of this chapter.

Section 49. Paragraph (c) of subsection (6) and subsection (9) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(6)

(c) The Department of Agriculture and Consumer Services shall, within 90 days after the date of receipt of the items

listed in subsection (5):

1. Issue the license; or

2. Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in subsection (2) or subsection (3). If the Department of Agriculture and Consumer Services denies the application, it shall notify the applicant in writing, stating the ground for denial and informing the applicant of any right to a hearing pursuant to chapter 120.

3. In the event the department receives incomplete criminal history information or ~~with~~ no final disposition on a crime which may disqualify the applicant, the Department of Agriculture and Consumer Services must expedite efforts to acquire the final disposition or proof of restoration of civil and firearm rights, or confirmation that clarifying records are not available from the jurisdiction where the criminal history originated. Ninety days after the date of receipt of the completed application, if the department has not acquired final disposition or proof of restoration of civil and firearm rights, or confirmation that clarifying records are not available from the jurisdiction where the criminal history originated, the department shall issue the license in the absence of disqualifying information. However, such license must be immediately suspended and revoked upon receipt of disqualifying information pursuant to this section ~~time limitation prescribed by this paragraph may be suspended until receipt of the final disposition or proof of restoration of civil and firearm rights~~.

(9) In the event that a concealed weapon or firearm license is lost or destroyed, the license shall be automatically

invalid, and the person to whom the same was issued may, upon payment of $15 to the Department of Agriculture and Consumer Services, obtain a duplicate, or substitute thereof, upon furnishing a ~~notarized~~ statement under oath to the Department of Agriculture and Consumer Services that such license has been lost or destroyed.

Section 50. Subsections (5) and (8) of section 790.0625, Florida Statutes, are amended, and sections (9) and (10) are added to that section, to read:

790.0625 Appointment of tax collectors to accept applications for a concealed weapon or firearm license; fees; penalties.—

(5) A tax collector appointed under this section shall collect and remit weekly to the department the license fees pursuant to s. 790.06 for deposit in the Division of Licensing Trust Fund and may collect and retain ~~a~~ convenience fees for the following: ~~fee of $22 for each new application and $12 for each renewal application and shall remit weekly to the department the license fees pursuant to s. 790.06 for deposit in the Division of Licensing Trust Fund.~~

(a) Twenty-two dollars for each new application.

(b) Twelve dollars for each renewal application.

(c) Twelve dollars for each duplicate license issued to replace a lost or destroyed license.

(d) Six dollars for fingerprinting.

(e) Six dollars for photographing services associated with the completion of an application submitted online.

(8) Upon receipt of a completed renewal application, a new color photograph, and ~~appropriate~~ payment of required fees, a

tax collector authorized to accept renewal applications for concealed weapon or firearm licenses under this section may, upon approval and confirmation of license issuance by the department, print and deliver a concealed weapon or firearm license to a licensee renewing his or her license at the tax collector's office.

(9) Upon receipt of a statement under oath to the department, and the payment of required fees, a tax collector authorized to accept applications for concealed weapon or firearm licenses under this section may, upon approval and confirmation from the department that a license is in good standing, print and deliver a concealed weapon or firearm license to a licensee whose license has been lost or destroyed.

(10) Tax collectors authorized to accept applications for concealed weapon or firearm licenses under this section may provide fingerprinting and photographing services to aid concealed weapon and firearm applicants and licensees with online initial and renewal applications.

Section 51. Section 817.417, Florida Statutes, is created to read:

817.417 Government Impostor and Deceptive Advertisement Act.—

(1) SHORT TITLE.—This act may be cited as the "Government Impostor and Deceptive Advertisements Act."

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

(a) "Advertisement" means any representation disseminated in any manner or by any means, other than by a label, for the purpose of inducing, or which is reasonably likely to induce, directly or indirectly, a purchase.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Governmental entity" means a political subdivision or agency of any state, possession, or territory of the United States, or the Federal Government, including, but not limited to, a board, a department, an office, an agency, a military veteran entity, or a military or veteran service organization by whatever name known.

(3) DUTIES AND RESPONSIBILITIES.—The department has the duty and responsibility to:

(a) Investigate potential violations of this section.

(b) Request and obtain information regarding potential violations of this section.

(c) Seek compliance with this section.

(d) Enforce this section.

(e) Adopt rules necessary to administer this section.

(4) VIOLATIONS.—Each occurrence of the following acts or practices constitute a violation of this section:

(a) Disseminating an advertisement that:

1. Simulates a summons, complaint, jury notice, or other court, judicial, or administrative process of any kind.

2. Represents, implies, or otherwise engages in an action that may reasonably cause confusion that the person using or employing the advertisement is a part of or associated with a governmental entity, when such is not true.

(b) Representing, implying, or otherwise reasonably causing confusion that goods, services, an advertisement, or an offer was disseminated by or has been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when

such is not true.

(c) Using or employing language, symbols, logos, representations, statements, titles, names, seals, emblems, insignia, trade or brand names, business or control tracking numbers, website or e-mail addresses, or any other term, symbol, or other content that represents or implies or otherwise reasonably causes confusion that goods, services, an advertisement, or an offer is from a governmental entity, when such is not true.

(d) Failing to provide the disclosures as required in subsections (5) or (6).

(e) Failing to timely submit to the department written responses and answers to its inquiries concerning alleged practices inconsistent with, or in violation of, this section. Responses or answers may include, but are not limited to, copies of customer lists, invoices, receipts, or other business records.

(5) NOTICE REGARDING DOCUMENT AVAILABILITY.—

(a) Any person offering documents that are available free of charge or at a lesser price from a governmental entity must provide the notice specified in paragraph (b) on advertisements as follows:

1. For printed or written advertisements, notice must be in the same font size, color, style, and visibility as primarily used elsewhere on the page or envelope and displayed as follows:

a. On the outside front of any mailing envelope used in disseminating the advertisement.

b. At the top of each printed or written page used in the advertisement.

2. For electronic advertisements, notice must be in the same font size, color, style, and visibility as the body text primarily used in the e-mail or web page and displayed as follows:

a. At the beginning of each e-mail message, before any offer or other substantive information.

b. In a prominent location on each web page, such as the top of each page or immediately following the offer or other substantive information on the page.

(b) Advertisements specified in paragraph (a) must include the following disclosure:

"IMPORTANT NOTICE:

The documents offered by this advertisement are available to Florida consumers free of charge or for a lesser price from ...(insert name, telephone number, and mailing address of the applicable governmental entity).... You are NOT required to purchase anything from this company and the company is NOT affiliated, endorsed, or approved by any governmental entity. The item offered in this advertisement has NOT been approved or endorsed by any governmental agency, and this offer is NOT being made by an agency of the government."

(6) NOTICE REGARDING CLAIM OF LEGAL COMPLIANCE.—

(a) Any person disseminating an advertisement that includes a form or template to be completed by the consumer with the claim that such form or template will assist the consumer in complying with a legal filing or record retention requirement

must provide the notice specified in paragraph (b) on advertisements as follows:

1. For printed or written advertisements, the notice must be in the same font size, color, style, and visibility as primarily used elsewhere on the page or envelope and displayed as follows:

a. On the outside front of any mailing envelope used in disseminating the advertisement.

b. At the top of each printed or written page used in the advertisement.

2. For electronic advertisements, the notice must be in the same font size, color, style, and visibility as the body text primarily used in the e-mail or web page and displayed as follows:

a. At the beginning of each e-mail message, before any offer or other substantive information.

b. In a prominent location on each web page, such as the top of each page or immediately following the offer or other substantive information on the page.

(b) Advertisements specified in paragraph (a) must include the following disclosure:

"IMPORTANT NOTICE:

You are NOT required to purchase anything from this company and the company is NOT affiliated, endorsed, or approved by any governmental entity. The item offered in this advertisement has NOT been approved or endorsed by any governmental agency, and this offer is NOT being made by an agency of the government."

(7) PENALTIES.—

(a) Any person substantially affected by a violation of this section may bring an action in a court of proper jurisdiction to enforce the provisions of this section. A person prevailing in a civil action for a violation of this section shall be awarded costs, including reasonable attorney fees, and may be awarded punitive damages in addition to actual damages proven. This provision is in addition to any other remedies prescribed by law.

(b) The department may bring one or more of the following for a violation of this section:

1. A civil action in circuit court for:

a. Temporary or permanent injunctive relief to enforce this section.

b. For printed advertisements and e-mail, a fine of up to $1,000 for each separately addressed advertisement or message containing content in violation of paragraphs (4)(a)-(d) received by or addressed to a state resident.

c. For websites, a fine of up to $5,000 for each day a website, with content in violation of paragraphs (4)(a)-(d), is published and made available to the general public.

d. For violations of paragraph (4)(e), a fine of up to $5,000 for each violation.

e. Recovery of restitution and damages on behalf of persons substantially affected by a violation of this section.

f. The recovery of court costs and reasonable attorney fees.

2. An action for an administrative fine in the Class III

category pursuant to s. 570.971 for each act or omission which constitutes a violation under this section.

(c) The department may terminate any investigation or action upon agreement by the alleged offender to pay a stipulated fine, make restitution, pay damages to customers, or satisfy any other relief authorized by this section.

(d) Any person who violates paragraphs (4)(a)-(d) also commits an unfair and deceptive trade practice in violation of part II of chapter 501 and is subject to the penalties and remedies imposed for such violation.

Section 52. Paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is 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 compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of

those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private

property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6) and does not require certification or registration under this part as a category I liquefied petroleum gas dealer, or category V LP gas installer, as defined in s. 527.01, ~~or specialty installer~~ who is licensed under chapter 527 or an authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 53. Subsection (3) of section 527.06, Florida Statutes, is reenacted to read:

527.06 Rules.—

(3) Rules in substantial conformity with the published standards of the National Fire Protection Association (NFPA) are deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

Section 54. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

22 Feb 18
Meeting Date

740
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Agency Package

Name Grace Lovett

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Phone 850 617 7200

Email grace.lovett@freshfromflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

740
Bill Number (if applicable)

350294
Amendment Barcode (if applicable)

Topic FDACS

Name Gabrielle Craft

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

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

Representing Florida Cattlemen's Association

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 740
Bill Number (if applicable)

Topic Natural Gas Propane

Amendment Barcode (if applicable)

Name Jacob Ross

Job Title Associate Director BeThink Energy

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City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self Waive until SB 462 is heard

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

3-22-18 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 740

Meeting Date *Bill Number (if applicable)*

Topic Natural Gas Propane

Amendment Barcode (if applicable)

Name Chloe Osborne

Job Title Legislative Coordinator

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Street

Apopka FL 32703 Email chloe@rethinkenergyflorida.org

City *State* *Zip*

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

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

Representing Self Waive until SB 962 is heard

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 740
Bill Number (if applicable)

Topic ~~Natural~~ Propane Gas

Amendment Barcode (if applicable)

Name Kim Bass

Job Title Exec Dir

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Street

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Tallahassee FL 32303
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self/Waive until SB 962 is heard

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 740
Bill Number (if applicable)

Topic Natural Gas

Amendment Barcode (if applicable)

Name Sean Malone

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Tallahassee, FL
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing ~~Self~~ Self Waive until SB 762 is heard

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 740
Bill Number (if applicable)

Topic Natural Gas

Amendment Barcode (if applicable)

Name Martha Beech

Job Title Retired

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Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Waive Until SB 462 is heard

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 740
Bill Number (if applicable)

Topic ~~Natural Gas~~ Propane.

Amendment Barcode (if applicable)

Name Amy Datz

Job Title

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self Waive until SB 462 is heard.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 740
Bill Number (if applicable)

Topic Natural Gas

Amendment Barcode (if applicable)

Name Gary Stein

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Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self Waive until SB 462 is heard

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 740
Bill Number (if applicable)

Topic Natural Gas

Amendment Barcode (if applicable)

Name BrendaLee Lennick

Job Title Retired USN

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self Waive until SB 462 is heard

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 764 (631516)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Higher Education); and Senator Bean and others
SUBJECT:	Dental Student Loan Repayment Program
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Sikes	Elwell	AHE	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**

I. Summary:

PCS/SB 764 creates the Dental Student Loan Repayment Program (program) for Florida-licensed dentists who practice in specific public health programs located in designated dental health professional shortage areas (HPSAs) or medically underserved areas. Subject to the availability of funds, the Department of Health (DOH) will award funds from the program in an amount not to exceed $50,000 per eligible dentist per year. A participant is eligible to receive funds for a minimum of one year and a maximum of five years.

The bill defines eligibility for the program and conditions for termination from the program. The Department of Health (DOH) is directed to adopt rules to administer the program.

The bill does not affect state revenues or expenditures. The program is contingent upon the availability of funds.

The bill is effective July 1, 2018.

II. Present Situation:

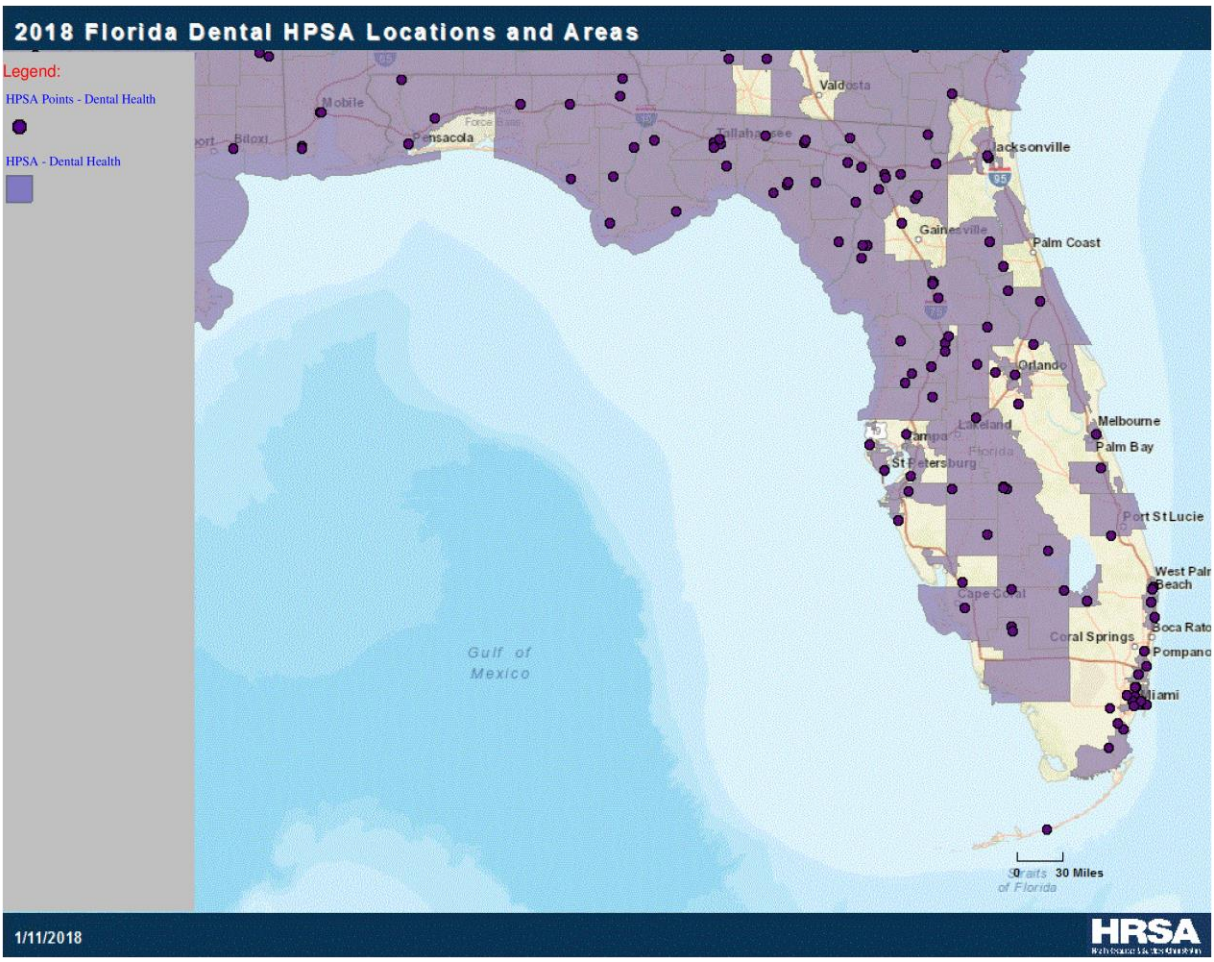
The Health Resources and Services Administration or HRSA, a federal agency within the United States Department of Health and Human Services (HHS), is charged with, among other responsibilities, improving health care for individuals who are geographically isolated, or economically or medically vulnerable.[1] Four of the five agency goals focus on access to care

[1] U.S. Department of Health and Human Services, HRSA, *About HRSA*, https://www.hrsa.gov/about/index.html (last visited Jan. 4, 2018).

through either building a healthy workforce or improvements in accessing quality care and services.[2]

Health Professional Shortage Areas (HPSAs)

Health Professional Shortage Areas (HPSAs) are designated by the HRSA according to criteria developed in accordance with section 332 of the Public Health Services Act. HPSA designations are used to identify areas and groups within the United States that are experiencing a shortage of health professionals. An HPSA can be a geographic area, a population group, or a health care facility. These areas have a shortage of health care professionals or have population groups who face specific barriers to health care. The map *(Picture 1)* below shows the locations of the state's current dental HPSAs as of January 1, 2018.[3]



There are three categories for HPSA designation: (1) primary medical care; (2) dental; and (3) mental health.

[2] *Id.*
[3] Map generated based on information held in the U.S. Dep't of Health and Human Services, HRSA Data Warehouse, *Dental Health Professional Shortage Areas (HPSAs) Primary Dataset*, https://datawarehouse.hrsa.gov/Tools/DataPortalResults.aspx (results last generated on Jan. 11, 2018).

The primary factor used to determine a HPSA designation is the number of health professionals relative to the population with consideration of high need. State Primary Care Offices apply to HRSA for most designations of HPSAs in their states. HRSA will review provider-level data, whether providers are actively engaged in clinical practice, if a provider has any additional practice locations, the number of hours served at each location, the populations served, and the amount of time that a provider spends with specific populations.[4] Primary care and mental health HPSAs can score between 0-25 and dental health can score between 0-26.[5] Three scoring criteria are common across all disciplines HPSA (primary care medical, dental, and mental health):

- The population to provider ratio;
- The percentage of the population below 100 percent of the federal poverty level; and
- The travel time to the nearest source of care outside of the HPSA designation.[6]

The dental scoring system also reviews the water fluoridation status of the areas.

The following chart indicates the percentage of current need that is being met for Florida's dental HPSA compared to data nationwide.

Health Professional Shortage Areas as of January 1, 2018[7]						
HPSA Types	**Number of Designations** *(geographic area, population group, or facility)*		**Population Covered by Designation**		**Percent of Need Met**	
	National	*FL*	*National*	*FL*	*National*	*FL*
Dental	5,866	223	62,916,553	5,185,561	35.28%	13.28%

Medically Underserved Area

Medically Underserved Areas (MUA) are also designated by the HRSA. These areas are designated using one of three methods and can consist of a whole county, a group of contiguous counties, or census tracts having too few health care providers, high infant mortality, high poverty rates, or a high elderly population.[8] Nationally, there are 4,235 such designated areas, with 128 designated in Florida.[9]

[4] U.S. Dep't of Health and Human Services, HRSA Health Workforce, *Shortage Designation Application and Scoring Process*, https://bhw.hrsa.gov/shortage-designation/application-scoring-process (last visited Jan. 3, 2018).
[5] *Id.*
[6] *Id.*
[7] U.S. Dep't of Health and Human Services, HRSA, *Designated Health Professional Shortage Areas Statistics – Generated by HRSA Data Warehouse* (as of January 1, 2018) https://datawarehouse.hrsa.gov/tools/quickReports.aspx (last visited Jan. 4, 2018).
[8] HHS, *supra* note 4.
[9] U.S. Dep't of Health and Human Services, HRSA, *Medically Underserved Areas/Populations (MUA/P) – State Summary of Designated MUA/P* (January 5, 2018), pg. 1, https://datawarehouse.hrsa.gov/topics/shortageareas.aspx (last visited Jan. 5, 2018).

The first method, the Index of Medical Underservice (IMU), calculates a score based on the ratio of primary medical care physicians per 1,000 in population, percentage of the population with incomes below the federal poverty level, infant mortality rate, and percentage of population aged 65 or older.[10]

The second method, Medically Underserved Populations (MUP), is based on data collected under the MUA process and reviews the ratio of primary care physicians serving the population seeking the designation. A MUP is a group of people who encounter economic or cultural barriers to primary health care services.[11]

The third process, Exceptional MUP Designations, includes those population groups that do not meet the criteria of an IMU but may be considered for designation because of unusual conditions with a request by the governor or another senior executive level official and a local state health official.[12]

The Dental Workforce

The Health Policy Institute (HPI) for the American Dental Association recently updated its estimates on the future supply of dentists and concluded the nation's per capita supply of dentists is projected to increase through 2035.[13] The unadjusted number of dentists per 100,000 population increases from 60.9 in 2015 to 65.7 in 2035.[14] The per capita calculation takes into account only the calculation of total number of dentist available and total population and, as the report cautions, does not consider the location of the providers and access to care issues in particular regions or needs of special populations. This distinction may make a difference between whether there is an adequate supply of dentists on a per capita basis nationally and whether there is a provider shortage in a particular area, region, or to address a specific need. For example, a shortage could be only for participation by dental health providers in public programs such as Medicaid and the Children's Health Insurance Program (CHIP), two programs that serve high numbers of children and families from low and moderate income families. In the same HPI report, dental providers were reviewed in 2016 for their participation in Medicaid and CHIP and the rates ranged from a high of 77.2 percent in Montana to a low of three states in the 15 percent range (California, Maine and New Hampshire).[15] Florida's participation rate is 30 percent; the national average is 38.6 percent.[16] This national average also matches the percentage of dentists who report any patients covered by public assistance:

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[10] U.S. Department of Health and Human Services, HRSA, *Shortage Designation,* https://bhw.hrsa.gov/shortage-designation/muap-process (last visited Jan. 11, 2018).
[11] *Id.*
[12] *Id.*
[13] Muson, B. and Vujicic, M., *Number of Practicing Dentists per Capita in the United States Will Grow Steadily*, Health Policy Institute, American Dental Association (June 2016), http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_0616_1.pdf?la=en (last visited Jan. 4, 2018).
[14] *Id* at 2.
[15] , Health Policy Institute, American Dental Association, *Supply and Profile of Dentists – Dentist Profile Snapshot by State 2016- Table 4: Dentist Participation in Medicaid or CHIP* (January 2016), http://www.ada.org/en/science-research/health-policy-institute/data-center/supply-and-profile-of-dentists (last visited Jan. 4, 2018).
[16] *Id.*

Percentage of Dentists' Practices that Had Any Patients Covered by Public Assistance[17]		
Type of Provider	**2015**	**2016**
National %	*% Public Assistance*	*% Public Assistance*
General Practitioner	36.4%	37.3%
Specialists	35.5%	41.4%
All Dentists	36.2%	38.2%

A more recent national study, which included Florida dentists, looked further out and found a more positive result. Using 2016 population data as a baseline, there were 10,781 listed dentists for a state population of 20.6 million resulting in a per capita calculation of 52.3.[18] The HPI report found Florida's overall dental supply would be expected to increase by the year 2035 to a per capita of 56.9.[19] The calculation assumes that in 2030-2035, 414 dentists would be leaving the workforce, but 598 would be entering during this same time period. The supply number does not review where those dental providers would practice, under which lines of business they would participate, or any special demographic groups they might cover, such as Medicaid.

Most dentists – 77.8 percent – practice in general dentistry.[20] In many rural communities, the county health department may be the primary provider of health care services, including dental care. According to the DOH, Florida's current designated dental HPSAs have only enough dentists to serve 13.28 percent of the population living within them.[21] As of January 1, 2018, HRSA estimated that 1,169 additional dentists were required to meet the state's total need and eliminate the state's shortage.[22]

The American Dental Association (ADA) has also studied this issue and found that while there may be a sufficient number of dentists overall for the state's population or the national population, there may be an inadequate number available for certain populations or geographic areas.[23] Children are acutely affected by the shortage of dentists to serve low-income patients.

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[17] Health Policy Institute, American Dental Association, *Dental Practice – 2016 Characteristics of Private Dental Practice – Table 4 – Percentage of Dentists' Practices That Had Any Patients Covered by Public Assistance, 1990-2016* (January 2016), http://www.ada.org/en/science-research/health-policy-institute/data-center/dental-practice (last visited Jan. 4, 2018).
[18] Health Policy Institute, American Dental Association, *Supply and Profile of Dentists – Dentist Profile Snapshot by State 2016*, http://www.ada.org/en/science-research/health-policy-institute/data-center/supply-and-profile-of-dentists (last visited Jan. 4, 2018).
[19] Health Policy Institute, American Dental Association, *Projected Supply of Dentists: Florida*, http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/ProjectedSupplyofDentists/Florida-Projected-Supply-of-Dentists.pdf?la=en (last visited Jan. 4, 2018).
[20] *Id.*
[21] U.S. Dep't of Health and Human Services, Bureau of Health Workforce – HRSA, *Designated Health Professional Shortage Areas Statistics* (as of December 31, 2017), https://ersrs.hrsa.gov/ReportServer?/HGDW_Reports/BCD_HPSA/BCD_HPSA_SCR50_Qtr_Smry_HTML&rc:Toolbar=false (last visited Jan. 11, 2017).
[22] U.S. Dep't of Health and Human Services, *supra* note 7, at 8.
[23] Bradley Munson, B.A., and Marko Vujicic, Ph.D.: Health Policy Institute Research Brief, American Dental Association, *Supply of Dentists in the United States Likely to Grow*, p.2. (October 2014) http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_1014_1.ashx (last visited Jan. 11, 2018).

For example in Florida for FFY 2016, 37.6 percent of all Medicaid-enrolled children and 42.8 percent of all CHIP-enrolled children received preventive dental services.[24] For Medicaid, this was an increase from 2012 when only 26 percent of Medicaid-enrolled children received at least one dental care service.[25]

In 2011, the Legislature passed HB 7107[26] creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The program has two primary components: Managed Medical Assistance program (MMA) and Long Term Care program. To implement MMA, the law required the AHCA to create an integrated managed care program for the delivery of Medicaid primary and acute care services, including dental. Medicaid recipients who are enrolled in MMA receive their dental services through managed care plans. Although most dental services are designated as a required benefit only for Medicaid recipients under age 21, many of the managed care plans also provide dental services for adults as an enhanced benefit. As the managed care contracts are rebid this Spring, this benefit will be carved out of the MMA managed care contracts and contracted for as a separate benefit by the AHCA.[27]

The Cost of Dental Education

According to a survey of dental school students, the average debt for graduates in 2017 was $287,337,[28] a 72 percent increase in the last decade.[29] Over 30 percent of the Class of 2016 reported student loan debt in excess of $300,000.[30] The amount of a graduate's average debt differed based on whether the student attended a public or private school by a significant amount. The average reported by a public school attendee in 2016 was $238,582 and for a private school attendee the average was $291,668.[31]

For in-state tuition at a state university, such as the University of Florida, one year's tuition is $41,720, non-residents pay $68,202. When housing, books and other costs are added, three or four years of dental school for a DMD degree can result in a total dental school bill ranging from $148,275 to $215,835.[32] In comparison, a northern private school's tuition is listed at $73,364

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[24] Brishke, J., Gaskins, J., and Shenkman, B., *Florida KidCare: The Florida KidCare Program Evaluation Calendar Year 2016* (Dec. 1 2017), p. 141, http://ahca.myflorida.com/medicaid/Policy_and_Quality/Quality/performance_evaluation/MER/contracts/med147/FL_KidCare_MED147_Deliverable_66_12-2017_Final.pdf (last visited Jan. 4, 2018).
[25] U.S. Dep't of Health and Human Services, *supra* note 7, at 8.
[26] *See* chapter 2011-134, Laws of Fla.
[27] AHCA, Invitation to Negotiate 012-17/18 (Oct. 16, 2017). A copy of the ITN can be downloaded from http://www.myflorida.com/apps/vbs/vbs_www.ad_r2.view_ad?advertisement_key_num=137442 (last visited Jan. 10, 2018). See also Chapter 2016-109, Laws of Fla.
[28] American Student Dental Education Association, *Dental Student Debt*, https://www.asdanet.org/index/get-involved/advocate/issues-and-legislative-priorities/Dental-Student-Debt (last visited Jan. 8, 2018).
[29] American Student Dental Education Association, *Paying for Dental School*, https://www.asdanet.org/index/get-into-dental-school/before-you-apply/paying-for-dental-school, (last visited Jan. 8, 2018).
[30] American Dental Education Association, *Education Debt*, http://www.adea.org/GoDental/Money_Matters/Educational_Debt.aspx#sthash.rYlqVawm.dpbs (last visited Jan. 8, 2018).
[31] *Id.*
[32] University of Florida, Office of Admissions – College of Dentistry, *Budgets & Costs of Attendance: DMD*, http://admissions.dental.ufl.edu/financial-aid-2/d-m-d/budgets-cost-of-attendance-d-m-d/ (last visited Jan. 8, 2018).

per year and with other supplies, housing and fees, the total estimated costs over four years for 2017-2018 would be $450,412.[33]

In 2013, Congress enacted the Bipartisan Student Loan Certainty Act of 2013 (Public Law 113-28) that tied certain student loan interest rates to the 10-year Treasury Note plus 2.05 percent for undergraduates. For graduate and professional student loans, the interest rate is tied to the 10-year Treasury note plus 3.6 percent but may not exceed 9.5 percent in any given year.[34]

In June 2014, through a Presidential Memorandum, President Barack Obama directed the Secretary of Education to propose final regulations to allow additional students with student loan debt to cap their payments at 10 percent of their income, by December 31, 2015.[35] The Presidential Memorandum called the plan, "*Pay as You Earn Plan."*[36] President Obama's memorandum also called for the Secretary to improve communication with vulnerable borrowers to help with loan rehabilitation, to encourage support and awareness of repayment options during tax filing season, and to promote collaboration between students and their families to ensure better borrowing decisions.[37] In 2016, Florida had over 826,000 federal student loan borrowers with 188,613 borrowers enrolled in a *Pay as You Earn* or other income driven payment plans. The state has a total student federal loan debt outstanding of $23.9 billion.[38]

Loan forgiveness is also one of the top priorities of the American Student Dental Association (ASDA). Listed among the organization's priorities is for Congress and state legislatures to pass measures that include loan forgiveness, scholarship opportunities, and tax deductions or rebates for students that agree to practice in underserved areas after graduation.[39]

Florida does not have a current state program to address the dental health professional shortage areas or medically underserved areas. According to the DOH, there are 20 vacant positions for dentists in the DOH.[40]

Florida Health Services Corps

In 1992, the Legislature created the Florida Health Services Corps (FHSC), administered by the DOH, to encourage medical professionals to practice in locations that are underserved because of

[33] Tufts School of Dental Medicine, *Financial Aid Application Forms and Costs of Attendance for D.M.D. and D.I.S. Programs*, https://dental.tufts.edu/academics/financial-aid/forms-and-costs-dmd-and-dis-programs (last visited Jan. 8, 2018).
[34] Bipartisan Student Loan Certainty Act of 2013, Pub. L. No. 113-28, §2, 127 Stat. 506, 506 (2013).
[35] *Id.*
[36] The White House, Office of the Press Secretary, *Presidential Memorandum - Federal Student Loan Repayments* (June 9, 2014) https://www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments (last visited Jan. 8, 2018).
[37] The White House, Office of the Press Secretary, *Presidential Memorandum – Federal Student Loan Repayments* (June 9, 2014) https://obamawhitehouse.archives.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments (last visited Jan. 8, 2018).
[38] Jason Furman, Sandra Black, The White House, Office of Press Secretary, *Six Recent Trends in Student Debt* (April 28, 2016), https://obamawhitehouse.archives.gov/blog/2016/04/28/six-recent-trends-student-debt (last visited Jan. 8, 2018).
[39] American Student Dental Education Association, *supra* note 37.
[40] E-Mail from Dennis Ragosta, Office of Legislative Planning, Florida Dept. of Health, (Jan. 11, 2018) (on file with the Senate Committee on Health Policy).

a shortage of qualified professionals.[41] The FHSC was defined[42] as a program that offered scholarships to allopathic, osteopathic, chiropractic, podiatric, dental, physician assistant, and nursing students, and loan repayment assistance and travel and relocation expenses to allopathic and osteopathic residents and physicians, chiropractic physicians, podiatric physicians, nurse practitioners, dentists, and physician assistants, in return for service in a public health care program[43] or in a medically underserved area.[44] Membership in the FHSC could be extended to any health care practitioner who provided uncompensated care to medically indigent patients.[45] All FHSC members were required to enroll in Medicaid and to accept all patients referred by the DOH pursuant to the program agreement.[46] In exchange for this service, an FHSC member was made an agent of the state and granted sovereign immunity under s. 768.28(9), F.S., when providing uncompensated care to medically indigent patients referred for treatment by the DOH.[47]

The statute authorized the DOH to provide loan repayment assistance and travel and relocation reimbursement to allopathic and osteopathic medical residents with primary care specialties during their last two years of residency training or upon completion of residency training, and to physician assistants and nurse practitioners with primary care specialties, in return for an agreement to serve a minimum of two years in the FHSC. During the period of service, the maximum amount of annual financial payments was limited to no more than the annual total of loan repayment assistance and tax subsidies authorized by the National Health Services Corps (NHSC) loan repayment program.[48]

During the 20 years the program was authorized by law, it was funded only three times. A total of $3,684,000 was appropriated in the 1994-1995 fiscal year, 1995-1996 fiscal year, and 1996-1997 fiscal year for loan assistance payments to all categories of eligible health care practitioners. Of that amount, $971,664 was directed to 18 dentists for an average award of $25,570 per year of service in the program.[49] The 2007 Legislature attempted to reinvigorate the program by appropriating $700,000 to fund loan repayment assistance for dentists only.[50]

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[41] Chapter 92-33, s. 111, Laws of Fla. (creating s. 381.0302, F.S., effective July 1, 1992).
[42] Section 381.0302(2)(b)1., F.S. (2011).
[43] "Public health program" was defined to include a county health department, a children's medical services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program designated by the department. Section 381.0302(2)(e), F.S. (2011).
[44] "Medically underserved area" was defined to include: a geographic area, a special population, or a facility that has a shortage of health professionals as defined by federal regulations; a county health department, community health center, or migrant health center; or a geographic area or facility designated by rule of the department that has a shortage of health care practitioners who serve Medicaid and other low-income patients. Section 381.0302(2)(c), F.S. (2011).
[45] "Medically indigent person" was defined as a person who lacks public or private health insurance, is unable to pay for care, and is a member of a family with income at or below 185 percent of the federal poverty level. Section 381.0302(2)(d), F.S. (2011).
[46] Section 381.0302(10), F.S. (2011).
[47] Section 381.0302(11), F.S. (2011).
[48] Section 381.0302(6), F.S. (2011).
[49] E-mail from Karen Lundberg, Florida Dept. of Health, to Joe Anne Hart, Florida Dental Association (Sept. 16, 2005) (on file with the Senate Committee on Health Policy).
[50] Chapter 2007-72, Laws of Fla. The funding was contained in Specific Appropriations 677A of the General Appropriation Act, but later vetoed pursuant to the Governor's line item veto authority.

However, the appropriation and a related substantive bill were vetoed.[51] The Legislature repealed the program in 2012.[52]

National Health Service Corps (NHSC)

The NHSC programs provide scholarships and educational loan repayment to primary care providers[53] who agree to practice in areas that are medically underserved and are located in selected HPSAs. The chart below shows the different loan programs that dental students may be eligible for based on where the participant is placed (HPSA score) and whether the participant provides full (40 hours per week) or part-time (20 hours per week) service.

The NHSC-approved sites are community-based health care facilities that provide comprehensive outpatient, ambulatory, and primary health care services. Eligible dental facilities must be located in a dental HPSA and offer comprehensive primary dental health services. NHSC-approved sites (with the exception of correctional facilities and free clinics) are required to provide services free or on a sliding fee scale (SFS) or discounted fee schedule for low-income individuals.

Participants may be eligible to continue loan repayment beyond the initial term. If a participant breaches his or her LRP agreement, he or she will be subject to monetary damages, which are the sum of the amount of assistance received by the participant representing any period of obligated service not completed, a penalty, and interest. As of January 2018, there were 49, full-time-equivalent NHSC dentists in Florida in the loan repayment program, all of which are located at federally qualified health centers.[54]

Federal Loan Programs Applicable for Dental Students – National Health Services Corps (NHSC)				
Program Name	**Time Commitment**	**Maximum Amount**	**Service Commitment Locations**	**Additional Time**
Loan Repayment Program (LRP) [55,56]	2 years	Vary based on where placed Range: $30,000 - $50,000 (Full-time) $15,000- 25,000 – (Part-time)	NHSC approved sites in HPSAs	Option to annually renew after 2 years

[51] *Journal of the Florida Senate*, at 3 (June 12, 2007).
[52] Chapter 2012-184, s. 45, Laws of Fla.
[53] Primary care physicians, nurse practitioners, certified nurse midwives, physician assistants, dentists, dental hygienists, and behavioral and mental health providers, including health service psychologists, licensed clinical social workers, marriage and family therapists, psychiatrist nurse specialists, and licensed professional counselors.
[54]. E-Mail from Dennis Ragosta, Office of Legislative Planning, Florida Dept. of Health, (Jan. 11, 2018) (on file with the Senate Committee on Health Policy).
[55] The definition of part-time and full-time vary by discipline. The guidelines for both can be found in the *Fiscal Year 2015 Application and Program Guidance* packet beginning on 19, http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Jan. 11, 2018).
[56] U.S. Dep't. of Health and Human Services, Loan Repayment Program - *Fiscal Year 2017 Application and Program Guidance*, pp. 4-5 (January 2017) http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Jan. 8, 2018).

Federal Loan Programs Applicable for Dental Students – National Health Services Corps (NHSC)				
Program Name	**Time Commitment**	**Maximum Amount**	**Service Commitment Locations**	**Additional Time**
Student to Service LRP[57]	Students in last year of school must commit to serve 3 years	Up to $120,000	At an HPSA of greatest need	Option to annually renew after 3 year commitment to pay off loan remainder
Public Service Loan Forgiveness[58]	120 qualifying on time loan payments	Forgiveness of remainder of qualified federal loan	Qualified public service employment while making 120 loan payments	Remainder of qualified federal loan amounts forgiven at end of 120 payments

All of the NHSC programs require an application process; some require a background checking depending on the setting; and all require that the applicant be:

- A U.S. Citizen or U.S. National;
- Eligible to participate in the Medicare, Medicaid, and the State Children's Health Insurance Program, as appropriate; and
- Fully trained and licensed to practice in the NHSC-eligible primary care medical, dental, mental/behavioral health discipline for which the applicant seeks approval.

Additionally, the applicant must:

- Have unpaid student loans, taken before application to the NHSC's Loan Repayment Program to support undergraduate or graduate education and
- Be working at or have an accepted an offer of employment at an NHSC-approved site by the designated date (date determined each year).[59]

The State Loan Repayment Program (SLRP) offers cost-sharing grants to states to operate their own state educational loan repayment programs for primary care providers, including dental professionals, working in HPSAs within the state. The SLRP varies from state to state and may differ in eligible categories of providers, practice sites, length of required service commitment, and the amount of loan repayment assistance offered. However, there are certain statutory requirements SLRP grantees must meet. There is a minimum two-year service commitment with an additional one-year commitment for each year of additional support requested. Any SLRP program participant must practice at an eligible site located in a federally designated HPSA.

In addition, the SLRP requires a $1 state match for every $1 provided under the federal grant. While the SLRP does not limit award amounts, the maximum award amount per provider that the federal government will support through its grant is $50,000 per year, with a minimum service commitment of two years. Florida does not currently participate in SLRP.

[57] US Dep't of Health and Human Services, HRSA, *Loan Repayment – NHSC Loan Repayment Program*, https://www.nhsc.hrsa.gov/loanrepayment/index.html (last visited Jan. 8, 2018).
[58] *Id.* A qualifying public employer is a government organization at any level (federal, state, local, or tribal), not-for-profit organizations that are tax exempt under Section 501(c)(3) of the Internal Revenue Code, or other types of not-for-profit organizations that provide certain types of qualifying public services.
[59] National Health Services Corps, Loan Repayment Program, *Eligibility*, https://www.nhsc.hrsa.gov/loanrepayment/eligibility.html (last visited Jan. 8, 2018).

Several other federal loan repayment programs are open to most borrowers, including dental, that have certain post-graduate working conditions such as a requirement to work as a faculty member at an approved health institution, as a biomedical researcher, as a provider at an Indian health program site, as a commissioned dental officer in the U.S. Public Health Service Commissioned Corps, or with the United States Army or Navy.[60]

III. Effect of Proposed Changes:

The bill creates the dental student loan repayment program at the Department of Health (DOH). The initiative is conditioned on the availability of funds and is intended to promote access to dental care, encourage dentists to practice in dental health professional shortage areas or medically underserved areas, or serve a medically underserved population. The bill defines several key terms:

- Dental health professional shortage area: A geographic area so designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services;
- Loan program: The Dental Student Loan Repayment Program.
- Medically underserved area: A designated health professional shortage area that lacks an adequate number of dental health professionals to serve Medicaid and other low income patients; and
- Public health program: A county health department, the Children's Medical Services program, a federally qualified community health center, a federally funded migrant health center, or other publicly funded or not-for-profit health care program designated by the DOH.

The DOH is required to establish a dental student loan repayment program to benefit state-licensed dentists who demonstrate active employment in a public health program that serves Medicaid recipients and other low-income patients. The employment must be located in a dental health professional shortage area (HPSA) or a medically underserved area (MUA). Compliance with these requirements will be established by rule as determined by the DOH.

The DOH shall award funds from the loan program to repay student dental loans of a dentist who meets these requirements; however, no award may exceed $50,000 per year, per dentist. The DOH must limit the number of new dentists participating in the loan program to no more than 10 per fiscal year. A dentist may receive funds for at least one year and up to a maximum of five years. The dentist's period of obligated service begins when the dentist who receives the funds begins his employment.

Only loans taken out to pay the costs of tuition, books, dental equipment and supplies, uniforms, and living expenses may be covered under the loan program. Loan repayments are contingent upon continued proof of eligibility and must be made directly to the holder of the loan.
A dentist is not eligible to receive funds under this bill if the dentist:

- Is no longer employed by a public health program;
- Ceases to participate in the Florida Medicaid program; or

[60] American Dental Education Association, *State and Federal Loan Forgiveness Programs* (November 1, 2017), www.adea.org/advocacy/state/loan-forgiveness-programs.aspx (last visited Jan. 8, 2018).

- Has disciplinary action taken against his or her license by the Board of Dentistry.

The DOH is required to adopt rules to administer the loan program.

The bill is effective July 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:

Floridians living in those areas identified as medically underserved with little or no access to dental care could benefit from this initiative. The program could bring additional dental professionals to underserved communities, populations, and facilities. The program could also be a reason that a dental graduate elects to stay in Florida instead of practicing in another state after graduation.

Dentists who qualify for the loan program will benefit from another option to reduce in their student loan debt.

As a dentist practices in his or her public service employment program, the DOH will make payments on the dentist's previously incurred student loans. The DOH notes that during the period that the state funded repayment assistance is in place, underwriters for the student loans will receive guaranteed repayments.[61] The DOH will need to have financial arrangements in place to ensure timely payments to the loan guarantors and arrangements with the dentists who participate in the program to ensure continued eligibility while payments are being made.

[61] Id at 5.

C. Government Sector Impact:

The bill does not affect state revenues or expenditures. The program is contingent upon the availability of funds. If the program is funded, the DOH will require additional OPS staff to implement the program in addition to funds for the loan repayment awards. The estimated cost is $58,642 for the first year of implementation and $54,887 for the second year of implementation.[62]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH counts 224 Health Profession Shortage Areas for dental in its bill analysis. Of these, 111 qualify for the maximum loan repayment of $50,000 per year for up to two years. These sites must meet National Health Services Corps requirements and follow the provisions of services that do not allow for any type of discrimination for patient selection such as age or the ability to pay.[63]

VIII. Statutes Affected:

This bill creates section 381.4019 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 by Appropriations Subcommittee on Higher Education on February 8, 2018:
The committee substitute:

- Requires the Department of Health (DOH) to limit the number of new dentists participating in the loan program to no more than 10 per fiscal year.
- Specifies that only loans taken out to pay the costs of tuition, books, dental equipment and supplies, uniforms, and living expenses may be covered under the loan program.
- Requires that loan repayments be contingent upon continued proof of eligibility and that such payments must be made directly to the holder of the loan.
- Establishes that a dentist is not eligible to receive funds under the loan program if the dentist:
  - Is no longer employed by a public health program;
  - Ceases to participate in the Florida Medicaid program; or
  - Has disciplinary action taken against his or her license by the Board of Dentistry.

[62] Staff analysis of Florida Department of Health, *Senate Bill 764 Analysis* (Dec. 6, 2017) (on file with the Senate Committee on Health Policy).
[63] Id at 2.

B. Amendments:

None.

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576-03022-18

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

A bill to be entitled

An act relating to the Dental Student Loan Repayment Program; creating s. 381.4019, F.S.; establishing the Dental Student Loan Repayment Program to support dentists who practice in public health programs located in certain underserved areas; providing definitions; requiring the Department of Health to establish the loan program; providing for the award of funds; providing the maximum number of years funds may be awarded; providing eligibility requirements; requiring the department to adopt rules; providing an effective date.

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

Section 1. Section 381.4019, Florida Statutes, is created to read:

381.4019 Dental Student Loan Repayment Program.—Subject to the availability of funds, the Legislature establishes the Dental Student Loan Repayment Program to promote access to dental care by supporting qualified dentists who treat medically underserved populations in dental health professional shortage areas or medically underserved areas. The Legislature recognizes that maintaining good oral health is integral to overall health status and that the good health of residents in this state is an important contributing factor in state economic development. Better health, including better oral health, increases workplace

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productivity, reduces the burden of health care costs, and improves the cognitive development of children.

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

(a) "Dental health professional shortage area" means a geographic area designated as such by the Health Resources and Services Administration of the United States Department of Health and Human Services.

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

(c) "Loan program" means the Dental Student Loan Repayment Program.

(d) "Medically underserved area" means a geographic area, an area having a special population, or a facility which is designated by department rule as a health professional shortage area as defined by federal regulation and which has a shortage of dental health professionals who serve Medicaid recipients and other low-income patients.

(e) "Public health program" means a county health department, the Children's Medical Services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program designated by the department.

(2) The department shall establish a dental student loan repayment program to benefit Florida-licensed dentists who demonstrate, as required by department rule, active employment in a public health program that serves Medicaid recipients and other low-income patients and is located in a dental health professional shortage area or a medically underserved area.

(3) The department shall award funds from the loan program to repay the student loans of a dentist who meets the

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requirements of subsection (2).

(a) An award may not exceed $50,000 per year per eligible dentist.

(b) Only loans to pay the costs of tuition, books, dental equipment and supplies, uniforms, and living expenses shall be covered.

(c) All repayments shall be contingent upon continued proof of eligibility and shall be made directly to the holder of the loan. The state shall bear no responsibility for the collection of any interest charges or other remaining balances.

(d) A dentist is eligible to receive funds under the loan program for at least 1 year, up to a maximum of 5 years.

(e) The department shall limit the number of new dentists participating in the loan program to no more than 10 per fiscal year.

(4) A dentist is no longer eligible to receive funds under the loan program if the dentist:

(a) Is no longer employed by a public health program that meets the requirements of subsection (2).

(b) Ceases to participate in the Florida Medicaid program.

(c) Has disciplinary action taken against his or her license by the Board of Dentistry for a violation of s. 466.028.

(5) The department shall adopt rules to administer the loan program.

Section 2. This act shall take effect July 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/SB 764
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Higher Education); and Senator Bean and others
SUBJECT:	Dental Student Loan Repayment Program
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Sikes	Elwell	AHE	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Fav/CS**

I. Summary:

CS/SB 764 creates the Dental Student Loan Repayment Program (program) for Florida-licensed dentists who practice in specific public health programs located in designated dental health professional shortage areas (HPSAs) or medically underserved areas. Subject to the availability of funds, the Department of Health (DOH) will award funds from the program in an amount not to exceed $50,000 per eligible dentist per year. A participant is eligible to receive funds for a minimum of one year and a maximum of five years.

The bill defines eligibility for the program and conditions for termination from the program. The Department of Health (DOH) is directed to adopt rules to administer the program.

The bill does not affect state revenues or expenditures. The program is contingent upon the availability of funds.

The bill is effective July 1, 2018.

II. Present Situation:

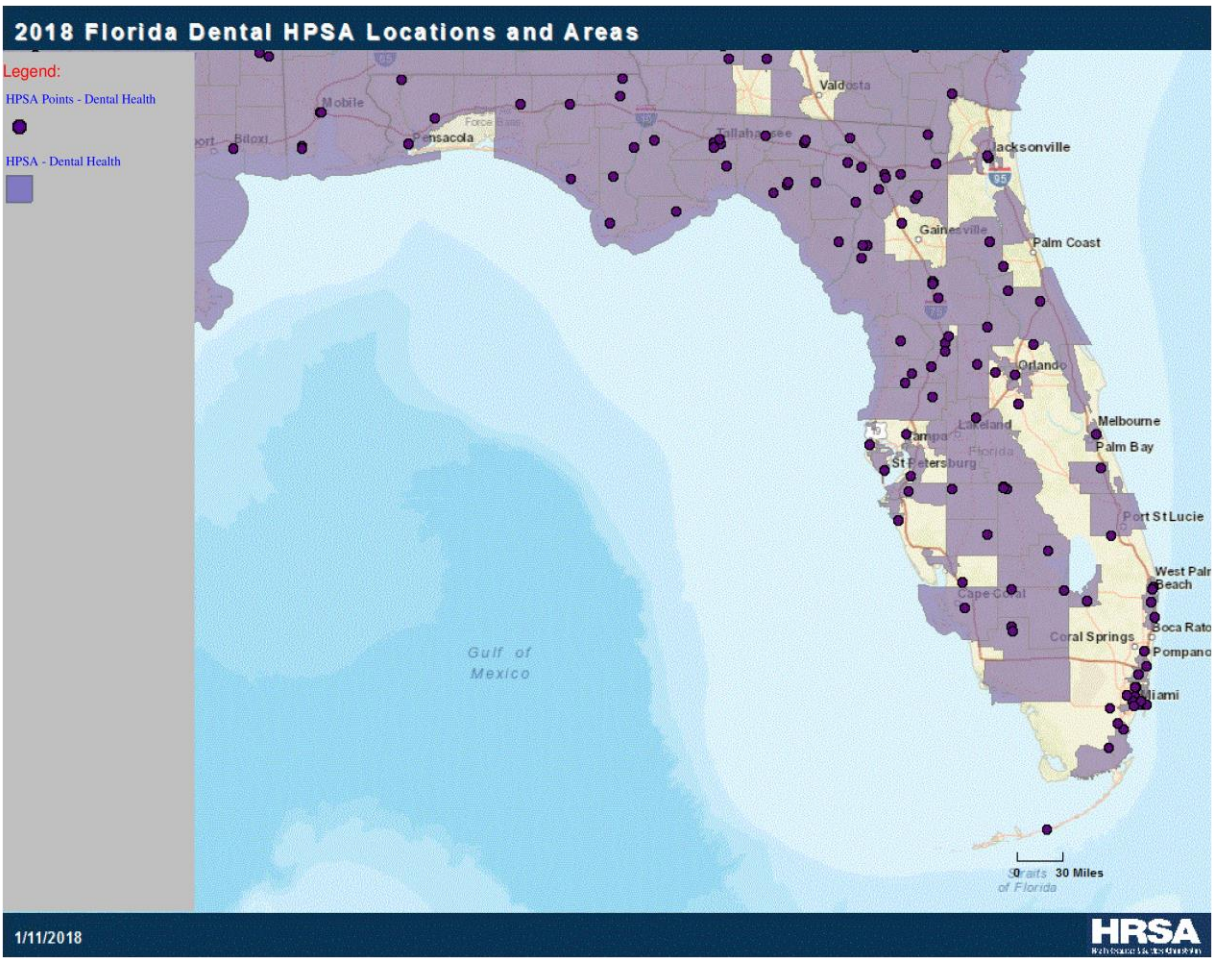
The Health Resources and Services Administration or HRSA, a federal agency within the United States Department of Health and Human Services (HHS), is charged with, among other responsibilities, improving health care for individuals who are geographically isolated, or economically or medically vulnerable.[1] Four of the five agency goals focus on access to care

[1] U.S. Department of Health and Human Services, HRSA, *About HRSA*, https://www.hrsa.gov/about/index.html (last visited Jan. 4, 2018).

through either building a healthy workforce or improvements in accessing quality care and services.[2]

Health Professional Shortage Areas (HPSAs)

Health Professional Shortage Areas (HPSAs) are designated by the HRSA according to criteria developed in accordance with section 332 of the Public Health Services Act. HPSA designations are used to identify areas and groups within the United States that are experiencing a shortage of health professionals. An HPSA can be a geographic area, a population group, or a health care facility. These areas have a shortage of health care professionals or have population groups who face specific barriers to health care. The map *(Picture 1)* below shows the locations of the state's current dental HPSAs as of January 1, 2018.[3]



There are three categories for HPSA designation: (1) primary medical care; (2) dental; and (3) mental health.

[2] *Id.*
[3] Map generated based on information held in the U.S. Dep't of Health and Human Services, HRSA Data Warehouse, *Dental Health Professional Shortage Areas (HPSAs) Primary Dataset*, https://datawarehouse.hrsa.gov/Tools/DataPortalResults.aspx (results last generated on Jan. 11, 2018).

The primary factor used to determine a HPSA designation is the number of health professionals relative to the population with consideration of high need. State Primary Care Offices apply to HRSA for most designations of HPSAs in their states. HRSA will review provider-level data, whether providers are actively engaged in clinical practice, if a provider has any additional practice locations, the number of hours served at each location, the populations served, and the amount of time that a provider spends with specific populations.[4] Primary care and mental health HPSAs can score between 0-25 and dental health can score between 0-26.[5] Three scoring criteria are common across all disciplines HPSA (primary care medical, dental, and mental health):

- The population to provider ratio;
- The percentage of the population below 100 percent of the federal poverty level; and
- The travel time to the nearest source of care outside of the HPSA designation.[6]

The dental scoring system also reviews the water fluoridation status of the areas.

The following chart indicates the percentage of current need that is being met for Florida's dental HPSA compared to data nationwide.

Health Professional Shortage Areas as of January 1, 2018[7]						
HPSA Types	**Number of Designations** *(geographic area, population group, or facility)*		**Population Covered by Designation**		**Percent of Need Met**	
	National	*FL*	*National*	*FL*	*National*	*FL*
Dental	5,866	223	62,916,553	5,185,561	35.28%	13.28%

Medically Underserved Area

Medically Underserved Areas (MUA) are also designated by the HRSA. These areas are designated using one of three methods and can consist of a whole county, a group of contiguous counties, or census tracts having too few health care providers, high infant mortality, high poverty rates, or a high elderly population.[8] Nationally, there are 4,235 such designated areas, with 128 designated in Florida.[9]

[4] U.S. Dep't of Health and Human Services, HRSA Health Workforce, *Shortage Designation Application and Scoring Process*, https://bhw.hrsa.gov/shortage-designation/application-scoring-process (last visited Jan. 3, 2018).
[5] *Id.*
[6] *Id.*
[7] U.S. Dep't of Health and Human Services, HRSA, *Designated Health Professional Shortage Areas Statistics – Generated by HRSA Data Warehouse* (as of January 1, 2018) https://datawarehouse.hrsa.gov/tools/quickReports.aspx (last visited Jan. 4, 2018).
[8] HHS, *supra* note 4.
[9] U.S. Dep't of Health and Human Services, HRSA, *Medically Underserved Areas/Populations (MUA/P) – State Summary of Designated MUA/P* (January 5, 2018), pg. 1, https://datawarehouse.hrsa.gov/topics/shortageareas.aspx (last visited Jan. 5, 2018).

The first method, the Index of Medical Underservice (IMU), calculates a score based on the ratio of primary medical care physicians per 1,000 in population, percentage of the population with incomes below the federal poverty level, infant mortality rate, and percentage of population aged 65 or older.[10]

The second method, Medically Underserved Populations (MUP), is based on data collected under the MUA process and reviews the ratio of primary care physicians serving the population seeking the designation. A MUP is a group of people who encounter economic or cultural barriers to primary health care services.[11]

The third process, Exceptional MUP Designations, includes those population groups that do not meet the criteria of an IMU but may be considered for designation because of unusual conditions with a request by the governor or another senior executive level official and a local state health official.[12]

The Dental Workforce

The Health Policy Institute (HPI) for the American Dental Association recently updated its estimates on the future supply of dentists and concluded the nation's per capita supply of dentists is projected to increase through 2035.[13] The unadjusted number of dentists per 100,000 population increases from 60.9 in 2015 to 65.7 in 2035.[14] The per capita calculation takes into account only the calculation of total number of dentist available and total population and, as the report cautions, does not consider the location of the providers and access to care issues in particular regions or needs of special populations. This distinction may make a difference between whether there is an adequate supply of dentists on a per capita basis nationally and whether there is a provider shortage in a particular area, region, or to address a specific need. For example, a shortage could be only for participation by dental health providers in public programs such as Medicaid and the Children's Health Insurance Program (CHIP), two programs that serve high numbers of children and families from low and moderate income families. In the same HPI report, dental providers were reviewed in 2016 for their participation in Medicaid and CHIP and the rates ranged from a high of 77.2 percent in Montana to a low of three states in the 15 percent range (California, Maine and New Hampshire).[15] Florida's participation rate is 30 percent; the national average is 38.6 percent.[16] This national average also matches the percentage of dentists who report any patients covered by public assistance:

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[10] U.S. Department of Health and Human Services, HRSA, *Shortage Designation,* https://bhw.hrsa.gov/shortage-designation/muap-process (last visited Jan. 11, 2018).
[11] *Id.*
[12] *Id.*
[13] Muson, B. and Vujicic, M., *Number of Practicing Dentists per Capita in the United States Will Grow Steadily*, Health Policy Institute, American Dental Association (June 2016), http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_0616_1.pdf?la=en (last visited Jan. 4, 2018).
[14] *Id* at 2.
[15] , Health Policy Institute, American Dental Association, *Supply and Profile of Dentists – Dentist Profile Snapshot by State 2016- Table 4: Dentist Participation in Medicaid or CHIP* (January 2016), http://www.ada.org/en/science-research/health-policy-institute/data-center/supply-and-profile-of-dentists (last visited Jan. 4, 2018).
[16] *Id.*

Percentage of Dentists' Practices that Had Any Patients Covered by Public Assistance[17]		
Type of Provider	**2015**	**2016**
National %	*% Public Assistance*	*% Public Assistance*
General Practitioner	36.4%	37.3%
Specialists	35.5%	41.4%
All Dentists	36.2%	38.2%

A more recent national study, which included Florida dentists, looked further out and found a more positive result. Using 2016 population data as a baseline, there were 10,781 listed dentists for a state population of 20.6 million resulting in a per capita calculation of 52.3.[18] The HPI report found Florida's overall dental supply would be expected to increase by the year 2035 to a per capita of 56.9.[19] The calculation assumes that in 2030-2035, 414 dentists would be leaving the workforce, but 598 would be entering during this same time period. The supply number does not review where those dental providers would practice, under which lines of business they would participate, or any special demographic groups they might cover, such as Medicaid.

Most dentists – 77.8 percent – practice in general dentistry.[20] In many rural communities, the county health department may be the primary provider of health care services, including dental care. According to the DOH, Florida's current designated dental HPSAs have only enough dentists to serve 13.28 percent of the population living within them.[21] As of January 1, 2018, HRSA estimated that 1,169 additional dentists were required to meet the state's total need and eliminate the state's shortage.[22]

The American Dental Association (ADA) has also studied this issue and found that while there may be a sufficient number of dentists overall for the state's population or the national population, there may be an inadequate number available for certain populations or geographic areas.[23] Children are acutely affected by the shortage of dentists to serve low-income patients.

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[17] Health Policy Institute, American Dental Association, *Dental Practice – 2016 Characteristics of Private Dental Practice – Table 4 – Percentage of Dentists' Practices That Had Any Patients Covered by Public Assistance, 1990-2016* (January 2016), http://www.ada.org/en/science-research/health-policy-institute/data-center/dental-practice (last visited Jan. 4, 2018).
[18] Health Policy Institute, American Dental Association, *Supply and Profile of Dentists – Dentist Profile Snapshot by State 2016*, http://www.ada.org/en/science-research/health-policy-institute/data-center/supply-and-profile-of-dentists (last visited Jan. 4, 2018).
[19] Health Policy Institute, American Dental Association, *Projected Supply of Dentists: Florida*, http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/ProjectedSupplyofDentists/Florida-Projected-Supply-of-Dentists.pdf?la=en (last visited Jan. 4, 2018).
[20] *Id.*
[21] U.S. Dep't of Health and Human Services, Bureau of Health Workforce – HRSA, *Designated Health Professional Shortage Areas Statistics* (as of December 31, 2017), https://ersrs.hrsa.gov/ReportServer?/HGDW_Reports/BCD_HPSA/BCD_HPSA_SCR50_Qtr_Smry_HTML&rc:Toolbar=false (last visited Jan. 11, 2017).
[22] U.S. Dep't of Health and Human Services, *supra* note 7, at 8.
[23] Bradley Munson, B.A., and Marko Vujicic, Ph.D.: Health Policy Institute Research Brief, American Dental Association, *Supply of Dentists in the United States Likely to Grow*, p.2. (October 2014) http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_1014_1.ashx (last visited Jan. 11, 2018).

For example in Florida for FFY 2016, 37.6 percent of all Medicaid-enrolled children and 42.8 percent of all CHIP-enrolled children received preventive dental services.[24] For Medicaid, this was an increase from 2012 when only 26 percent of Medicaid-enrolled children received at least one dental care service.[25]

In 2011, the Legislature passed HB 7107[26] creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The program has two primary components: Managed Medical Assistance program (MMA) and Long Term Care program. To implement MMA, the law required the AHCA to create an integrated managed care program for the delivery of Medicaid primary and acute care services, including dental. Medicaid recipients who are enrolled in MMA receive their dental services through managed care plans. Although most dental services are designated as a required benefit only for Medicaid recipients under age 21, many of the managed care plans also provide dental services for adults as an enhanced benefit. As the managed care contracts are rebid this Spring, this benefit will be carved out of the MMA managed care contracts and contracted for as a separate benefit by the AHCA.[27]

The Cost of Dental Education

According to a survey of dental school students, the average debt for graduates in 2017 was $287,337,[28] a 72 percent increase in the last decade.[29] Over 30 percent of the Class of 2016 reported student loan debt in excess of $300,000.[30] The amount of a graduate's average debt differed based on whether the student attended a public or private school by a significant amount. The average reported by a public school attendee in 2016 was $238,582 and for a private school attendee the average was $291,668.[31]

For in-state tuition at a state university, such as the University of Florida, one year's tuition is $41,720, non-residents pay $68,202. When housing, books and other costs are added, three or four years of dental school for a DMD degree can result in a total dental school bill ranging from $148,275 to $215,835.[32] In comparison, a northern private school's tuition is listed at $73,364

[24] Brishke, J., Gaskins, J., and Shenkman, B., *Florida KidCare: The Florida KidCare Program Evaluation Calendar Year 2016* (Dec. 1 2017), p. 141, http://ahca.myflorida.com/medicaid/Policy_and_Quality/Quality/performance_evaluation/MER/contracts/med147/FL_KidCare_MED147_Deliverable_66_12-2017_Final.pdf (last visited Jan. 4, 2018).
[25] U.S. Dep't of Health and Human Services, *supra* note 7, at 8.
[26] *See* chapter 2011-134, Laws of Fla.
[27] AHCA, Invitation to Negotiate 012-17/18 (Oct. 16, 2017). A copy of the ITN can be downloaded from http://www.myflorida.com/apps/vbs/vbs_www.ad_r2.view_ad?advertisement_key_num=137442 (last visited Jan. 10, 2018). See also Chapter 2016-109, Laws of Fla.
[28] American Student Dental Education Association, *Dental Student Debt*, https://www.asdanet.org/index/get-involved/advocate/issues-and-legislative-priorities/Dental-Student-Debt (last visited Jan. 8, 2018).
[29] American Student Dental Education Association, *Paying for Dental School*, https://www.asdanet.org/index/get-into-dental-school/before-you-apply/paying-for-dental-school, (last visited Jan. 8, 2018).
[30] American Dental Education Association, *Education Debt*, http://www.adea.org/GoDental/Money_Matters/Educational_Debt.aspx#sthash.rYlqVawm.dpbs (last visited Jan. 8, 2018).
[31] *Id.*
[32] University of Florida, Office of Admissions – College of Dentistry, *Budgets & Costs of Attendance: DMD*, http://admissions.dental.ufl.edu/financial-aid-2/d-m-d/budgets-cost-of-attendance-d-m-d/ (last visited Jan. 8, 2018).

per year and with other supplies, housing and fees, the total estimated costs over four years for 2017-2018 would be $450,412.[33]

In 2013, Congress enacted the Bipartisan Student Loan Certainty Act of 2013 (Public Law 113-28) that tied certain student loan interest rates to the 10-year Treasury Note plus 2.05 percent for undergraduates. For graduate and professional student loans, the interest rate is tied to the 10-year Treasury note plus 3.6 percent but may not exceed 9.5 percent in any given year.[34]

In June 2014, through a Presidential Memorandum, President Barack Obama directed the Secretary of Education to propose final regulations to allow additional students with student loan debt to cap their payments at 10 percent of their income, by December 31, 2015.[35] The Presidential Memorandum called the plan, "*Pay as You Earn Plan."*[36] President Obama's memorandum also called for the Secretary to improve communication with vulnerable borrowers to help with loan rehabilitation, to encourage support and awareness of repayment options during tax filing season, and to promote collaboration between students and their families to ensure better borrowing decisions.[37] In 2016, Florida had over 826,000 federal student loan borrowers with 188,613 borrowers enrolled in a *Pay as You Earn* or other income driven payment plans. The state has a total student federal loan debt outstanding of $23.9 billion.[38]

Loan forgiveness is also one of the top priorities of the American Student Dental Association (ASDA). Listed among the organization's priorities is for Congress and state legislatures to pass measures that include loan forgiveness, scholarship opportunities, and tax deductions or rebates for students that agree to practice in underserved areas after graduation.[39]

Florida does not have a current state program to address the dental health professional shortage areas or medically underserved areas. According to the DOH, there are 20 vacant positions for dentists in the DOH.[40]

Florida Health Services Corps

In 1992, the Legislature created the Florida Health Services Corps (FHSC), administered by the DOH, to encourage medical professionals to practice in locations that are underserved because of

[33] Tufts School of Dental Medicine, *Financial Aid Application Forms and Costs of Attendance for D.M.D. and D.I.S. Programs*, https://dental.tufts.edu/academics/financial-aid/forms-and-costs-dmd-and-dis-programs (last visited Jan. 8, 2018).
[34] Bipartisan Student Loan Certainty Act of 2013, Pub. L. No. 113-28, §2, 127 Stat. 506, 506 (2013).
[35] *Id.*
[36] The White House, Office of the Press Secretary, *Presidential Memorandum - Federal Student Loan Repayments* (June 9, 2014) https://www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments (last visited Jan. 8, 2018).
[37] The White House, Office of the Press Secretary, *Presidential Memorandum – Federal Student Loan Repayments* (June 9, 2014) https://obamawhitehouse.archives.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments (last visited Jan. 8, 2018).
[38] Jason Furman, Sandra Black, The White House, Office of Press Secretary, *Six Recent Trends in Student Debt* (April 28, 2016), https://obamawhitehouse.archives.gov/blog/2016/04/28/six-recent-trends-student-debt (last visited Jan. 8, 2018).
[39] American Student Dental Education Association, *supra* note 37.
[40] E-Mail from Dennis Ragosta, Office of Legislative Planning, Florida Dept. of Health, (Jan. 11, 2018) (on file with the Senate Committee on Health Policy).

a shortage of qualified professionals.[41] The FHSC was defined[42] as a program that offered scholarships to allopathic, osteopathic, chiropractic, podiatric, dental, physician assistant, and nursing students, and loan repayment assistance and travel and relocation expenses to allopathic and osteopathic residents and physicians, chiropractic physicians, podiatric physicians, nurse practitioners, dentists, and physician assistants, in return for service in a public health care program[43] or in a medically underserved area.[44] Membership in the FHSC could be extended to any health care practitioner who provided uncompensated care to medically indigent patients.[45] All FHSC members were required to enroll in Medicaid and to accept all patients referred by the DOH pursuant to the program agreement.[46] In exchange for this service, an FHSC member was made an agent of the state and granted sovereign immunity under s. 768.28(9), F.S., when providing uncompensated care to medically indigent patients referred for treatment by the DOH.[47]

The statute authorized the DOH to provide loan repayment assistance and travel and relocation reimbursement to allopathic and osteopathic medical residents with primary care specialties during their last two years of residency training or upon completion of residency training, and to physician assistants and nurse practitioners with primary care specialties, in return for an agreement to serve a minimum of two years in the FHSC. During the period of service, the maximum amount of annual financial payments was limited to no more than the annual total of loan repayment assistance and tax subsidies authorized by the National Health Services Corps (NHSC) loan repayment program.[48]

During the 20 years the program was authorized by law, it was funded only three times. A total of $3,684,000 was appropriated in the 1994-1995 fiscal year, 1995-1996 fiscal year, and 1996-1997 fiscal year for loan assistance payments to all categories of eligible health care practitioners. Of that amount, $971,664 was directed to 18 dentists for an average award of $25,570 per year of service in the program.[49] The 2007 Legislature attempted to reinvigorate the program by appropriating $700,000 to fund loan repayment assistance for dentists only.[50]

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[41] Chapter 92-33, s. 111, Laws of Fla. (creating s. 381.0302, F.S., effective July 1, 1992).
[42] Section 381.0302(2)(b)1., F.S. (2011).
[43] "Public health program" was defined to include a county health department, a children's medical services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program designated by the department. Section 381.0302(2)(e), F.S. (2011).
[44] "Medically underserved area" was defined to include: a geographic area, a special population, or a facility that has a shortage of health professionals as defined by federal regulations; a county health department, community health center, or migrant health center; or a geographic area or facility designated by rule of the department that has a shortage of health care practitioners who serve Medicaid and other low-income patients. Section 381.0302(2)(c), F.S. (2011).
[45] "Medically indigent person" was defined as a person who lacks public or private health insurance, is unable to pay for care, and is a member of a family with income at or below 185 percent of the federal poverty level. Section 381.0302(2)(d), F.S. (2011).
[46] Section 381.0302(10), F.S. (2011).
[47] Section 381.0302(11), F.S. (2011).
[48] Section 381.0302(6), F.S. (2011).
[49] E-mail from Karen Lundberg, Florida Dept. of Health, to Joe Anne Hart, Florida Dental Association (Sept. 16, 2005) (on file with the Senate Committee on Health Policy).
[50] Chapter 2007-72, Laws of Fla. The funding was contained in Specific Appropriations 677A of the General Appropriation Act, but later vetoed pursuant to the Governor's line item veto authority.

However, the appropriation and a related substantive bill were vetoed.[51] The Legislature repealed the program in 2012.[52]

National Health Service Corps (NHSC)

The NHSC programs provide scholarships and educational loan repayment to primary care providers[53] who agree to practice in areas that are medically underserved and are located in selected HPSAs. The chart below shows the different loan programs that dental students may be eligible for based on where the participant is placed (HPSA score) and whether the participant provides full (40 hours per week) or part-time (20 hours per week) service.

The NHSC-approved sites are community-based health care facilities that provide comprehensive outpatient, ambulatory, and primary health care services. Eligible dental facilities must be located in a dental HPSA and offer comprehensive primary dental health services. NHSC-approved sites (with the exception of correctional facilities and free clinics) are required to provide services free or on a sliding fee scale (SFS) or discounted fee schedule for low-income individuals.

Participants may be eligible to continue loan repayment beyond the initial term. If a participant breaches his or her LRP agreement, he or she will be subject to monetary damages, which are the sum of the amount of assistance received by the participant representing any period of obligated service not completed, a penalty, and interest. As of January 2018, there were 49, full-time-equivalent NHSC dentists in Florida in the loan repayment program, all of which are located at federally qualified health centers.[54]

Federal Loan Programs Applicable for Dental Students – National Health Services Corps (NHSC)				
Program Name	**Time Commitment**	**Maximum Amount**	**Service Commitment Locations**	**Additional Time**
Loan Repayment Program (LRP) [55,56]	2 years	Vary based on where placed Range: $30,000 - $50,000 (Full-time) $15,000- 25,000 – (Part-time)	NHSC approved sites in HPSAs	Option to annually renew after 2 years

[51] *Journal of the Florida Senate*, at 3 (June 12, 2007).
[52] Chapter 2012-184, s. 45, Laws of Fla.
[53] Primary care physicians, nurse practitioners, certified nurse midwives, physician assistants, dentists, dental hygienists, and behavioral and mental health providers, including health service psychologists, licensed clinical social workers, marriage and family therapists, psychiatrist nurse specialists, and licensed professional counselors.
[54]. E-Mail from Dennis Ragosta, Office of Legislative Planning, Florida Dept. of Health, (Jan. 11, 2018) (on file with the Senate Committee on Health Policy).
[55] The definition of part-time and full-time vary by discipline. The guidelines for both can be found in the *Fiscal Year 2015 Application and Program Guidance* packet beginning on 19, http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Jan. 11, 2018).
[56] U.S. Dep't. of Health and Human Services, Loan Repayment Program - *Fiscal Year 2017 Application and Program Guidance*, pp. 4-5 (January 2017) http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Jan. 8, 2018).

Federal Loan Programs Applicable for Dental Students – National Health Services Corps (NHSC)				
Program Name	**Time Commitment**	**Maximum Amount**	**Service Commitment Locations**	**Additional Time**
Student to Service LRP[57]	Students in last year of school must commit to serve 3 years	Up to $120,000	At an HPSA of greatest need	Option to annually renew after 3 year commitment to pay off loan remainder
Public Service Loan Forgiveness[58]	120 qualifying on time loan payments	Forgiveness of remainder of qualified federal loan	Qualified public service employment while making 120 loan payments	Remainder of qualified federal loan amounts forgiven at end of 120 payments

All of the NHSC programs require an application process; some require a background checking depending on the setting; and all require that the applicant be:

- A U.S. Citizen or U.S. National;
- Eligible to participate in the Medicare, Medicaid, and the State Children's Health Insurance Program, as appropriate; and
- Fully trained and licensed to practice in the NHSC-eligible primary care medical, dental, mental/behavioral health discipline for which the applicant seeks approval.

Additionally, the applicant must:

- Have unpaid student loans, taken before application to the NHSC's Loan Repayment Program to support undergraduate or graduate education and
- Be working at or have an accepted an offer of employment at an NHSC-approved site by the designated date (date determined each year).[59]

The State Loan Repayment Program (SLRP) offers cost-sharing grants to states to operate their own state educational loan repayment programs for primary care providers, including dental professionals, working in HPSAs within the state. The SLRP varies from state to state and may differ in eligible categories of providers, practice sites, length of required service commitment, and the amount of loan repayment assistance offered. However, there are certain statutory requirements SLRP grantees must meet. There is a minimum two-year service commitment with an additional one-year commitment for each year of additional support requested. Any SLRP program participant must practice at an eligible site located in a federally designated HPSA.

In addition, the SLRP requires a $1 state match for every $1 provided under the federal grant. While the SLRP does not limit award amounts, the maximum award amount per provider that the federal government will support through its grant is $50,000 per year, with a minimum service commitment of two years. Florida does not currently participate in SLRP.

[57] US Dep't of Health and Human Services, HRSA, *Loan Repayment – NHSC Loan Repayment Program*, https://www.nhsc.hrsa.gov/loanrepayment/index.html (last visited Jan. 8, 2018).
[58] *Id.* A qualifying public employer is a government organization at any level (federal, state, local, or tribal), not-for-profit organizations that are tax exempt under Section 501(c)(3) of the Internal Revenue Code, or other types of not-for-profit organizations that provide certain types of qualifying public services.
[59] National Health Services Corps, Loan Repayment Program, *Eligibility*, https://www.nhsc.hrsa.gov/loanrepayment/eligibility.html (last visited Jan. 8, 2018).

Several other federal loan repayment programs are open to most borrowers, including dental, that have certain post-graduate working conditions such as a requirement to work as a faculty member at an approved health institution, as a biomedical researcher, as a provider at an Indian health program site, as a commissioned dental officer in the U.S. Public Health Service Commissioned Corps, or with the United States Army or Navy.[60]

III. Effect of Proposed Changes:

The bill creates the dental student loan repayment program at the Department of Health (DOH). The initiative is conditioned on the availability of funds and is intended to promote access to dental care, encourage dentists to practice in dental health professional shortage areas or medically underserved areas, or serve a medically underserved population. The bill defines several key terms:

- Dental health professional shortage area: A geographic area so designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services;
- Loan program: The Dental Student Loan Repayment Program.
- Medically underserved area: A designated health professional shortage area that lacks an adequate number of dental health professionals to serve Medicaid and other low income patients; and
- Public health program: A county health department, the Children's Medical Services program, a federally qualified community health center, a federally funded migrant health center, or other publicly funded or not-for-profit health care program designated by the DOH.

The DOH is required to establish a dental student loan repayment program to benefit state-licensed dentists who demonstrate active employment in a public health program that serves Medicaid recipients and other low-income patients. The employment must be located in a dental health professional shortage area (HPSA) or a medically underserved area (MUA). Compliance with these requirements will be established by rule as determined by the DOH.

The DOH shall award funds from the loan program to repay student dental loans of a dentist who meets these requirements; however, no award may exceed $50,000 per year, per dentist. The DOH must limit the number of new dentists participating in the loan program to no more than 10 per fiscal year. A dentist may receive funds for at least one year and up to a maximum of five years. The dentist's period of obligated service begins when the dentist who receives the funds begins his employment.

Only loans taken out to pay the costs of tuition, books, dental equipment and supplies, uniforms, and living expenses may be covered under the loan program. Loan repayments are contingent upon continued proof of eligibility and must be made directly to the holder of the loan.
A dentist is not eligible to receive funds under this bill if the dentist:

- Is no longer employed by a public health program;
- Ceases to participate in the Florida Medicaid program; or
- Has disciplinary action taken against his or her license by the Board of Dentistry.

[60] American Dental Education Association, *State and Federal Loan Forgiveness Programs* (November 1, 2017), www.adea.org/advocacy/state/loan-forgiveness-programs.aspx (last visited Jan. 8, 2018).

The DOH is required to adopt rules to administer the loan program.

The bill is effective July 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:

Floridians living in those areas identified as medically underserved with little or no access to dental care could benefit from this initiative. The program could bring additional dental professionals to underserved communities, populations, and facilities. The program could also be a reason that a dental graduate elects to stay in Florida instead of practicing in another state after graduation.

Dentists who qualify for the loan program will benefit from another option to reduce in their student loan debt.

As a dentist practices in his or her public service employment program, the DOH will make payments on the dentist's previously incurred student loans. The DOH notes that during the period that the state funded repayment assistance is in place, underwriters for the student loans will receive guaranteed repayments.[61] The DOH will need to have financial arrangements in place to ensure timely payments to the loan guarantors and arrangements with the dentists who participate in the program to ensure continued eligibility while payments are being made.

[61] Id at 5.

C. Government Sector Impact:

The bill does not affect state revenues or expenditures. The program is contingent upon the availability of funds. If the program is funded, the DOH will require additional OPS staff to implement the program in addition to funds for the loan repayment awards. The estimated cost is $58,642 for the first year of implementation and $54,887 for the second year of implementation.[62]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH counts 224 Health Profession Shortage Areas for dental in its bill analysis. Of these, 111 qualify for the maximum loan repayment of $50,000 per year for up to two years. These sites must meet National Health Services Corps requirements and follow the provisions of services that do not allow for any type of discrimination for patient selection such as age or the ability to pay.[63]

VIII. Statutes Affected:

This bill creates section 381.4019 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute:

- Requires the Department of Health (DOH) to limit the number of new dentists participating in the loan program to no more than 10 per fiscal year.
- Specifies that only loans taken out to pay the costs of tuition, books, dental equipment and supplies, uniforms, and living expenses may be covered under the loan program.
- Requires that loan repayments be contingent upon continued proof of eligibility and that such payments must be made directly to the holder of the loan.
- Establishes that a dentist is not eligible to receive funds under the loan program if the dentist:
  - Is no longer employed by a public health program;
  - Ceases to participate in the Florida Medicaid program; or
  - Has disciplinary action taken against his or her license by the Board of Dentistry.

[62] Staff analysis of Florida Department of Health, *Senate Bill 764 Analysis* (Dec. 6, 2017) (on file with the Senate Committee on Health Policy).
[63] Id at 2.

B. Amendments:

None.

By Senator Bean

4-00543C-18 2018764__

A bill to be entitled

An act relating to the Dental Student Loan Repayment Program; creating s. 381.4019, F.S.; establishing the Dental Student Loan Repayment Program to support dentists who practice in public health programs located in certain underserved areas; providing definitions; requiring the Department of Health to establish the loan program; providing for the award of funds; providing the maximum number of years funds may be awarded; providing eligibility requirements; requiring the department to adopt rules; providing an effective date.

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

Section 1. Section 381.4019, Florida Statutes, is created to read:

381.4019 Dental Student Loan Repayment Program.—Subject to the availability of funds, the Legislature establishes the Dental Student Loan Repayment Program to promote access to dental care by supporting qualified dentists who treat medically underserved populations in dental health professional shortage areas or medically underserved areas. The Legislature recognizes that maintaining good oral health is integral to overall health status and that the good health of residents in this state is an important contributing factor in state economic development. Better health, including better oral health, increases workplace productivity, reduces the burden of health care costs, and improves the cognitive development of children.

4-00543C-18 2018764__

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

(a) "Dental health professional shortage area" means a geographic area designated as such by the Health Resources and Services Administration of the United States Department of Health and Human Services.

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

(c) "Loan program" means the Dental Student Loan Repayment Program.

(d) "Medically underserved area" means a geographic area, an area having a special population, or a facility which is designated by department rule as a health professional shortage area as defined by federal regulation and which has a shortage of dental health professionals who serve Medicaid recipients and other low-income patients.

(e) "Public health program" means a county health department, the Children's Medical Services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program designated by the department.

(2) The department shall establish a dental student loan repayment program to benefit state-licensed dentists who demonstrate, as required by department rule, active employment in a public health program that serves Medicaid recipients and other low-income patients and is located in a dental health professional shortage area or a medically underserved area.

(3) The department shall award funds from the loan program to repay the student loans of a dentist who meets the requirements of subsection (2). An award may not exceed $50,000 per year per eligible dentist.

(4) A participant in the loan program is eligible to receive funds for at least 1 year, up to a maximum of 5 years. The period of obligated service begins when the dentist begins employment as provided in subsection (2).

(5) A dentist is not eligible to participate in the loan program if:

(a) The dentist's employment by a public health program is terminated;

(b) The dentist's practice in a designated health professional shortage area or medically underserved area is terminated;

(c) The dentist's participation in the Florida Medicaid program is terminated; or

(d) The dentist knowingly fails to disclose any participation in fraudulent activity.

(6) The department shall adopt rules to administer the loan program.

Section 2. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 8, 2018

I respectfully request that **Senate Bill #764**, relating to Dental Student Loan Repayment , be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 764
Bill Number (if applicable)

Topic Dental Student Loan Repayment Program
Amendment Barcode (if applicable)

Name Joe Anne Hart

Job Title Chief Legislative Officer

Address 118 E. Jefferson St
Street

Tallahassee FL 32301
City State Zip

Phone (850) 224-1089

Email jahart@floridadental.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/19
Meeting Date

764
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Dental Loan Repayment

Name David Fifer

Job Title Senior Associate

Address 901 E St NW
Street

Washington DC 20004
City *State* *Zip*

Phone 305-606-9146

Email DFifer@pewtrusts.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Pew Charitable Trusts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 854
INTRODUCER:	Criminal Justice Committee and Senator Brandes
SUBJECT:	Correctional Officers
DATE:	February 14, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Fav/CS**
2.	Forbes	Sadberry	ACJ	**Recommend: Favorable**
3.	Forbes	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 854 lowers the minimum age for employment as a correctional officer from 19 years of age to 18 years of age. However, a correctional officer who is younger than 19 years of age may not supervise inmates but may perform all other duties performed by a full-time, part-time, or auxiliary correctional officer.

The bill does not affect state revenues or expenditures.

The bill is effective July 1, 2018.

II. Present Situation:

The Criminal Justice Standards and Training Commission (Commission), which is housed within the Florida Department of Law Enforcement (FDLE) is, in part, responsible for implementing

requirements related to the training, certification, and discipline of full-time, part-time,[1] and auxiliary[2] correctional officers.[3]

Section 943.10(2), F.S., defines "correctional officer" to mean 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.[4]

Section 943.13, F.S., provides that, to be eligible to be employed as a correctional officer, the person must:

- Be at least 19 years of age;
- Be a citizen of the United States, notwithstanding any law of the state to the contrary;
- Be a high school graduate or its equivalent;[5]
- Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States;[6]
- Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections (DOC) or the Commission;[7]

[1] Section 943.10(7), F.S., defines "part-time correctional officer" to mean any person who is employed or appointed less than full time, as defined by the employing or appointing agency, with or without compensation, whose responsibilities include the supervision, protection, care, custody, and control of inmates within a correctional institution.
[2] Section 943.10(9), F.S., defines "auxiliary correctional officer" to mean any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional officer and who, while under the supervision of a full-time or part-time correctional officer, has the same authority as a full-time or part-time correctional officer for the purpose of providing supervision, protection, care, custody, and control of inmates within a correctional institution or a county or municipal detention facility.
[3] Correctional officers are eligible for special risk class benefits in accordance with s. 121.0515, F.S. Special risk class membership awards more retirement credit per year of service than is awarded to other employees due to the increased risk that such employees undertake as a part of their duties. Membership of correctional officers in the special risk class is determined by whether the officer's primary duties and responsibilities involve the custody of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or whether the officer is the supervisor or command officer of a member or members who have such responsibilities. Section 121.0515(1) and (3)(c), F.S.
[4] Section 943.10(2), F.S.
[5] Section 943.13(3), F.S., provides that the Commission must define the term high school equivalency in rule.
[6] Section 943.13(4), F.S., further specifies that: a. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of any felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication; and b. Any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has had such record sealed or expunged shall not be deemed ineligible for employment or appointment as an officer.
[7] Section 943.13(5), F.S., provides that the FDLE must retain and enter into the statewide automated biometric identification system all fingerprints submitted. Thereafter, the fingerprints must be available for all purposes and uses authorized for arrest fingerprints entered in the statewide automated biometric identification system pursuant to s. 943.051, F.S. The FDLE is also required to search all arrest fingerprints received pursuant to s. 943.051, F.S., against the fingerprints retained in the statewide automated biometric identification system in accordance with s. 943.13, F.S., and report to the employing agency any arrest records that are identified with the retained employee's fingerprints. These fingerprints must be forwarded to the FDLE for processing and retention.

- Have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the Commission;
- Have a good moral character as determined by a background investigation by the Commission;
- Execute and submit a sworn affidavit-of-applicant form attesting to his or her compliance with the above-listed requirements to the employing agency or, if a private correctional officer, submit to the appropriate governmental entity;
- Complete a Commission approved basic recruit training program for the applicable criminal justice discipline, unless exempt under law;[8] and
- Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline.

If a critical need for officers exists, the employing agency may temporarily employ a person as a correctional officer, if he or she has met all the requirements listed above, even if he or she has not completed basic recruit school or received an acceptable score on the certification examination.[9] Any person employed as a temporary correctional officer must be supervised by another correctional officer anytime he or she is performing any duties of a correctional officer and must attend the first basic recruit training program offered in the geographic area within 180 consecutive days of employment.[10] A person temporarily employed as a correctional officer is prohibited from being employed in the position for more than 30 months. However, a person that is attending the first available basic recruit training program offered in his or her geographic area may continue to be employed as a temporary correctional officer until he or she:

- Fails or withdraws from the basic recruit training program; or
- Is separated from employment or appointment by the employing agency.[11]

Any person employed as a correctional officer, regardless of age, must comply with all the above-described eligibility criteria and any other requirements imposed by the Commission, including such requirements as continuing education requirements proscribed in s. 943.135, F.S.

The DOC reports that 23 states permit 18 year olds to be employed as correctional officers.[12]

[8] Section 943.13(9), F.S., provides an exemption for an applicant to be required to take the basic recruit training program, including that if the applicant has completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government and served as a full-time sworn officer in another state or for the Federal Government for at least 1 year. For the exemption to be available, the applicant cannot have more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for the exemption.

[9] Section 943.131(1)(a), F.S.

[10] Section 943.131(1)(a) and (c), F.S.

[11] Section 943.131(1)(b), F.S.

[12] These states include Arkansas, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Florida Department of Corrections, *Senate Bill 854 Analysis*, at p. 2, (September 19, 2017) (on file with the Senate Committee on Criminal Justice).

III. Effect of Proposed Changes:

The bill amends s. 943.13, F.S., to reduce the minimum age requirement for correctional officers from 19 years of age to 18 years of age.

The bill also creates s. 944.145, F.S., to prohibit a correctional officer younger than 19 years of age from supervising inmates. A correctional officer that is younger than 19 years of age may perform all other duties performed by a full-time, part-time, or auxiliary correctional officer.[13]

The bill takes effect July 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:

None.

C. Government Sector Impact:

The bill permits the DOC to hire persons who are between18 and 19 years of age to perform limited correctional officer functions. To the extent that this bill increases the number of persons the DOC is able to hire, the bill could potentially reduce the current vacancy rate within correctional facilities.

VI. Technical Deficiencies:

None.

[13] A person employed as a correctional officer who is younger than 19 years of age will not qualify for special risk class benefits because he or she will not be supervising inmates, which is required pursuant to s. 121.0515, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 943.13 of the Florida Statutes.

This bill creates section 944.145 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 January 9, 2018:
The committee substitute amends s. 943.13, F.S., expanding the eligibility requirements of a correctional officer to include a person who is 18 years of age, rather than 19 years of age or older. The committee substitute also creates s. 944.145, F.S., prohibiting a correctional officer younger than 19 years of age from supervising inmates.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Brandes

591-01944-18 2018854c1

A bill to be entitled

An act relating to correctional officers; amending s. 943.13, F.S.; authorizing a full-time, part-time, or auxiliary correctional officer to be employed at 18 years of age; creating s. 944.145, F.S.; prohibiting a correctional officer who is under 19 years of age from supervising inmates; authorizing a correctional officer who is under 19 years of age to perform all other tasks performed by a full-time, part-time, or auxiliary correctional officer; providing an effective date.

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

Section 1. Subsection (1) of section 943.13, Florida Statutes, is amended to read

943.13 Officers' minimum qualifications for employment or appointment.—On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services shall:

(1) Be at least 19 years of age, except that any person employed as a full-time, part-time, or auxiliary correctional officer may be at least 18 years of age.

Florida Senate - 2018 **CS for SB 854**

591-01944-18 2018854c1

Section 2. Section 944.145, Florida Statutes, is created to read:

944.145 Correctional officers under the age of 19.—A correctional officer who is under the age of 19 years may not supervise inmates, but may perform all of the other duties performed by a full-time, part-time, or auxiliary correctional officer.

Section 3. This act shall take effect July 1, 2018.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/18
Meeting Date

854.
Bill Number (if applicable)

Topic Correctional Officers.

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director.

Address 824 N Duval St
Street

Phone 954.[illegible]

TLH FL 32303
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

854
Bill Number (if applicable)

Topic Corrections Officers

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 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 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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 854
Bill Number (if applicable)

Topic Correctional Officers

Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director

Address 501 South Calhoun Street
Street

Phone (850) 728-5207

Tallahassee Florida 32399
City *State* *Zip*

Email Jared.Torres@fdc.myflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Corrections

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 856
INTRODUCER:	Senators Montford and Broxson
SUBJECT:	High School Graduation Requirements
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Olenick	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Hansen	AP	**Favorable**

I. Summary:

SB 856 authorizes students to use apprenticeship or preapprenticeship program credit to meet specified credit requirements for high school graduation. Specifically, the bill:

- Authorizes a student who earns credit upon completion of an apprenticeship or preapprenticeship program registered with the Department of Education to use such credit to meet the credit requirements for:
  - Fine or performing arts, speech and debate, or practical arts; or
  - Electives.
- Requires the State Board of Education to approve and identify in the Course Code Directory the apprenticeship and preapprenticeship programs from which a student may use earned credit to meet the specified credit requirements for high school graduation.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Florida law specifies the requirements for public school students to graduate from high school with a standard diploma.[1]

Florida High School Graduation Requirements

Receipt of a standard high school diploma requires successful completion of 24 credits, an International Baccalaureate curriculum, or an Advanced International Certificate of Education

[1] Section 1003.4282, F.S.

curriculum.[2] The required credits may be earned through equivalent, applied, or integrated courses or career education courses,[3] including work-related internships approved by the State Board of Education (SBE) and identified in the course code directory.[4]

Credit Requirements

To graduate from high school with a standard high school diploma, a student must successfully complete 24 credits in the following subject areas:[5]

- Four credits in English Language Arts (ELA) I, II, III, and IV.
- Four credits in mathematics including one credit each in Algebra I and Geometry. Industry certifications earned by students may substitute for up to two mathematics credits, except for Algebra I and Geometry.
- Three credits in science including one credit in Biology I and two credits in equally rigorous courses. Industry certifications earned by students may substitute for one science credit, except for Biology I.
- Three credits in social studies including one credit each in United States History and World History; one-half credit in economics, which must include financial literacy; and one-half credit in United States Government.
- One credit in fine or performing arts, speech and debate, or practical arts.
- One credit in physical education.
- Eight credits in electives.

At least one course within the required 24 credits must be completed through online learning.[6]

Career Education

Participation in career education courses engages students in their high school education, increases academic achievement, enhances employability, and increases postsecondary success.[7] Florida law[8] requires the Department of Education (DOE) to develop, for approval by the SBE, career education courses or a series of courses that meet the specified requirements in law[9] and allow students to earn credit in both the career education course and courses required for high

[2] *Id.* at (1)(a).
[3] Career education means education that provides instruction for purposes specified in law such as providing information to students about a broad range of occupations to assist students in preparing their academic and occupational plans, effectively enter an occupation, or advance within an occupation. Section 1003.01(4), F.S.
[4] Section 1003.4282(1)(b), F.S. The Course Code Directory (CCD) is the listing of all public preK-12 courses available for use by school districts. Programs and courses which are funded through the Florida Education Finance Program and courses or programs for which students may earn credit toward high school graduation must be listed in the CCD. The CCD maintains course listings for administration and service assignments, K-12 education, exceptional student education, career and technical education, and adult education, with details regarding appropriate teacher certification levels. The CCD provides for course information to schools, districts, and the state. Rule 6A-1.09441, F.A.C.
[5] Section 1003.4282(3), F.S.
[6] *Id.* at (4).
[7] *Id.* at (8).
[8] Section 1003.4282(8), F.S.
[9] Sections 1003.493(2), (4), and (5) and 1003.4282, F.S.

school graduation.[10] It is the responsibility of the SBE to determine if sufficient academic standards are covered to warrant the award of academic credit.[11]

Career and professional academies[12] are required to initiate partnerships with local workforce boards, local businesses, industry, and postsecondary institutions to create career education courses or a series of courses.[13]

Career education courses must include workforce and digital literacy skills and the integration of required course content with practical applications and designated rigorous coursework that results in one or more industry certifications or clearly articulated credit or advanced standing in a 2-year or 4-year certificate or degree program, which may include high school junior and senior year work-related internships or apprenticeships.[14]

Apprenticeship and Preapprenticeship Programs

An apprenticeship program is an organized course of instruction, registered and approved by the DOE,[15] which contains all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices[16] including the requirements for a written apprenticeship agreement.[17]

The DOE is responsible for administering, facilitating, and supervising registered apprenticeship programs, including, but not limited to:[18]

- Developing and encouraging apprenticeship programs.

[10] Section 1003.4282(8)(a), F.S.
[11] *Id.* at (8)(a)(1), F.S.
[12] A "career and professional academy" is a research-based program that integrates a rigorous academic curriculum with an industry-specific curriculum aligned directly to priority workforce needs established by the local workforce development board or the Department of Economic Opportunity. Career and professional academies shall be offered by public schools and school districts. The Florida Virtual School is encouraged to develop and offer rigorous career and professional courses as appropriate. Students completing career and professional academy programs must receive a standard high school diploma, the highest available industry certification, and opportunities to earn postsecondary credit if the academy partners with a postsecondary institution approved to operate in the state. Section 1003.493(1)(a), F.S.
[13] *Id.* at (4)(b).
[14] Section 1003.4282(8)(a)2, F.S.
[15] Registration of an apprenticeship program means acceptance and recording of such program by the Department as meeting the basic standards and requirements of the Department for approval of such program. Approval is evidenced by a certificate or other written indicia. Rule 6A-23.002(18), F.A.C. Eligibility and requirements for registration are established in State Board of Education rule. Rule 6A-23.003, F.A.C.
[16] An "apprentice" means "a person at least 16 years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of journeyman craftsmen, which training should be combined with properly coordinated studies of technical and supplementary subjects, and who has entered into a written agreement, which may be cited as an apprentice agreement, with a registered apprenticeship sponsor who may be either an employer, an association of employers, or a local joint apprenticeship committee." Section 446.021(2), F.S. A "journeyman means" "a person working in an apprenticeable occupation who has successfully completed a registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation." Section 446.021(4), F.S.
[17] Section 446.021(6), F.S. An apprenticeship agreement may not operate to invalidate any apprenticeship provision in a collective agreement between employers and employees which establishes higher apprenticeship standards. Section 446.081(1), F.S.
[18] Section 446.041, F.S.

- Cooperating with and assisting apprenticeship sponsors to develop apprenticeship standards and training requirements.
- Monitoring registered apprenticeship programs.
- Investigating complaints regarding failure to meet the standards established by the DOE.
- Canceling registration of programs that fail to comply with DOE standards and policies.

To be eligible for an apprenticeship program, the person must be at least 16 years of age.[19] Admission requirements related to education, physical ability, work experience and other criteria vary based on the program's training needs.[20] As of January 2018, there are 196 registered apprenticeship programs and 12,468 registered apprentices.[21]

A preapprenticeship program is an organized course of instruction in the public school system or elsewhere, which is designed to prepare a person 16 years of age or older to become an apprentice[22] and is approved by and registered with the DOE and sponsored by a registered apprenticeship program.[23]

The DOE, under regulations established by the SBE, may administer the provisions in law[24] which relate to preapprenticeship programs in cooperation with district school boards and Florida College System (FCS) institution boards of trustees.[25] District school boards, FCS institution boards of trustees, and registered program sponsors must cooperate in developing and establishing programs that include career instruction and general education courses required to obtain a high school diploma.[26]

Additionally, the DOE, district school boards, and FCS institution boards of trustees must work together with existing apprenticeship programs so that individuals completing preapprenticeship programs may be able to receive credit towards completing registered apprenticeship programs.[27]

According to the DOE, there are six one credit preapprenticeship courses, which are counted as electives for graduation purposes.[28] As of September 2017 there are 19 preapprenticeship programs located throughout the state.[29]

III. Effect of Proposed Changes:

The bill authorizes students to use apprenticeship or preapprenticeship program credit to meet specified credit requirements for high school graduation. Specifically, the bill:

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[19] Section 446.021(2), F.S.
[20] United State Department of Labor, Employment and Training Administration, *Apprentices*, https://www.doleta.gov/oa/apprenticeship.cfm (last visited Jan. 26, 2018).
[21] Email, Florida Department of Education (Jan. 5, 2018).
[22] A "preapprentice" means any person 16 years of age or over engaged in any course of instruction in the public school system or elsewhere, which course is registered as a preapprenticeship program with the department. Section 446.021(1), F.S.
[23] Section 446.021(5), F.S.
[24] Sections 446.011-446.092, F.S.
[25] Section 446.052(2), F.S.
[26] *Id*.
[27] Section 446.052(3), F.S.
[28] Telephone Interview with staff, Department of Education (Jan. 25, 2018)
[29] *Id*.

- Authorizes a student who earns credit upon completion of an apprenticeship or preapprenticeship program registered with the Department of Education to use such credit to meet the credit requirements for:
  - Fine or performing arts, speech and debate, or practical arts; or
  - Electives.
- Requires the State Board of Education to approve and identify in the Course Code Directory the apprenticeship and preapprenticeship programs from which a student may use earned credit to meet the specified credit requirements for high school graduation.

The bill may promote student participation in apprenticeship and preapprenticeship programs, which may help participating students acquire the skills and training needed to enter the workforce. It is not known how many credits may be generated upon students' completion of apprenticeship and preapprenticeship programs, and how many of such credits may be applied toward fine or performing arts, speech and debate, or practical arts; or electives.

The bill takes effect July 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:

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 section 1003.4282 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Montford

3-00732-18 2018856__

A bill to be entitled

An act relating to high school graduation requirements; amending s. 1003.4282, F.S.; authorizing the use of credits earned upon completion of a registered apprenticeship or preapprenticeship to satisfy specified high school graduation credit requirements; requiring that the State Board of Education approve and identify apprenticeship and preapprenticeship programs for such purpose; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 1003.4282, Florida Statutes, is amended to read:

1003.4282 Requirements for a standard high school diploma.—

(8) CAREER EDUCATION COURSES THAT SATISFY HIGH SCHOOL CREDIT REQUIREMENTS.—

(a) Participation in career education courses engages students in their high school education, increases academic achievement, enhances employability, and increases postsecondary success. By July 1, 2014, the department shall develop, for approval by the State Board of Education, multiple, additional career education courses or a series of courses that meet the requirements set forth in s. 1003.493(2), (4), and (5) and this subsection and allow students to earn credit in both the career education course and courses required for high school graduation under this section and s. 1003.4281.

1. The state board must determine if sufficient academic

3-00732-18 2018856__

standards are covered to warrant the award of academic credit.

2. Career education courses must include workforce and digital literacy skills and the integration of required course content with practical applications and designated rigorous coursework that results in one or more industry certifications or clearly articulated credit or advanced standing in a 2-year or 4-year certificate or degree program, which may include high school junior and senior year work-related internships or apprenticeships. The department shall negotiate state licenses for material and testing for industry certifications. The instructional methodology used in these courses must be comprised of authentic projects, problems, and activities for contextually learning the academics.

3. A student who earns credit upon completion of an apprenticeship or preapprenticeship program registered with the Department of Education under chapter 446 may use such credit to satisfy the high school graduation credit requirements in paragraph (3)(e) or paragraph (3)(g). The state board shall approve and identify in the Course Code Directory the apprenticeship and preapprenticeship programs from which earned credit may be used pursuant to this subparagraph.

Section 2. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Senate Committee on Appropriations

Subject: Committee Agenda Request

Date: February 8, 2018

I respectfully request that SB 856 on High School Graduation Requirements be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Bill Montford

Senator Bill Montford
Florida Senate, District 3

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

856
Bill Number (if applicable)

Topic High School Graduating Requirements

Amendment Barcode (if applicable)

Name Theresa King

Job Title President

Address PO Box 10888
Street

Phone 850-228-8940

Tallahassee FL 32301
City *State* *Zip*

Email fbt.tking@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Building and Construction Trades

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB-856
Bill Number (if applicable)

Topic APPRENTICESHIP

Amendment Barcode (if applicable)

Name J.B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE
Street

Phone 850-556-8143

TALLAHASSEE FL 32303
City *State* *Zip*

Email JBCLARK5@EARTHLINK.NET

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ELECTRICAL WORKERS ASSN.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 872 (620914)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources) and Senator Grimsley
SUBJECT:	Young Farmers and Ranchers
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Favorable**
2.	Blizzard	Betta	AEN	**Recommend: Fav/CS**
3.	Blizzard	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/SB 872 creates the Florida Young Farmer and Rancher matching grant program within the Department of Agriculture and Consumer Services (department) to support start up functions for new farming and ranching operations. An individual with less than 10 years of farming or ranching experience who is between the ages of 18 and 35 or is a veteran as defined in s. 1.01, F.S., will be eligible for a grant award. If funded by the legislature, each grant award must be between $5,000 and $20,000, and a recipient may receive only one award per year. The bill requires the department to establish a webpage with a resource center for young farmers and ranchers.

The bill establishes the Florida Young Farmer and Rancher Advisory Council within the department. The Commissioner of Agriculture (commissioner) will appoint 12 members to the council. The council may submit findings and recommendations for mitigating challenges facing young farmers and ranchers to the commissioner.

The department will incur an indeterminate increase in costs relating to workload to implement the provisions of the bill. These costs will be absorbed within the department's existing resources. The bill creates a new grant program that is contingent upon specific appropriation by the Legislature. The department will incur additional workload associated with the implementation of the grant program. The costs associated with this workload will need to be

funded through the overall appropriation for the grant program. This bill does not provide funding for the grant program.

The bill takes effect July 1, 2018.

II. Present Situation:

Currently, there are no grant programs or councils within the department specifically to assist young farmers and ranchers. The department does provide resources through its Agricultural Industry,[1] Grant Opportunity,[2] and Business Development[3] public webpages. At this time, financial resource content is limited to assisting growers with export operations.

III. Effect of Proposed Changes:

Section 1 creates s. 570.842, F.S., to establish the Florida Young Farmer and Rancher Matching Grant Program. The bill requires the department to administer grants to foster the creation and expansion of agricultural businesses by young farmers and ranchers in Florida. The bill requires the department to adopt rules regarding the program. To be eligible, grant recipients must be:

- An agricultural producer who is at least 18 years of age but younger than 35 years of age or who is a veteran;
- A farmer or rancher with less than 10 years' experience;
- Demonstrate, at a minimum, a dollar-for-dollar matching investment for grant money requested; and
- Timely in submitting a grant application.

The bill specifies that each grant award must be between $5,000 and $20,000 and no more than one award per year may go to a recipient. Grant funding for the program is contingent upon specific annual appropriation by the Legislature.

Section 2 creates s. 570.843, F.S., to establish the Florida Young Farmer and Rancher Advisory Council within the department. The bill specifies the membership and terms of the council and its statutory requirements. The bill specifies issues for which the council may provide findings and recommendations to the Commissioner of Agriculture.

Section 3 creates s. 570.844, F.S., to authorize the department to establish on its website a clearinghouse for resources available to young and beginning farmers and ranchers. These resources could include local, state, federal, and private sources of grants, loans, and scholarships, as well as general resources on finance and business planning.

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[1] Information pertaining to the agricultural industry may be retrieved from http://www.freshfromflorida.com/Agriculture-Industry/Search-by-Industry.

[2] Information pertaining to grant opportunities can be retrieved from http://www.freshfromflorida.com/Business-Services/Grant-Opportunities.

[3] Information pertaining to business development can be retrieved from http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Business-Development-Resources/Exporting-Florida-Agricultural-Products.

Section 4 provides that this act shall take effect July 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:

Florida's young farmers, ranchers and veterans with new farming and ranch operations may benefit from the grant program.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services will experience increased workload relating to the advisory council and clearinghouse. The costs associated with these administrative responsibilities, while indeterminate, can be absorbed within the department's existing resources.

If the legislature provides funding for the Florida Young Farmer and Rancher Matching Grant Program, the department will incur additional workload, depending on the amount of the annual appropriation and the size of the applicant pool.[4] Temporary staff may be needed to manage the application and grant award process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[4] Department of Agriculture and Consumer Services, *Senate Bill 872 Agency Bill Analysis*, (Dec. 8, 2017) (on file with the Appropriations Subcommittee on the Environment and Natural Resources).

VIII. Statutes Affected:

This bill creates sections 570.842, 570.843, and 570.844 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 by Appropriations Subcommittee on the Environment and Natural Resources on January 24, 2018:
The committee substitute includes a technical revision to clarify the definition of a veteran.

B. Amendments:

None.

620914

576-02406-18

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 young farmers and ranchers; creating s. 570.842, F.S.; creating the Florida Young Farmer and Rancher Matching Grant Program within the Department of Agriculture and Consumer Services; specifying the purpose of the grants; requiring the department to select grant recipients based on certain criteria; requiring the department to adopt rules; specifying minimum grant selection criteria; specifying a grant award minimum and maximum; requiring that no more than one award per year may go to an individual recipient; specifying that grant funding is contingent upon specific appropriation from the Legislature; creating s. 570.843, F.S.; creating the Florida Young Farmer and Rancher Advisory Council within the department; specifying membership of the council; providing for staggered terms; specifying the meetings, powers, duties, procedures, and recordkeeping of the council; specifying that the council may submit findings and recommendations to the Commissioner of Agriculture; specifying the issues the council may examine; creating s. 570.844, F.S.; requiring the department to establish a clearinghouse on its website for resources to assist young and beginning farmers and ranchers; providing an effective date.

620914

576-02406-18

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

Section 1. Section 570.842, Florida Statutes, is created to read:

570.842 Florida Young Farmer and Rancher Matching Grant Program.—

(1) To support the start-up functions associated with new farming and ranching operations, there is created within the department the Florida Young Farmer and Rancher Matching Grant Program.

(a) Grants administered by the department through this program must be for the purpose of fostering the creation and expansion of agricultural businesses by young farmers and ranchers in the state.

(b) The department shall select grant recipients based on selection criteria developed pursuant to subsection (2).

(2) The department shall adopt rules governing the operation of the program, an application process, and selection criteria for grant recipients. At a minimum, in order to be eligible to receive a grant, a person must:

(a) Be an agricultural producer who is at least 18 years of age but younger than 35 years of age or be an agricultural producer who is a veteran as defined by s. 1.01;

(b) Have operated a farm or ranch for not more than 10 years;

(c) Demonstrate, at minimum, a dollar-for-dollar matching investment for grant money requested; and

(d) Submit, on a form prescribed by the department, a grant

620914

576-02406-18

application during the application period established by the department. The department may designate only one period each year for accepting applications.

(3) Each grant award under the program must be between $5,000 and $20,000, with no more than one award being made to an individual grant recipient per grant period.

(4) Annual grant funding for this program is contingent upon specific annual appropriation by the Legislature.

Section 2. Section 570.843, Florida Statutes, is created to read:

570.843 Florida Young Farmer and Rancher Advisory Council.—

(1) There is created within the department the Florida Young Farmer and Rancher Advisory Council, to consist of 12 members to be appointed by the commissioner. Initially, six members shall be appointed by the commissioner for a 1-year term and six members for a 2-year term. Thereafter, members shall be appointed for 2-year terms.

(2) The meetings, powers, duties, procedures, and recordkeeping of the Florida Young Farmers and Ranchers Advisory Council shall be pursuant to s. 570.232.

(3) The council may submit to the commissioner, annually, findings and recommendations for mitigating challenges facing aspiring farmers and ranchers in the early stages of their careers. The council may examine issues that include, but are not limited to, access to land, availability of credit and capital, and access to business skills training.

Section 3. Section 570.844, Florida Statutes, is created to read:

570.844 Florida Young Farmer and Rancher Resource

620914

576-02406-18

Clearinghouse.—The department shall establish on its website a clearinghouse for resources available to young and beginning farmers and ranchers, including, but not limited to, local, state, federal, and private sources of grants, loans, and scholarships, as well as general resources on finance and business planning. The clearinghouse also must include resources available to beginning agricultural producers who are veterans as defined in s. 1.01.

Section 4. This act shall take effect July 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/SB 872
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources) and Senator Grimsley
SUBJECT:	Young Farmers and Ranchers
DATE:	February 23, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Favorable**
2.	Blizzard	Betta	AEN	**Recommend: Fav/CS**
3.	Blizzard	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 872 creates the Florida Young Farmer and Rancher matching grant program within the Department of Agriculture and Consumer Services (department) to support start up functions for new farming and ranching operations. An individual with less than 10 years of farming or ranching experience who is between the ages of 18 and 35 or is a veteran as defined in s. 1.01, F.S., will be eligible for a grant award. If funded by the legislature, each grant award must be between $5,000 and $20,000, and a recipient may receive only one award per year. The bill requires the department to establish a webpage with a resource center for young farmers and ranchers.

The bill establishes the Florida Young Farmer and Rancher Advisory Council within the department. The Commissioner of Agriculture (commissioner) will appoint 12 members to the council. The council may submit findings and recommendations for mitigating challenges facing young farmers and ranchers to the commissioner.

The department will incur an indeterminate increase in costs relating to workload to implement the provisions of the bill. These costs will be absorbed within the department's existing resources. The bill creates a new grant program that is contingent upon specific appropriation by the Legislature. The department will incur additional workload associated with the implementation of the grant program. The costs associated with this workload will need to be

funded through the overall appropriation for the grant program. This bill does not provide funding for the grant program.

The bill takes effect July 1, 2018.

II. Present Situation:

Currently, there are no grant programs or councils within the department specifically to assist young farmers and ranchers. The department does provide resources through its Agricultural Industry,[1] Grant Opportunity,[2] and Business Development[3] public webpages. At this time, financial resource content is limited to assisting growers with export operations.

III. Effect of Proposed Changes:

Section 1 creates s. 570.842, F.S., to establish the Florida Young Farmer and Rancher Matching Grant Program. The bill requires the department to administer grants to foster the creation and expansion of agricultural businesses by young farmers and ranchers in Florida. The bill requires the department to adopt rules regarding the program. To be eligible, grant recipients must be:

- An agricultural producer who is at least 18 years of age but younger than 35 years of age or who is a veteran;
- A farmer or rancher with less than 10 years' experience;
- Demonstrate, at a minimum, a dollar-for-dollar matching investment for grant money requested; and
- Timely in submitting a grant application.

The bill specifies that each grant award must be between $5,000 and $20,000 and no more than one award per year may go to a recipient. Grant funding for the program is contingent upon specific annual appropriation by the Legislature.

Section 2 creates s. 570.843, F.S., to establish the Florida Young Farmer and Rancher Advisory Council within the department. The bill specifies the membership and terms of the council and its statutory requirements. The bill specifies issues for which the council may provide findings and recommendations to the Commissioner of Agriculture.

Section 3 creates s. 570.844, F.S., to authorize the department to establish on its website a clearinghouse for resources available to young and beginning farmers and ranchers. These resources could include local, state, federal, and private sources of grants, loans, and scholarships, as well as general resources on finance and business planning.

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[1] Information pertaining to the agricultural industry may be retrieved from http://www.freshfromflorida.com/Agriculture-Industry/Search-by-Industry.

[2] Information pertaining to grant opportunities can be retrieved from http://www.freshfromflorida.com/Business-Services/Grant-Opportunities.

[3] Information pertaining to business development can be retrieved from http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Business-Development-Resources/Exporting-Florida-Agricultural-Products.

Section 4 provides that this act shall take effect July 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:

Florida's young farmers, ranchers and veterans with new farming and ranch operations may benefit from the grant program.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services will experience increased workload relating to the advisory council and clearinghouse. The costs associated with these administrative responsibilities, while indeterminate, can be absorbed within the department's existing resources.

If the legislature provides funding for the Florida Young Farmer and Rancher Matching Grant Program, the department will incur additional workload, depending on the amount of the annual appropriation and the size of the applicant pool.[4] Temporary staff may be needed to manage the application and grant award process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[4] Department of Agriculture and Consumer Services, *Senate Bill 872 Agency Bill Analysis*, (Dec. 8, 2017) (on file with the Appropriations Subcommittee on the Environment and Natural Resources).

VIII. Statutes Affected:

This bill creates sections 570.842, 570.843, and 570.844 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute includes a technical revision to clarify the definition of a veteran.

B. Amendments:

None.

By Senator Grimsley

26-00676A-18 2018872__

A bill to be entitled

An act relating to young farmers and ranchers; creating s. 570.842, F.S.; creating the Florida Young Farmer and Rancher Matching Grant Program within the Department of Agriculture and Consumer Services; specifying the purpose of the grants; requiring the department to select grant recipients based on certain criteria; requiring the department to adopt rules; specifying minimum grant selection criteria; specifying a grant award minimum and maximum; requiring that no more than one award per year may go to an individual recipient; specifying that grant funding is contingent upon specific appropriation from the Legislature; creating s. 570.843, F.S.; creating the Florida Young Farmer and Rancher Advisory Council within the department; specifying membership of the council; providing for staggered terms; specifying the meetings, powers, duties, procedures, and recordkeeping of the council; specifying that the council may submit findings and recommendations to the Commissioner of Agriculture; specifying the issues the council may examine; creating s. 570.844, F.S.; requiring the department to establish a clearinghouse on its website for resources to assist young and beginning farmers and ranchers; providing an effective date.

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

26-00676A-18 2018872__

Section 1. Section 570.842, Florida Statutes, is created to read:

570.842 Florida Young Farmer and Rancher Matching Grant Program.—

(1) To support the start-up functions associated with new farming and ranching operations, there is created within the department the Florida Young Farmer and Rancher Matching Grant Program.

(a) Grants administered by the department through this program must be for the purpose of fostering the creation and expansion of agricultural businesses by young farmers and ranchers in the state.

(b) The department shall select grant recipients based on selection criteria developed pursuant to subsection (2).

(2) The department shall adopt rules governing the operation of the program, an application process, and selection criteria for grant recipients. At a minimum, in order to be eligible to receive a grant, a person must:

(a) Be an agricultural producer who is at least 18 years of age but younger than 35 years of age or be an agricultural producer who is a veteran as defined by s. 1.01;

(b) Have operated a farm or ranch for not more than 10 years;

(c) Demonstrate, at minimum, a dollar-for-dollar matching investment for grant money requested; and

(d) Submit, on a form prescribed by the department, a grant application during the application period established by the department. The department may designate only one period each year for accepting applications.

(3) Each grant award under the program must be between $5,000 and $20,000, with no more than one award being made to an individual grant recipient per grant period.

(4) Annual grant funding for this program is contingent upon specific annual appropriation by the Legislature.

Section 2. Section 570.843, Florida Statutes, is created to read:

570.843 Florida Young Farmer and Rancher Advisory Council.—

(1) There is created within the department the Florida Young Farmer and Rancher Advisory Council, to consist of 12 members to be appointed by the commissioner. Initially, six members shall be appointed by the commissioner for a 1-year term and six members for a 2-year term. Thereafter, members shall be appointed for 2-year terms.

(2) The meetings, powers, duties, procedures, and recordkeeping of the Florida Young Farmers and Ranchers Advisory Council shall be pursuant to s. 570.232.

(3) The council may submit to the commissioner, annually, findings and recommendations for mitigating challenges facing aspiring farmers and ranchers in the early stages of their careers. The council may examine issues that include, but are not limited to, access to land, availability of credit and capital, and access to business skills training.

Section 3. Section 570.844, Florida Statutes, is created to read:

570.844 Florida Young Farmer and Rancher Resource Clearinghouse.—The department shall establish on its website a clearinghouse for resources available to young and beginning farmers and ranchers, including, but not limited to, local,

state, federal, and private sources of grants, loans, and scholarships, as well as general resources on finance and business planning. The clearinghouse also must include resources available to beginning agricultural producers who are defined as veterans under s. 1.01.

Section 4. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #872**, relating to Young Farmers and Ranchers, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 26

cc: Mike Hansen, Staff Director
Alicia Weiss, Committee Administrative Assistant

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

872
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Farmers and Ranchers

Name Gabrielle Craft

Job Title

Address PO Box 10406
Street

Tallahassee FL 32304
City *State* *Zip*

Phone 8505776500

Email gcraft@asrlegal.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Cattlemen's Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1002 (799584)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senators Passidomo and Bean
SUBJECT:	Guardianship
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Favorable**
2.	Harkness	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Harkness	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1002 identifies several specific actions that circuit court clerks may take when reviewing guardianships. The bill also expressly authorizes designees in the Office of Public and Professional Guardians to receive otherwise confidential documents when investigating guardianships. The circuit court clerks serve as the custodians of guardianship files and must review certain reports to ensure that guardians are correctly performing their responsibilities. The Office of Public and Professional Guardians is authorized to appoint certain types of guardians and investigate and, when appropriate, discipline guardians who violate their statutory duties.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Guardians

A guardian may be described as someone who has been given the legal duty and authority to care for another person or his or her property because of that person's infancy, disability, or incapacity.[1] Guardianships are trust relationships designed to protect vulnerable members of

[1] BLACK'S LAW DICTIONARY, 10th edition, 2014.

society who do not have the ability to protect themselves. The person for whom a guardian is appointed is called a "ward."[2] Once a guardian is appointed by the court, the guardian serves as a surrogate decision-maker and makes personal or financial decisions, or both, for the ward.[3] In Florida, guardianship matters are governed and controlled exclusively by statute.[4]

Annual Accounting

Each guardian of the property of a ward must file an annual accounting with the court.[5] The annual accounting must include a full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period. However, the requirement for an accounting does not apply to any property or trust of which the ward is a beneficiary but which is not under the control or administration of the guardian.[6] The guardian must obtain a receipt, cancelled check, or other proof of payment for all expenditures and disbursements made on behalf of the ward. The guardian must preserve all evidence of payment, together with any substantiating papers, for 3 years after his or her discharge as a guardian. These items do not need to be filed with the court but must be made available for inspection and review as the court may order.[7]

Responsibilities of the Clerk of the Court to Review Guardianship Reports

The State Constitution establishes the office of clerk of the circuit court in each county. This provision is contained in Article 5, section 16, the article that establishes the Judiciary. The duties of the clerk may be detailed by special or general law.

In addition to the duty to serve as the custodian of the guardianship files, the clerk must review each initial and annual guardianship report to ensure it contains information about the ward that addresses mental and physical health care, physical and mental health examinations, personal and social services, residential setting, the application of insurance, private and government benefits, and the initial verified inventory or the annual accounting.[8]

The clerk has 30 days after the initial or annual reports are filed to complete a review of the report. He or she has 90 days after the verified inventory and accounts are filed to audit those submissions. The clerk must advise the court of the results of the audit and report to the court when a report is not timely filed.[9]

In 2014, the Legislature expanded the authority and responsibilities of the clerk as auditor of guardianship reports.[10] The statutes now provide that if the clerk believes that a further review is

[2] Section 744.102(22), F.S.
[3] Section 744.102(9), F.S.
[4] *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla. 2d DCA 1966); *Hughes v. Bunker*, 76 So. 2d 474, 476 (1954).
[5] Section 744.3678(1), F.S.
[6] Section 744.3678(2)(a), F.S.
[7] Section 744.3678(3), F.S.
[8] Section 744.368(1), F.S.
[9] Section 744.368(2), (3), and (4), F.S.
[10] Ch. 2014-124, Laws of Fla.

appropriate, he or she may request and review records and documents that reasonably impact the guardianship assets. These records and documents may include but are not limited to, the beginning inventory balance and any fees charged to the guardianship.[11] If a guardian does not produce records and documents to the clerk upon request, the clerk may request the court to enter an order by filing an affidavit that identifies the records and documents requested and shows good cause as to why those items requested are needed to complete the audit.[12]

The clerk may, upon application to the court and with a supporting affidavit, issue subpoenas to nonparties to compel the production of books, papers, and other documentary evidence. Before issuing a subpoena by affidavit, the clerk must serve notice on the guardian and the ward, unless the ward is a minor or totally incapacitated, of the intent to serve subpoenas to nonparties.[13]

The Office of Public and Professional Guardians, Investigations, and Specialized Units

The Office of Public and Professional Guardians (OPPG) is situated within the Department of Elder Affairs. It is responsible for appointing local public guardians to provide services to people who do not have enough income or assets to afford a private guardian and no family member or friend is willing to serve. The Office contracts with 17 local offices of public guardians and is responsible for registering and educating professional guardians in the state. In 2016, the Office's responsibilities were increased to include regulating professional guardians which involves investigating, and if appropriate, disciplining guardians who violate the law.[14] As part of its investigative responsibilities, OPPG is authorized to request and be provided records held by an agency, the court and its agencies, or financial audits prepared by a clerk and held by the court which are necessary as part of an investigation when a complaint is filed against a guardian.[15] If confidential or exempt information is provided to OPPG, it continues its status as confidential or exempt.[16]

Since OPPG began receiving complaints on October 1, 2017, it has referred 83 legally sufficient complaints for further investigation. In 30 of those cases, letters of concern were issued or discipline was imposed or the cases were determined to be unfounded. The remaining 53 cases are still open and ongoing.[17]

Seven clerk offices around the state have specialized units that are trained to provide independent investigative services of professional guardianships. The Office of Public and Professional Guardians has contracted with these accredited units to perform investigations of legally sufficient complaints regarding the conduct of professional guardians. These investigations are performed using professional investigative standards. The clerk investigative units compare professional guardians' conduct to Florida Guardianship Law, the Florida Criminal Code, and Standards of Practice for Professional Guardians. All facts and findings are reported to the OPPG

[11] Section 744.368(5), F.S.
[12] Section 744.368(6), F.S.
[13] Section 744.368(7), F.S.
[14] Office of Public & Professional Guardians, Department of Elder Affairs, *Office of Public & Professional Guardians: Who We Are* http://elderaffairs.state.fl.us/doea/spgo.php (last visited Jan. 6, 2018).
[15] Section 744.2104(1), F.S.
[16] *Id*.
[17] Telephone conversation with Carol Berkowitz, Executive Director of the Office of Public and Professional Guardians, Tallahassee, Fla. (Jan. 4, 2018).

for administrative complaints, and if necessary, a referral to a criminal justice agency. The Palm Beach County Clerk serves as the administrative coordinator and chief investigator. The remaining clerk offices are Pinellas County, Polk County, Okaloosa County, Lake County, Lee County, and Sarasota County.

Statistics of the Elderly in Florida

According to statistics compiled for the State of Florida, 3,259,602 Floridians were age 65 and older in 2010. This number is projected to reach 4,390,788 by 2020, and 5,916,832 by 2030. Between 2010 and 2020, Florida's population age 85 and older is expected to increase by 36.1 percent.[18] These numbers indicate that there will likely be a significant increase in guardianships in the coming years.

The Power of a Guardian to Act without Court Approval

Two types of guardians may act without court approval when dealing with the property of a ward.[19] Those types are a plenary guardian of the property or a limited guardian of the property.[20] As specified in statute, the guardian does not need court approval to conduct a list of activities,[21] including the authority to provide confidential information about a ward to a local or state ombudsman member conducting an investigation involving a long-term care facility.

III. Effect of Proposed Changes:

This bill identifies specific actions that the circuit court clerks may take when reviewing guardianships. The bill also expressly authorizes designees of the Office of Public and Professional Guardians to receive otherwise confidential documents when investigating guardianships.

Section 1 amends s. 744.2104(1), F.S., which addresses the OPPG's ability to access records when a complaint is filed against a guardian and an investigation is initiated. In adding the words "or its designee," the bill clarifies that the seven specialized units that perform investigations of

[18] Florida Demographic Estimating Conference, February 2017 and the University of Florida, Bureau of Economic and Business Research, Florida Population Studies, Bulletin 178, June 2017. Available at http://edr.state.fl.us/Content/population-demographics/data/pop_census_day-2016.pdf and http://edr.state.fl.us/Content/population-demographics/data/index-floridaproducts.cfm.

[19] Section 744.444, F.S.

[20] A plenary guardian is a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court finds that the ward lacks the capacity to perform all of the necessary tasks to care for his or her person or property. Section 744.102(9)(b), F.S. A limited guardian is a guardian appointed by the court to exercise the legal rights and powers specifically designated by the court after the court finds that the ward lacks the capacity to do some, but not all tasks, necessary to care for his or her person or property, or after he or she voluntarily petitions the court for appointment of a limited guardian.

[21] Those enumerated activities include the ability to: retain or receive assets, vote or not vote stocks or other securities, insure assets and himself or herself against liability, execute instruments, pay taxes, assessments, certain encumbrances, and reasonable living expenses, elect to dissent from a will, make an election, or assert certain rights, deposit or invest certain assets, pay incidental expenses for the administration of the estate, sell or exercise stock rights and consent to activities of a business enterprise, employ necessary persons to advise or assist in performing the guardian's duties, execute and deliver certain instruments to carry out court order, hold securities, and pay or reimburse costs incurred.

complaints at the direction of the OPPG are authorized to receive records held by the court or its agencies which are necessary as part of an investigation of a guardian.

Section 2 amends s. 744.368, F.S., which addresses the responsibilities of the clerk of the circuit court to review guardianship reports. The language added to the statute expressly authorizes clerks, when conducting a further review of inventories and accountings, to conduct audits and cause initial and annual guardianship reports to be audited. The clerk must advise the court of the results of the audit. If a fee or cost is incurred by the guardian when he or she responds to the review or audit, it may not be paid or reimbursed using the ward's assets if the court finds an act of wrongdoing on the part of the guardian.

Section 3 amends s. 744.3701, F.S., which pertains to the disclosure and confidentiality of guardianship inspections and reports. The bill provides that the clerk may disclose confidential information to the Department of Children and Families or law enforcement agencies "for other purposes," as provided by a court order. The confidential information described in s. 744.3701(3), F.S., which may not be disclosed unless specifically authorized, is a court record pertaining to the settlement of a ward's or minor's claim, including a petition for approval of a settlement, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf a ward of minor. What the "other purposes" are is not explained in the bill.

Section 4 amends s. 744.444, F.S., which addresses the power of a guardian to act without court approval regarding the property of a ward. The bill expands the authority of a guardian to disclose confidential information about a ward to additional investigative entities. Specifically, the guardian is authorized to provide the confidential information to the court clerk or an investigator with the OPPG for investigations that arise under a review of records and documents involving assets, the beginning inventory balance, and fees charged to the guardianship. The clerk or investigator has a duty to maintain the confidentiality of that disclosed information.

The bill takes effect July 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:

If the court finds a guardian guilty or wrongdoing in a report or audit, those costs or fees incurred by the guardian in responding must be borne by the guardian. The ward's assets may not be used for payment or reimbursement of the guardian.

C. Government Sector Impact:

The disclosure of confidential information about a ward to additional investigative entities may result in additional costs to those entities. However, the bill has no discernible impact on state expenditures or revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 744.2104, 744.368, 744.3701, and 744.444.

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 Criminal and Civil Justice on February 8, 2018:
The committee substitute removes language that provides that the clerk's advice to the court may not be considered an ex parte communication.

B. Amendments:

None.

167214

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 46 - 50
and insert:
with the Office of Public and Professional Guardians to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports, shall be provided to the Office of Public and Professional Guardians or its designee upon that office's request. Any

167214

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 6 - 9
and insert:
of a complaint filed for certain purposes with the Office of Public and Professional Guardians to be provided to the Office of Public and Professional Guardians or its designee upon that office's request;

799584

576-03014-18

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

A bill to be entitled

An act relating to guardianship; amending s. 744.2104, F.S.; requiring certain medical, financial, or mental health records or financial audits that are necessary as part of an investigation of a guardian as a result of a complaint filed for certain purposes with a designee of the Office of Public and Professional Guardians to be provided to the Office of Public and Professional Guardians upon that office's request; amending s. 744.368, F.S.; authorizing the clerk of the court to conduct audits and cause the initial and annual guardianship reports to be audited under certain circumstances; requiring the clerk to advise the court of the results of any such audit; prohibiting any fee or cost incurred by the guardian in responding to the review or audit from being paid or reimbursed by the ward's assets if there is a finding of wrongdoing by the court; amending s. 744.3701, F.S.; authorizing the clerk to disclose confidential information to the Department of Children and Families or law enforcement agencies for certain purposes as provided by court order; amending s. 744.444, F.S.; authorizing certain guardians of property to provide confidential information about a ward which is related to an investigation arising under specified provisions to a clerk or to an Office of Public and Professional Guardians investigator

799584

576-03014-18

conducting such an investigation; providing that any such clerk or Office of Public and Professional Guardians investigator has a duty to maintain the confidentiality of such information; providing an effective date.

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

Section 1. Subsection (1) of section 744.2104, Florida Statutes, is amended to read:

744.2104 Access to records by the Office of Public and Professional Guardians; confidentiality.—

(1) Notwithstanding any other provision of law to the contrary, any medical, financial, or mental health records held by an agency, or the court and its agencies, or financial audits prepared by the clerk of the court pursuant to s. 744.368 and held by the court, which are necessary as part of an investigation of a guardian as a result of a complaint filed with the Office of Public and Professional Guardians or its designee to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports, shall be provided to the Office of Public and Professional Guardians upon that office's request. Any confidential or exempt information provided to the Office of Public and Professional Guardians shall continue to be held confidential or exempt as otherwise provided by law.

Section 2. Subsection (5) of section 744.368, Florida Statutes, is amended to read:

744.368 Responsibilities of the clerk of the circuit

576-03014-18

court.—

(5) If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship. As a part of this review, the clerk may conduct audits and may cause the initial and annual guardianship reports to be audited. The clerk shall advise the court of the results of any such audit. Any fee or cost incurred by the guardian in responding to the review or audit may not be paid or reimbursed by the ward's assets if there is a finding of wrongdoing by the court.

Section 3. Subsection (4) is added to section 744.3701, Florida Statutes, to read:

744.3701 Confidentiality.—

(4) The clerk may disclose confidential information to the Department of Children and Families or law enforcement agencies for other purposes as provided by court order.

Section 4. Subsection (17) of section 744.444, Florida Statutes, is amended to read:

744.444 Power of guardian without court approval.—Without obtaining court approval, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(17) Provide confidential information about a ward which ~~that~~ is related to an investigation arising under s. 744.368 to the clerk, part II of this chapter to an Office of Public and Professional Guardians investigator, or part I of chapter 400 to

576-03014-18

a local or state ombudsman council member conducting such an investigation. Any such clerk, Office of Public and Professional Guardians investigator, or ombudsman shall have a duty to maintain the confidentiality of such information.

Section 5. This act shall take effect July 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/SB 1002
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senators Passidomo and Bean
SUBJECT:	Guardianship
DATE:	February 23, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Favorable**
2.	Harkness	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Harkness	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1002 identifies several specific actions that circuit court clerks may take when reviewing guardianships. The bill also expressly authorizes designees in the Office of Public and Professional Guardians to receive otherwise confidential documents when investigating guardianships. The circuit court clerks serve as the custodians of guardianship files and must review certain reports to ensure that guardians are correctly performing their responsibilities. The Office of Public and Professional Guardians is authorized to appoint certain types of guardians and investigate and, when appropriate, discipline guardians who violate their statutory duties.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Guardians

A guardian may be described as someone who has been given the legal duty and authority to care for another person or his or her property because of that person's infancy, disability, or incapacity.[1] Guardianships are trust relationships designed to protect vulnerable members of

[1] BLACK'S LAW DICTIONARY, 10th edition, 2014.

society who do not have the ability to protect themselves. The person for whom a guardian is appointed is called a "ward."[2] Once a guardian is appointed by the court, the guardian serves as a surrogate decision-maker and makes personal or financial decisions, or both, for the ward.[3] In Florida, guardianship matters are governed and controlled exclusively by statute.[4]

Annual Accounting

Each guardian of the property of a ward must file an annual accounting with the court.[5] The annual accounting must include a full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period. However, the requirement for an accounting does not apply to any property or trust of which the ward is a beneficiary but which is not under the control or administration of the guardian.[6] The guardian must obtain a receipt, cancelled check, or other proof of payment for all expenditures and disbursements made on behalf of the ward. The guardian must preserve all evidence of payment, together with any substantiating papers, for 3 years after his or her discharge as a guardian. These items do not need to be filed with the court but must be made available for inspection and review as the court may order.[7]

Responsibilities of the Clerk of the Court to Review Guardianship Reports

The State Constitution establishes the office of clerk of the circuit court in each county. This provision is contained in Article 5, section 16, the article that establishes the Judiciary. The duties of the clerk may be detailed by special or general law.

In addition to the duty to serve as the custodian of the guardianship files, the clerk must review each initial and annual guardianship report to ensure it contains information about the ward that addresses mental and physical health care, physical and mental health examinations, personal and social services, residential setting, the application of insurance, private and government benefits, and the initial verified inventory or the annual accounting.[8]

The clerk has 30 days after the initial or annual reports are filed to complete a review of the report. He or she has 90 days after the verified inventory and accounts are filed to audit those submissions. The clerk must advise the court of the results of the audit and report to the court when a report is not timely filed.[9]

In 2014, the Legislature expanded the authority and responsibilities of the clerk as auditor of guardianship reports.[10] The statutes now provide that if the clerk believes that a further review is

[2] Section 744.102(22), F.S.
[3] Section 744.102(9), F.S.
[4] *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla. 2d DCA 1966); *Hughes v. Bunker*, 76 So. 2d 474, 476 (1954).
[5] Section 744.3678(1), F.S.
[6] Section 744.3678(2)(a), F.S.
[7] Section 744.3678(3), F.S.
[8] Section 744.368(1), F.S.
[9] Section 744.368(2), (3), and (4), F.S.
[10] Ch. 2014-124, Laws of Fla.

appropriate, he or she may request and review records and documents that reasonably impact the guardianship assets. These records and documents may include but are not limited to, the beginning inventory balance and any fees charged to the guardianship.[11] If a guardian does not produce records and documents to the clerk upon request, the clerk may request the court to enter an order by filing an affidavit that identifies the records and documents requested and shows good cause as to why those items requested are needed to complete the audit.[12]

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The Office of Public and Professional Guardians (OPPG) is situated within the Department of Elder Affairs. It is responsible for appointing local public guardians to provide services to people who do not have enough income or assets to afford a private guardian and no family member or friend is willing to serve. The Office contracts with 17 local offices of public guardians and is responsible for registering and educating professional guardians in the state. In 2016, the Office's responsibilities were increased to include regulating professional guardians which involves investigating, and if appropriate, disciplining guardians who violate the law.[14] As part of its investigative responsibilities, OPPG is authorized to request and be provided records held by an agency, the court and its agencies, or financial audits prepared by a clerk and held by the court which are necessary as part of an investigation when a complaint is filed against a guardian.[15] If confidential or exempt information is provided to OPPG, it continues its status as confidential or exempt.[16]

Since OPPG began receiving complaints on October 1, 2017, it has referred 83 legally sufficient complaints for further investigation. In 30 of those cases, letters of concern were issued or discipline was imposed or the cases were determined to be unfounded. The remaining 53 cases are still open and ongoing.[17]

Seven clerk offices around the state have specialized units that are trained to provide independent investigative services of professional guardianships. The Office of Public and Professional Guardians has contracted with these accredited units to perform investigations of legally sufficient complaints regarding the conduct of professional guardians. These investigations are performed using professional investigative standards. The clerk investigative units compare professional guardians' conduct to Florida Guardianship Law, the Florida Criminal Code, and Standards of Practice for Professional Guardians. All facts and findings are reported to the OPPG

[11] Section 744.368(5), F.S.
[12] Section 744.368(6), F.S.
[13] Section 744.368(7), F.S.
[14] Office of Public & Professional Guardians, Department of Elder Affairs, *Office of Public & Professional Guardians: Who We Are* http://elderaffairs.state.fl.us/doea/spgo.php (last visited Jan. 6, 2018).
[15] Section 744.2104(1), F.S.
[16] *Id*.
[17] Telephone conversation with Carol Berkowitz, Executive Director of the Office of Public and Professional Guardians, Tallahassee, Fla. (Jan. 4, 2018).

for administrative complaints, and if necessary, a referral to a criminal justice agency. The Palm Beach County Clerk serves as the administrative coordinator and chief investigator. The remaining clerk offices are Pinellas County, Polk County, Okaloosa County, Lake County, Lee County, and Sarasota County.

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The Power of a Guardian to Act without Court Approval

Two types of guardians may act without court approval when dealing with the property of a ward.[19] Those types are a plenary guardian of the property or a limited guardian of the property.[20] As specified in statute, the guardian does not need court approval to conduct a list of activities,[21] including the authority to provide confidential information about a ward to a local or state ombudsman member conducting an investigation involving a long-term care facility.

III. Effect of Proposed Changes:

This bill identifies specific actions that the circuit court clerks may take when reviewing guardianships. The bill also expressly authorizes designees of the Office of Public and Professional Guardians to receive otherwise confidential documents when investigating guardianships.

Section 1 amends s. 744.2104(1), F.S., which addresses the OPPG's ability to access records when a complaint is filed against a guardian and an investigation is initiated. In adding the words "or its designee," the bill clarifies that the seven specialized units that perform investigations of

[18] Florida Demographic Estimating Conference, February 2017 and the University of Florida, Bureau of Economic and Business Research, Florida Population Studies, Bulletin 178, June 2017. Available at http://edr.state.fl.us/Content/population-demographics/data/pop_census_day-2016.pdf and http://edr.state.fl.us/Content/population-demographics/data/index-floridaproducts.cfm.

[19] Section 744.444, F.S.

[20] A plenary guardian is a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court finds that the ward lacks the capacity to perform all of the necessary tasks to care for his or her person or property. Section 744.102(9)(b), F.S. A limited guardian is a guardian appointed by the court to exercise the legal rights and powers specifically designated by the court after the court finds that the ward lacks the capacity to do some, but not all tasks, necessary to care for his or her person or property, or after he or she voluntarily petitions the court for appointment of a limited guardian.

[21] Those enumerated activities include the ability to: retain or receive assets, vote or not vote stocks or other securities, insure assets and himself or herself against liability, execute instruments, pay taxes, assessments, certain encumbrances, and reasonable living expenses, elect to dissent from a will, make an election, or assert certain rights, deposit or invest certain assets, pay incidental expenses for the administration of the estate, sell or exercise stock rights and consent to activities of a business enterprise, employ necessary persons to advise or assist in performing the guardian's duties, execute and deliver certain instruments to carry out court order, hold securities, and pay or reimburse costs incurred.

complaints at the direction of the OPPG are authorized to receive records held by the court or its agencies which are necessary as part of an investigation of a guardian.

Section 2 amends s. 744.368, F.S., which addresses the responsibilities of the clerk of the circuit court to review guardianship reports. The language added to the statute expressly authorizes clerks, when conducting a further review of inventories and accountings, to conduct audits and cause initial and annual guardianship reports to be audited. The clerk must advise the court of the results of the audit. If a fee or cost is incurred by the guardian when he or she responds to the review or audit, it may not be paid or reimbursed using the ward's assets if the court finds an act of wrongdoing on the part of the guardian.

Section 3 amends s. 744.3701, F.S., which pertains to the disclosure and confidentiality of guardianship inspections and reports. The bill provides that the clerk may disclose confidential information to the Department of Children and Families or law enforcement agencies "for other purposes," as provided by a court order. The confidential information described in s. 744.3701(3), F.S., which may not be disclosed unless specifically authorized, is a court record pertaining to the settlement of a ward's or minor's claim, including a petition for approval of a settlement, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf a ward of minor. What the "other purposes" are is not explained in the bill.

Section 4 amends s. 744.444, F.S., which addresses the power of a guardian to act without court approval regarding the property of a ward. The bill expands the authority of a guardian to disclose confidential information about a ward to additional investigative entities. Specifically, the guardian is authorized to provide the confidential information to the court clerk or an investigator with the OPPG for investigations that arise under a review of records and documents involving assets, the beginning inventory balance, and fees charged to the guardianship. The clerk or investigator has a duty to maintain the confidentiality of that disclosed information.

The bill takes effect July 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:

If the court finds a guardian guilty or wrongdoing in a report or audit, those costs or fees incurred by the guardian in responding must be borne by the guardian. The ward's assets may not be used for payment or reimbursement of the guardian.

C. Government Sector Impact:

The disclosure of confidential information about a ward to additional investigative entities may result in additional costs to those entities. However, the bill has no discernible impact on state expenditures or revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 744.2104, 744.368, 744.3701, and 744.444.

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute removes language that provides that the clerk's advice to the court may not be considered an ex parte communication and requires certain information to be provided to a designee of the Office of Public and Professional Guardians.

B. Amendments:

None.

By Senator Passidomo

28-01378-18 20181002__

A bill to be entitled

An act relating to guardianship; amending s. 744.2104, F.S.; requiring certain medical, financial, or mental health records or financial audits that are necessary as part of an investigation of a guardian as a result of a complaint filed for certain purposes with a designee of the Office of Public and Professional Guardians to be provided to the Office of Public and Professional Guardians upon that office's request; amending s. 744.368, F.S.; authorizing the clerk of the court to conduct audits and cause the initial and annual guardianship reports to be audited under certain circumstances; requiring the clerk to advise the court of the results of any such audit; prohibiting any fee or cost incurred by the guardian in responding to the review or audit from being paid or reimbursed by the ward's assets if there is a finding of wrongdoing by the court; prohibiting the clerk's advice to the court from being considered an ex parte communication; amending s. 744.3701, F.S.; authorizing the clerk to disclose confidential information to the Department of Children and Families or law enforcement agencies for certain purposes as provided by court order; amending s. 744.444, F.S.; authorizing certain guardians of property to provide confidential information about a ward which is related to an investigation arising under specified provisions to a clerk or to an Office of Public and Professional Guardians investigator conducting such an

28-01378-18 20181002__

investigation; providing that any such clerk or Office of Public and Professional Guardians investigator has a duty to maintain the confidentiality of such information; providing an effective date.

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

Section 1. Subsection (1) of section 744.2104, Florida Statutes, is amended to read:

744.2104 Access to records by the Office of Public and Professional Guardians; confidentiality.—

(1) Notwithstanding any other provision of law to the contrary, any medical, financial, or mental health records held by an agency, or the court and its agencies, or financial audits prepared by the clerk of the court pursuant to s. 744.368 and held by the court, which are necessary as part of an investigation of a guardian as a result of a complaint filed with the Office of Public and Professional Guardians or its designee to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports, shall be provided to the Office of Public and Professional Guardians upon that office's request. Any confidential or exempt information provided to the Office of Public and Professional Guardians shall continue to be held confidential or exempt as otherwise provided by law.

Section 2. Subsection (5) of section 744.368, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

744.368 Responsibilities of the clerk of the circuit

court.—

(5) If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship. As a part of this review, the clerk may conduct audits and may cause the initial and annual guardianship reports to be audited. The clerk shall advise the court of the results of any such audit. Any fee or cost incurred by the guardian in responding to the review or audit may not be paid or reimbursed by the ward's assets if there is a finding of wrongdoing by the court.

(8) The clerk's advice to the court may not be considered an ex parte communication.

Section 3. Subsection (4) is added to section 744.3701, Florida Statutes, to read:

744.3701 Confidentiality.—

(4) The clerk may disclose confidential information to the Department of Children and Families or law enforcement agencies for other purposes as provided by court order.

Section 4. Subsection (17) of section 744.444, Florida Statutes, is amended to read:

744.444 Power of guardian without court approval.—Without obtaining court approval, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(17) Provide confidential information about a ward which ~~that~~ is related to an investigation arising under s. 744.368 to

the clerk, part II of this chapter to an Office of Public and Professional Guardians investigator, or part I of chapter 400 to a local or state ombudsman council member conducting such an investigation. Any such clerk, Office of Public and Professional Guardians investigator, or ombudsman shall have a duty to maintain the confidentiality of such information.

Section 5. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/22/18
Meeting Date

SB 1002
Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Carl Hill Galloway III

Job Title Advocate/Guardian/Parent

Address 195 0 King Arthur Circle
Street
Maitland FL 32751
City *State* *Zip*

Phone 407 376 9339

Email chgalloway7@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CHGalLoway Family

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1002
Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave.
Street

Phone 850 228-4243

Tally FL 32301
City *State* *Zip*

Email zsmith@aarp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1002
Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Fred Baggett

Job Title Chair, Greenberg Traurig

Address 101 E. College Av. *Street*

Phone 222-6891

Tallahassee FL 32301
City *State* *Zip*

Email baggettf@gtlaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Court Clerks & Comptrollers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 9, 2018

I respectfully request that **Senate Bill #1002**, relating to Guardianship, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1046
INTRODUCER:	Children, Families, and Elder Affairs Committee; and Senators Book and Campbell
SUBJECT:	Trust Fund for Victims of Human Trafficking and Prevention/Department of Law Enforcement
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Fav/CS**
2.	Sadberry	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1046 creates the Trust Fund for Victims of Human Trafficking and Prevention within the Florida Department of Law Enforcement (FDLE). The trust fund consists of civil penalties imposed by, and punitive damages awarded by, the courts in civil actions brought on behalf of victims of human trafficking and funds received from any other sources including legislative appropriations.

The Florida Constitution requires a bill creating a new trust fund to pass by a three-fifths vote of the membership of each chamber of the Legislature. State trust funds must terminate not more than four years after the effective date of the bill authorizing the initial creation of the trust fund unless the Legislature sets a shorter time.

The bill provides that it shall take effect on the same date that SB 1044 or similar legislation takes effect, if such legislation is adopted in the same session and becomes law. The effective date of CS/SB 1044 is October 1, 2018.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in

the world who are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.[1]

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.[2]

SB 1044 Human Trafficking

CS/SB 1044, which is linked to SB 1046, creates a civil cause of action for victims of human trafficking to bring against the trafficker[3] or facilitator[4] of human trafficking. The bill allows a victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the victim.

A victim who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs.

If a victim prevails in an action, the court must award a civil penalty against the defendant of $50,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty cannot be disclosed to the jury. The proceeds from the civil penalty must be deposited into the trust fund.

If a victim recovers punitive damage in an action, the court must distribute the punitive damages award equally between the victim and the trust fund.

III. Effect of Proposed Changes:

Section 1 creates the Trust Fund for Victims of Human Trafficking and Prevention within FDLE. The bill requires that the trust fund must consist of civil penalties imposed by, and punitive damages awarded by, the courts in civil actions brought on behalf of victims and funds received from any other source, including legislative appropriations. The bill also requires the FDLE to administer the trust fund.

The purposes of the trust fund include, but are not limited to:

---

[1] U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited February 8, 2018). Polaris, *Human Trafficking: The Facts*, 2016, available at https://polarisproject.org/facts (last visited February 8, 2018).

[2] *See* ss. 787.06(3) and (4), F.S.

[3] SB 1044 defines a "trafficker" as any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

[4] SB 1044 defines a "facilitator" as a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking.

- Educating the public about the recruitment, trafficking, and exploitation of persons in connection with human trafficking;
- Assisting in the prevention of the recruitment of minors in Florida schools for exploitation;
- Establishing a survivors' resource center to make available to survivors of human trafficking legal services, social services, safe harbors, safe houses, and language services;
- Advertising the National Human Trafficking Resource Center hotline number and the BeFree Textline in diverse venues;
- Assisting in the coordination between law enforcement and service providers;
- Assisting in vacating any convictions of minors who were victims of human trafficking, whose offenses were the result of force, duress, or coercion, and
- Providing medical and mental health examinations and treatment, living expenses, lost wages, and repatriation services to human trafficking victims.

The bill provides FDLE with the ability to contract entities having appropriate expertise and experience to manage and provide services outlined in the trust fund.

In accordance with section 19(f)(2), Art. III, of the Florida Constitution, the trust fund must, unless terminated sooner, be terminated on July 1, 2022. Before its scheduled termination, the trust fund must be reviewed as provided in s. 215.3206(1) and (2), F.S.

Section 2 provides that the bill shall take effect on the same date that SB 1044 or similar legislation takes effect, if such legislation is adopted in the same session and becomes law. The effective date of CS/SB 1044 is October 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDLE's agency bill analysis states that post-conviction compensation to victims falls outside of the department's current defined mission and normal scope of operations. FDLE suggests that the Department of Legal Affairs may be a more appropriate entity to administer the trust fund.[5]

VIII. Statutes Affected:

This bill creates section 787.0611 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 Children, Families, and Elder Affairs on February 12, 2018:

- Eliminates the requirement that funds must only be used for medical and mental health examinations and treatment, living expenses, lost wages, and repatriation services for human trafficking victims.
- Requires that funds be used either directly to aid victims and/or for activities and programs related to victim assistance, education, repatriation, and other related purposes.
- Provides FDLE with the ability to contract entities having appropriate expertise and experience to manage and provide services outlined in the trust fund.

B. Amendments:

None.

[5] *Supra* at note 5.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on the Environment and Natural Resources, *Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Environmental Preservation and Conservation
Health Policy
Rules

SENATOR LAUREN BOOK
Democratic Leader Pro Tempore
32nd District

February 13, 2018

Chair Rob Bradley
Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Bradley,

I respectfully request that you place CS/SB 1046, relating to Trust Fund for Victims of Human Trafficking and Prevention/Department of Law Enforcement, on the agenda of the Committee on Appropriations at your earliest convenience.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Lauren Book

Senator Lauren Book
Senate District 32

cc: Mike Hansen, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
❒ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

1046
Bill Number (if applicable)

Topic Human Trafficking T.F.

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 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 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:	SB 1066
INTRODUCER:	Senator Baxley
SUBJECT:	Transportation Facility Designations/Nelle W. Needham Memorial Highway
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Favorable**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Favorable**
3.	McAuliffe	Hansen	AP	**Pre-meeting**

I. Summary:

SB 1066 designates the portion of S.R. 464/Maricamp Road between S.E. 25th Avenue and S.E. 24th Street in Marion County as "Nelle W. Needham Memorial Highway" and directs the Florida Department of Transportation (FDOT) to erect suitable markers.

The estimated cost to the FDOT to install the designation markers required under this bill is $1,000.

The bill takes effect July 1, 2018.

II. Present Situation:

Transportation Facility Designations

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

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

[1] Section 334.071(1), F.S.
[2] Section 334.071(2), F.S.

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

Nelle W. Needham

Described as a champion for people with disabilities, Nelle W. Needham began working in 1959 with Advocacy Resource Center (ARC) Marion, then known as New Hope School and Opportunity Workshop. She was the first executive director, serving from 1964 through 1990. During her more than 30 years with ARC Marion, Ms. Needham was presented with numerous awards for her contributions to the community and the state, including the Exchange Club Book of Golden Deeds Award, the Ocala Jaycees Outstanding Citizen Award for Outstanding Contribution, the Humanitarian Award from the Ocala Jaycee-ettes, and the Jefferson Award from the State of Florida.[4]

III. Effect of Proposed Changes:

The bill designates the portion of S.R. 464/Maricamp Road between S.E. 25th Avenue and S.E. 24th Street in Marion County as "Nelle W. Needham Memorial Highway" and directs the Florida Department of Transportation (FDOT) to erect suitable markers.

The bill takes effect July 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.

[3] Section 334.071(3), F.S.
[4] Information on file in the Senate Transportation Committee.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The estimated cost to erect the designation markers required by the bill is $1,000, based on the assumptions that two markers are required and each marker costs the FDOT at least $500. The estimate includes sign fabrication, installation, and maintenance over time but does not include any additional expenses related to maintenance of traffic, the dedication event, or replacement necessitated by damage, vandalism, or storm events.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida Law.

IX. Additional Information:

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

None.

B. Amendments:

None.

723622

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 10 - 17

and insert:

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

(1) That portion of S.R. 464/Maricamp Road between S.E. 25th Avenue and S.E. 24th Street in Marion County is designated as "Nelle W. Needham Memorial Highway."

(2) That portion of S.R. 19 between Lane Park Cutoff Road

723622

and U.S. 441 in Lake County is designated as "Sheriff Chris Daniels Memorial Highway."

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

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

And the title is amended as follows:

Delete lines 3 - 4

and insert:

designations; providing honorary designations of certain transportation facilities in specified counties;

By Senator Baxley

12-01411-18 20181066__

A bill to be entitled

An act relating to transportation facility designations; providing an honorary designation of a certain transportation facility in a specified county; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Nelle W. Needham Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of S.R. 464/Maricamp Road between S.E. 25th Avenue and S.E. 24th Street in Marion County is designated as "Nelle W. Needham Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Nelle W. Needham Memorial Highway as described in subsection (1).

Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Agriculture
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 6, 2018

The Honorable Senator Rob Bradley
414 Senate Office Building
404 So Monroe Street
Tallahassee, FL 32399

Dear Senator Bradley,

I respectfully request SB 1066 Transportation Facility Designations/Nelle W. Needham Memorial Highway be placed on your next available agenda.

This bill requires the Department of Transportation to erect suitable markers designating a certain portion of S.R. 464/Maricamp Road as the Nelle W. Needham Memorial Highway.

Mrs. Needham began working with the ARC in 1959, then known as New Hope School and Opportunity Workshop. She became the first Executive Director in 1964 and served through 1990. During her more than 30 years with ARC Marion she was presented with many awards, including the Exchange Club Book of Golden Deeds Award; Ocala Jaycees Outstanding Citizen Award for Outstanding Contribution; The Humanitarian Award from Ocala Jayceeettes and the Jefferson Award from the State of Florida.

I appreciate your favorable consideration.

Onward & Upward,

Dennis K Baxley

Senator Dennis Baxley
Senate District 12

DKB/amb

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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1132 (237298)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources) and Senator Hutson
SUBJECT:	Vessel Safety Inspection Decals
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Favorable**
2.	Reagan	Betta	AEN	**Recommend: Fav/CS**
3.	Reagan	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/SB 1132 authorizes the Fish and Wildlife Conservation Commission (FWC) to designate by rule the timeframe for the expiration of, and the specific design for, the safety inspection decal for vessels. The bill specifies that the decal may not be valid for more than five years, and, at a minimum, meet the standards specified in s. 327.70(2)(a), F.S., which requires the decal to be displayed:

- Within six inches of the vessel's properly displayed vessel registration decal; or
- For a non-motorized vessel which is not required to be registered, on the forward half of the port side of the vessel above the waterline.

The FWC will have additional workload relating to rulemaking to implement the bill. The associated costs of such workload will be absorbed within the FWC's existing resources.

II. Present Situation:

Florida Vessel Safety Law

Florida leads the nation in the number of vessels registered in any state with close to one million vessels.[1] The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating

[1] Fish and Wildlife Conservation Commission (FWC), 2016 Boating Accident Statistical Report, *Introduction*, II (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).

and managing the waterways of the state to provide for safe and enjoyable boating.[2] Specifically, the Division of Law Enforcement within the FWC provides protection to those who enjoy Florida's waterways, while also enforcing resource protection and boating safety laws.[3]

Chapter 327, F.S., titled the "Florida Vessel Safety Law," includes laws relating to vessel safety, such as boating safety education course requirements, vessel operation requirements, and the delineation of boating-restricted areas. The Florida Vessel Safety Law, as well as vessel titling, certificate, and registration requirements, are authorized to be enforced by the following entities or officers:

- The Division of Law Enforcement within the FWC and its officers;
- Sheriffs of the various counties and their deputies;
- Municipal police officers; and
- Any other law enforcement officer described in s. 943.10, F.S.[4]

Safety Equipment and Inspections

The following safety items are required by state and federal law to be aboard a vessel and if found to be missing during a safety inspection can result in a vessel citation:

- Visible distress signals;
- Fire extinguishers;
- Navigation lights;
- Personal floatation devices; and
- Sound-producing devices.[5]

The United States Coast Guard offers Vessel Safety Checks (VSC) free of charge.[6] Boats that pass the safety check are awarded a distinctive VSC Decal that alerts the Coast Guard, Harbor Patrol, and other law enforcement agencies that the boat was in full compliance with all federal and state boating laws for that year.[7] The decal must be immediately affixed to a portion of the boat where it is readily visible to law enforcement authorities.[8]

The FWC also issues safety inspection decals upon demonstrated compliance with the safety equipment carriage and use requirements during a safety inspection administrated by a law enforcement officer.[9] The safety inspection decal, if displayed, must be located within six inches

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[2] FWC, *Boating in Florida*, http://myfwc.com/boating/ (last visited Jan. 8, 2018).
[3] FWC, 2016 Boating Accident Statistical Report, *Introduction*, I (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).
[4] Section 327.70, F.S.; Section 943.10, F.S., defines the term "law enforcement officer" as "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state…"
[5] *See* s. 327.50, F.S., and FWC, *Boating Regulations, Equipment and Lighting Requirements*, *available at* http://myfwc.com/boating/regulations/#nogo (last visited Jan. 8, 2018) and U.S. Coast Guard Auxiliary, *Vessel Safety Checks*, *available at* http://cgaux.org/vsc/ (last visited Jan. 8, 2018).
[6] U.S. Coast Guard Auxiliary, *Vessel Safety Check Website*, *available at* http://wow.uscgaux.info/content.php?unit=V-DEPT (last visited Jan. 8, 2018).
[7] U.S. Coast Guard, *Vessel Safety Check Manual*, (Oct. 2014) *available at* http://vdept.cgaux.org/pdf-files/CIM_16796_8A_Printable_Version.pdf (last visited Jan. 8, 2018).
[8] *Id*.
[9] Section 327.70(2), F.S.

of the inspected vessel's properly displayed vessel registration decal or, for nonmotorized vessels that are not required to be registered, must be located above the waterline on the forward half of the port side of the vessel.[10]

The FWC and any other law enforcement agency are authorized to inspect and investigate vessels as necessary to carry out and enforce the Florida Vessel Safety Law.[11] An officer is prohibited from boarding a vessel to make a safety inspection if the owner or operator is not aboard.[12] If the owner or operator is aboard, an officer is authorized to board a vessel with the consent or when the officer has probable cause or knowledge to believe that a violation of the Florida Vessel Safety Law is occurring. An officer may board a vessel if the operator refuses or is unable to display the safety equipment required by law when requested to do so by an officer or when the safety equipment to be inspected is permanently installed and is not visible for inspection unless the officer boards the vessel.[13]

Additionally, if a vessel has a properly displayed and valid safety inspection decal created or approved by the FWC, a law enforcement officer may not stop such vessel for the sole purpose of inspecting the vessel for compliance with the safety equipment carriage and use requirements, unless there is a reasonable suspicion that a violation of a safety equipment carriage or use requirement has occurred or is occurring.[14]

The following chart provides a summary of the citations that were issued in 2016 relating to violations for registration and numbering requirements or safety equipment and regulations.

[10] *Id*.
[11] *See* ss. 327.56, 327.70(4) and 328.18, F.S.; ch. 327, F.S. compromises the *Florida Vessel Safety Law*. The U.S. Constitution protects people from unreasonable searches and seizures by the government through the Fourth Amendment, which provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…." The extent to which an individual is protected by the Fourth Amendment depends on the location of the search or seizure. None of the similar safeguards that are applicable to stops of motor vehicles on less than a probable cause are necessary predicates to stop a vessel. *See* U.S. CONST. amend. IV and U.S. Government Publishing Office, *Amendment 4-Search and Seizure*, pg. 1241 (Oct. 5, 2014), *available at* https://www.gpo.gov/fdsys/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-5.pdf (last visited Jan. 8, 2018).
[12] Section 327.56, F.S.
[13] *Id*.
[14] Section 327.70, F.S.

2016 Uniform Boating Citation Summary[15]

Citation Type	Number of Citations Issued	
	FWC	Other
Registration and Numbering Operation of unregistered/unnumbered vessels Application, certificate, number or decal violation Special manufacturer and dealer numbers Violation relating to vessel titling Violation relating to Hull Identification Numbers	1,970	556
Safety Equipment and Regulations Equipment and lighting requirements	3,260	432

III. Effect of Proposed Changes:

The bill authorizes the Fish and Wildlife Conservation Commission (FWC) to designate by rule the timeframe for the expiration of, and the specific design for, the safety inspection decal. The bill specifies that the decal may not be valid for more than five years, and, at a minimum, meet the standards specified in s. 327.70(2)(a), F.S., which requires the decal to be displayed:

- Within six inches of the vessel's properly displayed vessel registration decal; or
- For a non-motorized vessel which is not required to be registered, on the forward half of the port side of the vessel above the waterline.

The bill provides that all safety inspection decals issued by the FWC on or before December 31, 2018, are no longer valid after that date.

The bill takes effect January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[15] FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, 35 (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Fish and Wildlife Conservation Commission will experience additional workload associated with rulemaking authorized by this bill. The indeterminate costs associated with this workload will be absorbed within the commission's existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 327.70 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 by Appropriations Subcommittee on the Environment and Natural Resources on January 24, 2018:
Provides that all decals issued by the FWC on or before December 31, 2018, are no longer valid after that date. Delays the effective date from July 1, 2018, to January 1, 2019.

B. Amendments:

None.

237298

576-02407-18

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 vessel safety inspection decals; amending s. 327.70, F.S.; providing rulemaking authority to the Fish and Wildlife Conservation Commission regarding expiration and design of safety inspection decals; specifying standards for such rulemaking; providing a maximum period of validity; specifying that decals issued on or before a specified date are no longer valid after that date; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 327.70, Florida Statutes, is amended to read:

327.70 Enforcement of this chapter and chapter 328.—

(2)(a)1. Upon demonstrated compliance with the safety equipment carriage and use requirements of this chapter during a safety inspection initiated by a law enforcement officer, the operator of a vessel shall be issued a safety inspection decal signifying that the vessel is deemed to have met the safety equipment carriage and use requirements of this chapter at the time and location of such inspection. The commission may designate by rule the timeframe for expiration of, and the specific design for, the safety inspection decal. However, a decal may not be valid for more than 5 years and, at a minimum, must meet the

237298

576-02407-18

standards specified in this paragraph. All decals issued by the commission on or before December 31, 2018, are no longer valid after that date.

2. The safety inspection decal, if displayed, must be located within 6 inches of the inspected vessel's properly displayed vessel registration decal. For nonmotorized vessels that are not required to be registered, the safety inspection decal, if displayed, must be located above the waterline on the forward half of the port side of the vessel.

Section 2. This act shall take effect January 1, 2019.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1132
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources) and Senator Hutson
SUBJECT:	Vessel Safety Inspection Decals
DATE:	February 23, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Favorable**
2.	Reagan	Betta	AEN	**Recommend: Fav/CS**
3.	Reagan	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1132 authorizes the Fish and Wildlife Conservation Commission (FWC) to designate by rule the timeframe for the expiration of, and the specific design for, the safety inspection decal for vessels. The bill specifies that the decal may not be valid for more than five years, and, at a minimum, meet the standards specified in s. 327.70(2)(a), F.S., which requires the decal to be displayed:

- Within six inches of the vessel's properly displayed vessel registration decal; or
- For a non-motorized vessel which is not required to be registered, on the forward half of the port side of the vessel above the waterline.

The FWC will have additional workload relating to rulemaking to implement the bill. The associated costs of such workload will be absorbed within the FWC's existing resources.

II. Present Situation:

Florida Vessel Safety Law

Florida leads the nation in the number of vessels registered in any state with close to one million vessels.[1] The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating

[1] Fish and Wildlife Conservation Commission (FWC), 2016 Boating Accident Statistical Report, *Introduction*, II (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).

and managing the waterways of the state to provide for safe and enjoyable boating.[2] Specifically, the Division of Law Enforcement within the FWC provides protection to those who enjoy Florida's waterways, while also enforcing resource protection and boating safety laws.[3]

Chapter 327, F.S., titled the "Florida Vessel Safety Law," includes laws relating to vessel safety, such as boating safety education course requirements, vessel operation requirements, and the delineation of boating-restricted areas. The Florida Vessel Safety Law, as well as vessel titling, certificate, and registration requirements, are authorized to be enforced by the following entities or officers:

- The Division of Law Enforcement within the FWC and its officers;
- Sheriffs of the various counties and their deputies;
- Municipal police officers; and
- Any other law enforcement officer described in s. 943.10, F.S.[4]

Safety Equipment and Inspections

The following safety items are required by state and federal law to be aboard a vessel and if found to be missing during a safety inspection can result in a vessel citation:

- Visible distress signals;
- Fire extinguishers;
- Navigation lights;
- Personal floatation devices; and
- Sound-producing devices.[5]

The United States Coast Guard offers Vessel Safety Checks (VSC) free of charge.[6] Boats that pass the safety check are awarded a distinctive VSC Decal that alerts the Coast Guard, Harbor Patrol, and other law enforcement agencies that the boat was in full compliance with all federal and state boating laws for that year.[7] The decal must be immediately affixed to a portion of the boat where it is readily visible to law enforcement authorities.[8]

The FWC also issues safety inspection decals upon demonstrated compliance with the safety equipment carriage and use requirements during a safety inspection administrated by a law enforcement officer.[9] The safety inspection decal, if displayed, must be located within six inches

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[2] FWC, *Boating in Florida*, http://myfwc.com/boating/ (last visited Jan. 8, 2018).
[3] FWC, 2016 Boating Accident Statistical Report, *Introduction*, I (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).
[4] Section 327.70, F.S.; Section 943.10, F.S., defines the term "law enforcement officer" as "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state…"
[5] *See* s. 327.50, F.S., and FWC, *Boating Regulations, Equipment and Lighting Requirements, available at* http://myfwc.com/boating/regulations/#nogo (last visited Jan. 8, 2018) and U.S. Coast Guard Auxiliary, *Vessel Safety Checks, available at* http://cgaux.org/vsc/ (last visited Jan. 8, 2018).
[6] U.S. Coast Guard Auxiliary, *Vessel Safety Check Website, available at* http://wow.uscgaux.info/content.php?unit=V-DEPT (last visited Jan. 8, 2018).
[7] U.S. Coast Guard, *Vessel Safety Check Manual*, (Oct. 2014) *available at* http://vdept.cgaux.org/pdf-files/CIM_16796_8A_Printable_Version.pdf (last visited Jan. 8, 2018).
[8] *Id*.
[9] Section 327.70(2), F.S.

of the inspected vessel's properly displayed vessel registration decal or, for nonmotorized vessels that are not required to be registered, must be located above the waterline on the forward half of the port side of the vessel.[10]

The FWC and any other law enforcement agency are authorized to inspect and investigate vessels as necessary to carry out and enforce the Florida Vessel Safety Law.[11] An officer is prohibited from boarding a vessel to make a safety inspection if the owner or operator is not aboard.[12] If the owner or operator is aboard, an officer is authorized to board a vessel with the consent or when the officer has probable cause or knowledge to believe that a violation of the Florida Vessel Safety Law is occurring. An officer may board a vessel if the operator refuses or is unable to display the safety equipment required by law when requested to do so by an officer or when the safety equipment to be inspected is permanently installed and is not visible for inspection unless the officer boards the vessel.[13]

Additionally, if a vessel has a properly displayed and valid safety inspection decal created or approved by the FWC, a law enforcement officer may not stop such vessel for the sole purpose of inspecting the vessel for compliance with the safety equipment carriage and use requirements, unless there is a reasonable suspicion that a violation of a safety equipment carriage or use requirement has occurred or is occurring.[14]

The following chart provides a summary of the citations that were issued in 2016 relating to violations for registration and numbering requirements or safety equipment and regulations.

[10] *Id*.
[11] *See* ss. 327.56, 327.70(4) and 328.18, F.S.; ch. 327, F.S. compromises the *Florida Vessel Safety Law*. The U.S. Constitution protects people from unreasonable searches and seizures by the government through the Fourth Amendment, which provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…." The extent to which an individual is protected by the Fourth Amendment depends on the location of the search or seizure. None of the similar safeguards that are applicable to stops of motor vehicles on less than a probable cause are necessary predicates to stop a vessel. *See* U.S. CONST. amend. IV and U.S. Government Publishing Office, *Amendment 4-Search and Seizure*, pg. 1241 (Oct. 5, 2014), *available at* https://www.gpo.gov/fdsys/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-5.pdf (last visited Jan. 8, 2018).
[12] Section 327.56, F.S.
[13] *Id*.
[14] Section 327.70, F.S.

2016 Uniform Boating Citation Summary[15]

Citation Type	Number of Citations Issued	
	FWC	Other
Registration and Numbering Operation of unregistered/unnumbered vessels Application, certificate, number or decal violation Special manufacturer and dealer numbers Violation relating to vessel titling Violation relating to Hull Identification Numbers	1,970	556
Safety Equipment and Regulations Equipment and lighting requirements	3,260	432

III. Effect of Proposed Changes:

The bill authorizes the Fish and Wildlife Conservation Commission (FWC) to designate by rule the timeframe for the expiration of, and the specific design for, the safety inspection decal. The bill specifies that the decal may not be valid for more than five years, and, at a minimum, meet the standards specified in s. 327.70(2)(a), F.S., which requires the decal to be displayed:

- Within six inches of the vessel's properly displayed vessel registration decal; or
- For a non-motorized vessel which is not required to be registered, on the forward half of the port side of the vessel above the waterline.

The bill provides that all safety inspection decals issued by the FWC on or before December 31, 2018, are no longer valid after that date.

The bill takes effect January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[15] FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, 35 (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Fish and Wildlife Conservation Commission will experience additional workload associated with rulemaking authorized by this bill. The indeterminate costs associated with this workload will be absorbed within the commission's existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 327.70 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute provides that all decals issued by the FWC on or before December 31, 2018, are no longer valid after that date. Delays the effective date from July 1, 2018, to January 1, 2019.

B. Amendments:

None.

By Senator Hutson

7-00683A-18 20181132__

A bill to be entitled

An act relating to vessel safety inspection decals; amending s. 327.70, F.S.; providing rulemaking authority to the Fish and Wildlife Conservation Commission regarding expiration and design of safety inspection decals; specifying standards for such rulemaking; providing a maximum period of validity; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 327.70, Florida Statutes, is amended to read:

327.70 Enforcement of this chapter and chapter 328.—

(2)(a)1. Upon demonstrated compliance with the safety equipment carriage and use requirements of this chapter during a safety inspection initiated by a law enforcement officer, the operator of a vessel shall be issued a safety inspection decal signifying that the vessel is deemed to have met the safety equipment carriage and use requirements of this chapter at the time and location of such inspection. The commission may designate by rule the timeframe for expiration of, and the specific design for, the safety inspection decal. However, a decal may not be valid for more than 5 years and, at a minimum, must meet the standards specified in this paragraph.

2. The safety inspection decal, if displayed, must be located within 6 inches of the inspected vessel's properly displayed vessel registration decal. For nonmotorized vessels that are not required to be registered, the safety inspection

7-00683A-18 20181132__

decal, if displayed, must be located above the waterline on the forward half of the port side of the vessel.

Section 2. This act shall take effect July 1, 2018.

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

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 19, 2018

I respectfully request that **Senate Bill #1132**, relating to Vessel Safety Inspection Decals, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1184
INTRODUCER:	Senator Gibson
SUBJECT:	Closing the Gap Grant Program
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Gerbrandt	Williams	AHS	**Recommend: Favorable**
3.	Gerbrandt	Hansen	AP	**Favorable**

I. Summary:

SB 1184 expands the list of priority health areas eligible for funding under the "Closing the Gap" grant program to include lupus. The "Closing the Gap" program provides state grants for activities designed to reduce racial and ethnic health disparities.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

The Closing the Gap Grant Program

In 2000, the Florida Legislature created the Reducing the Racial and Ethnic Health Disparities: "Closing the Gap" (CTG) grant program to improve health outcomes of racial and ethnic populations.[1] The CTG program provides grants to stimulate the development of community-based and neighborhood-based projects that improve health outcomes of racial and ethnic populations within Florida counties.[2]

The CTG program is administered by the Department of Health (department). The department is responsible for publicizing the availability of the CTG program and grant funds, establishing the grant application process, providing technical assistance and training, developing uniform data reporting requirements, evaluating progress towards meeting grant objectives, and coordinating with other state and local programs to avoid duplication of effort.[3]

[1] Chapter 2000-256, ss. 31-32, Laws of Fla. (2000).
[2] Section 381.7352, F.S.
[3] Section 381.7353, F.S.

Eligibility

Any person, entity, or organization within a Florida county may submit a proposal for a CTG grant.[4] Persons, entities, or organizations within adjoining counties, with populations of less than 100,000, based on the annual estimates produced by the Population Program of the University of Florida Bureau of Economic and Business Research, may submit a multi-county proposal.[5] At least 20 percent of the appropriation for the CTG grant must be dedicated to proposals that address improving the racial and ethnic health status within specific Front Porch Florida Communities.[6]

Grant Proposals

Currently, CTG grants are awarded for proposals with strategies designed to:

- Address the physical and social determinants of health, particularly as it relates to evidence-based prevention, intervention, and local policy initiatives demonstrated to improve health outcomes.
- Address evidence-based interventions proven to:
  - Increase the percentage of minority children and adults who are at a healthy weight.
  - Reduce the non-white infant mortality rate.
  - Decrease the percentage of HIV-infected people in minority groups.
  - Increase the number of minorities who have access to and are receiving culturally and linguistically appropriate prevention, care and treatment services.
  - Increase access to resources that promote healthy behaviors.
  - Promote chronic disease self-management education.
  - Promote early detection and screening for chronic diseases such as cancer, heart disease and diabetes.
  - Increase immunization rates among adults, particularly among people over the age of 65.
  - Decrease racial and ethnic disparities in morbidity and mortality rates relating to cancer, HIV/AIDS, cardiovascular disease, diabetes and sickle cell disease.[7]

In Fiscal Year 2016-2017, the department awarded $3,004,666 to18 CTG proposals. The proposals covered priority health areas in diabetes, cardiovascular disease, HIV/AIDS, sickle cell disease, maternal and infant mortality, cancer, colorectal cancer, and oral health.[8]

Grant Awards

The amount of a grant award varies and is based on the county or neighborhood's population or the combined population from which a multi-county proposal is submitted.[9] The maximum grant

[4] Section 381.7354 (1), F.S.
[5] *Id.* at (2).
[6] *Id.* at (3). The Front Porch Florida Initiative was created by the Florida Legislature as a comprehensive, community-based urban core redevelopment program to encourage economic revitalization is the state's most distressed communities. *See* s. 20.60(5)(b), F.S.
[7] Department of Health, Office of Minority Health and Health Equity, *Reducing Racial and Ethnic Health Disparities Closing the Gap Grant Program (CTG) Request for Applications, RFA # 17-007, FY 2018-2019*, http://www.floridahealth.gov/programs-and-services/minority-health/closing-the-gap.html, (last visited Feb. 8, 2018).
[8] Department of Health, *Closing the Gap Contract Spreadsheet FY 2016-17*, (on file with the Senate Committee on Health Policy).
[9] Section 381.7356(3), F.S.

award per applicant is $200,000 for a twelve-month period.[10] Grant awards may be renewed annually subject to the availability of funds and the grantee's achievement of quality standards, objectives, and outcomes.[11]

Currently, the department is accepting applications until February 16, 2018, for grants beginning July 1, 2018.[12]

Matching Fund Requirements

Certain grantees are required to provide $1 in local matching funds for every $3 in state grant funds requested. Depending on the size of the county, in-kind contributions can be substituted for the required cash match.[13] The following table illustrates the matching fund requirements for each type of grantee.[14]

Closing the Gap Matching Funds Contribution Combinations	
Grantee Type	**Matching Funds Requirements**
County Population greater than 50,000	One dollar in local matching funds for every 3 dollars of grant funds - At least 50 percent of the local match must be in cash - Up to 50 percent of the local match may be in-kind contributions such as free services, office space or human resources.
County Population of 50,000 or less	Up to 100 percent of the local match may be in-kind contributions such as free services, office space or human resources.
Grantee is a Front Porch Community	No matching funds required

Health Disparities in Florida

In Florida, the ethnic and racial disparity in some health categories is significant (see table below).

[10] *Supra* note 7.
[11] Section 381.7356(4), F.S.
[12] *Supra* note 7.
[13] Section 381.7356(2), F.S.
[14] *Id.*

Minority Health Profiles – Select Indicators for 2016				
Indicator (per 100,000, unless noted)	**White Rate**	**Black Rate**[15]	**Hispanic Rate**[16]	**Non-Hispanic Rate**[17]
Fetal Deaths (per 1,000 deliveries)	5.3	12.2	5.4	7.2
Infant Deaths (per 1,000 births)	4.4	11.3	5.1	6.4
Maternal Deaths	15.7	32.5	8.9	24.4
Diabetes death rate	38.5	17.4	18.5	20.0
HIV Infection Cases,	10.5	65.7	30.1	22.0
Coronary Heart Disease death rate	96.9	100	87.4	98.7
Stroke death rate	34.6	53.6	35.8	37.0

A 2017 statistical brief from the department noted that the gap between the black age-adjusted mortality rate and the white age-adjusted mortality rate had decreased over time. Specifically, in 1995, the black rate was 50.9% higher than the white rate while in in 2015, the black rate was only 29.6% higher than the white rate.[18]

Lupus

Lupus is a chronic autoimmune disease that triggers inflammation in bodily tissues. The body's immune system attacks its own tissues and organs and the resulting inflammation can impact joints, skin, kidneys, blood cells, brain, heart and lungs. Symptoms of lupus can include fatigue, fever, stiff, swollen and painful joints, skin lesions, rash, chest pain, headaches and memory loss.[19]

Types of Lupus

There are four different forms of lupus. *Systemic lupus* affects a major organ or tissue of the body, such as the heart, lungs, kidney, or brain. Systemic lupus is the most common and most serious type of lupus accounting for approximately 70 percent of all lupus cases. *Cutaneous lupus* affects only the skin in the form of a rash or lesions and accounts for approximately 10 percent of all lupus cases. *Drug-induced lupus* is caused by a reaction to high doses of certain medications and accounts for 10 percent of all lupus cases. *Neonatal lupus* is a rare condition where the mother's antibodies affect the fetus. At birth, the baby may have a skin rash, liver problems, or low blood cell counts, but these issues usually disappear within 6 months.[20]

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[15] Department of Health, FLHealthCHARTS.com, *Minority Health Profile – Black – 2016*, http://www.flhealthcharts.com/ChartsReports/rdPage.aspx?rdReport=ChartsProfiles.MinorityHealthProfile-Black, (last visited Feb. 8, 2018).
[16] Department of Health, FLCharts, *Minority Health Profile – Hispanic – 2016*, http://www.flhealthcharts.com/ChartsReports/rdPage.aspx?rdReport=ChartsProfiles.MinorityHealthProfile-Hispanic, (last visited Feb. 8, 2018).
[17] *Id.*
[18] Department of Health, FLHealthCHARTS.com Statistical Brief, *Gap Between Black and White Death Rate Narrows*, http://www.flhealthcharts.com/Charts/documents/StatisticalBriefs/GapNarrows.pdf, (last visited Feb. 7, 2018).
[19] Mayo Clinic, *Lupus - Overview*, https://www.mayoclinic.org/diseases-conditions/lupus/symptoms-causes/syc-20365789, (last visited Feb. 7, 2018).
[20] The National Resource Center on Lupus, *What is Lupus*, https://resources.lupus.org/entry/what-is-lupus?utm_source=lupusorg&utm_medium=answersFAQ, (last visited Feb. 7, 2018).

Causes of Lupus

In most cases, the cause of Lupus is unknown; however, it is believed to be linked to environmental, genetic, or hormonal factors. Most researchers today think that environmental factors, such as a virus or a chemical, trigger lupus in certain susceptible individuals. Examples of environmental triggers for lupus include:

- Sunlight – exposure to the sun may bring on lupus skin lesions in certain individuals;
- Infections – an infection can initiate lupus or cause a relapse; and
- Medications – certain types of blood pressure medication, anti-seizure medications, and antibiotics may trigger lupus.[21]

Diagnosis and Treatment

More than 16,000 new cases of lupus are reported each year and most people who develop lupus are women between the ages of 15 and 44. It is estimated that more than 1.5 million Americans have a form of lupus.[22] Lupus can be difficult to diagnose because the symptoms often mimic other illness. Common symptoms include extreme fatigue, headaches, painful and swollen joints, fever, hair loss, anemia, and skin rashes and lesions.[23] The American College of Rheumatology developed a list of 11 measures to help with the diagnosis of lupus. If an individual has had or has, at least four of the measures there is a strong chance that the individual has lupus.[24]

Lupus is generally not a fatal disease; however, causes of premature death associated with lupus are active disease, organ failure, infection, or cardiovascular disease.[25] There is no cure for lupus, but medications, medical interventions, and lifestyle changes can help control its symptoms.[26]

Racial and Ethnic Health Disparities

Certain ethnic groups have a greater chance of developing lupus than other groups. Lupus is 2 to 3 times more prevalent among women of color (African American, Hispanic/Latino, Asian, Native American, Alaska Natives, Native Hawaiians and other Pacific Islanders) than among Caucasian women. Lupus affects one in 537 young African American women and African American women are more likely to have organ system involvement, develop lupus at a younger age, have more serious complications, and have a higher mortality rate due to lupus.

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[21] The National Resource Center on Lupus, *What Causes Lupus,* https://resources.lupus.org/entry/what-causes-lupus, (last visited Feb. 7, 2018).
[22] *Supra* note 20.
[23] The National Resource Center on Lupus, *Common symptoms of lupus*, https://resources.lupus.org/entry/common-symptoms, (last visited Feb. 8, 2018).
[24] For a list of the 11 common criteria or measures to help diagnose lupus see: The National Resource Center on Lupus, *What doctors look for to confirm a diagnosis*, https://resources.lupus.org/entry/what-doctors-look-for, (last visited Feb. 7, 2018).
[25] Centers for Disease Control and Prevention, *Lupus Detailed Fact Sheet*, https://www.cdc.gov/lupus/facts/detailed.html, (last visited Feb. 8, 2018).
[26] Mayo Clinic, *Lupus – Diagnosis and Treatment*, https://www.mayoclinic.org/diseases-conditions/lupus/diagnosis-treatment/drc-20365790, (last visited Feb. 7, 2018).

Economic Impact

Lupus also imposes a significant financial burden on individuals because of direct health care costs and loss of productivity due to work disability.[27] On average, only 46 percent of those with lupus report being employed.[28] The annual direct health care costs of a patient with lupus is $12,643 (in 2004 U.S. dollars) and the lost annual productivity costs of an employment-aged patient is $8,659.[29]

III. Effect of Proposed Changes:

The bill amends s. 381.7355, F.S., to expand the priority areas that may be addressed in a CTG proposal to include projects focused on decreasing the racial and ethnic disparities in morbidity and mortality rates relating to lupus.

The bill takes effect July 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 bill expands the types of project proposals that are eligible to receive grant funds under the Closing the Gap Grant program.

C. Government Sector Impact:

The Department of Health reports no impact on expenditures.[30]

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[27] Pantelis Panopalis, et al, *Heath Care costs and Costs Associated with Changes in Work Productivity Among Persons with Systematic Lupus Erythematosus*, Arthritis & Rheumatism (Arthritis Care and Research), Vol. 59, No. 12, (Dec. 15, 2008).
[28] Centers for Disease Control and Prevention, *Lupus Basic Fact Sheet*, https://www.cdc.gov/lupus/basics/index.html, (last visited Feb. 8, 2018).
[29] *Supra* note 27.

The availability of state funds for the CTG grant program is subject to an annual appropriation. The addition of lupus as new priority health area eligible for grant funding does not impact the overall cost of the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.7355 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Gibson

6-01248-18 20181184__

A bill to be entitled

An act relating to the Closing the Gap grant program; amending s. 381.7355, F.S.; requiring a Closing the Gap grant proposal to address racial and ethnic disparities in morbidity and mortality rates relating to Lupus; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 381.7355, Florida Statutes, is amended to read:

381.7355 Project requirements; review criteria.—

(2) A proposal must include each of the following elements:

(a) The purpose and objectives of the proposal, including identification of the particular racial or ethnic disparity the project will address. The proposal must address one or more of the following priority areas:

1. Decreasing racial and ethnic disparities in maternal and infant mortality rates.

2. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to cancer.

3. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to HIV/AIDS.

4. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to cardiovascular disease.

5. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to diabetes.

6. Increasing adult and child immunization rates in certain racial and ethnic populations.

6-01248-18 20181184__

7. Decreasing racial and ethnic disparities in oral health care.

8. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to sickle cell disease.

9. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to Lupus.

10.~~9.~~ Improve neighborhood social determinants of health, such as transportation, safety, and food access, as outlined by the Centers for Disease Control and Prevention's "Tools for Putting Social Determinants of Health into Action."

Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 14, 2018

Senator Rob Bradley, Chair
Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Bradley,

I respectfully request that SB 1184, addressing racial and ethnic disparities in morbidity and mortality rates relating to Lupus, be placed on the next committee agenda.

SB 1184, adds Lupus a chronic disease, to Closing the Gap grant proposals. Closing the Gap grant program provides funding to decrease racial or ethnic disparities for a variety of diseases and illnesses, such as Cancer and HIV/AIDS.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

AP

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1224
INTRODUCER:	Appropriations Committee and Senator Bradley
SUBJECT:	Beverage Law
DATE:	February 23, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Favorable**
2.	Swift	McKay	CM	**Favorable**
3.	Davis	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1224 creates an exception to the alcoholic beverage "tied-house evil" prohibitions to permit a malt beverage distributor to give, without charge, malt beverage branded glassware to a vendor licensed to sell beer or malt beverages for on-premises consumption. The bill prohibits the distributor from giving more than 10 cases that include up to 24 pieces per case of single-service glassware per brand, per licensed premises, per calendar year, and prohibits the vendor from selling the glassware or returning it to the distributor for cash or credit. Each single-service glass container may hold no more than 23 ounces of liquid volume. Industry members (manufacturers, importers, distributors, and vendors) must maintain records for any glassware sold, gifted, or received.

The "tied house evil" prohibition in current law prohibits a member of the alcoholic beverage industry, including a manufacturer, distributor, or importer, from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer, distributor, or importer from giving gifts, loans or property, or rebates to retail vendors. Under current law, a distributor may sell glassware and other expendable retailer advertising specialties to any vendor, but must sell the items at a price not less than the actual cost to the industry member who initially purchased them, with no limit in total dollar value of the items sold to the vendor.

The bill has no fiscal impact on state revenues or expenditures.

The bill provides an effective date of October 1, 2018.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,[1] which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of one percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."[5]
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."[6]
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.[7]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[8]

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[9] A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.[10]

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] Section 561.02, F.S.
[4] Section 563.01, F.S.
[5] Section 561.14(1), F.S.
[6] Section 561.14(2), F.S.
[7] Section 561.01(5), F.S.
[8] Section 561.14(3). F.S.
[9] Section 561.14, F.S.
[10] Section 561.22(1), F.S.

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[11] Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.[12] Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.[13]

Tied House Evil Prohibitions

States have enacted statutes designed to prevent or limit the control of retail alcoholic beverage vendors by manufacturers, wholesalers, and importers, or to prohibit "tied-house arrangements," such legislation is referred to as "tied house" or “tied house evil” statutes.[14]

Section 561.42, F.S., Florida’s “tied house evil” statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates.[15] The prohibitions also apply to an importer, primary American source of supply,[16] brand owner or registrant, broker, and sales agent (or sales person thereof).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit for liquors sold, if made strictly in compliance with the provisions of s. 561.42, F.S.[17]

Section 561.42, F.S., also prohibits licensed manufacturers and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;[18]
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;[19]
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of the licensed premises;[20] and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.[21]

[11] Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[12] Section 561.22, F.S.
[13] Sections 563.022(14) and 561.14(1), F.S.
[14] 45 AM. JUR. 2d *Intoxicating Liquors*, s. 94 (2017).
[15] Section 561.42(1), F.S.
[16] *See* s. 564.045, F.S.
[17] Section 564.42(1). Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.
[18] Section 561.42(4), F.S.
[19] Section 561.42(10), F.S.
[20] Section 561.42(12), F.S.
[21] Section 561.42(14)(a), F.S.

Section 561.42(14), F.S., further prohibits industry members from providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them. A member of the malt beverage industry may provide a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like. The industry member must sell these items to a vendor only at a price not less than the actual cost to the industry member who initially purchased the items, without limitation in total dollar value of such items sold to a vendor. Industry members may not engage in cooperative advertising with a vendor.[22]

III. Effect of Proposed Changes:

The bill amends s. 561.42(14), F.S., to permit a distributor to give branded glassware to a vendor licensed to sell malt beverages for on-premises consumption.

The bill replaces the term "glasses" with "glassware."

A distributor may give glassware to a vendor licensed to sell malt beverages for on-premises consumption under the following restrictions:

- The distributor must have received the glassware at no charge on a no-charge invoice from a malt beverage manufacturer or importer;
- Each piece of glassware must bear a permanent brand name intended to prominently advertise the brand;
- No more than 10 cases of glassware per calendar year per licensed premises may be given to the vendor; and
- Each single-service glass container can hold no more than 23 ounces of liquid volume.

A vendor that receives a gift of glassware from a distributor may not sell the glassware or return it to a distributor for cash, credit, or replacement.

Additionally, the bill requires records to be maintained for any sale, gifting, or receipt of glassware by a:

- Manufacturer or importer to a distributor;
- Distributor to a vendor; and
- Vendor from a distributor.

The effective date of the bill is October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[22] Section 561.42(14)(e), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not affect state revenues or expenditures. The division will need to update training on inspections and investigations related to tied house evil prohibitions and exceptions;[23] however, these costs can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.42 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 February 22, 2018:
The committee substitute:

- Removes the provision permitting industry members to sell advertising specialties, including glassware, only vendors licensed to sell malt beverages for on-premises consumption.

[23] Florida Department of Business and Professional Regulation, *Senate Bill 1224 Analysis* (January 4, 2018) (Copy on file with the Senate Appropriations Subcommittee on General Government).

- Requires glassware gifted to a vendor to have been received by the distributor with a "no-charge invoice" from a malt beverage manufacturer or importer.
- Requires manufacturers, importers, distributors, and vendors to maintain records for any glassware sold, gifted, or received.

B. Amendments:

None.

413734

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 33 - 50

and insert:

sales person thereof, provides a vendor with branded expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glassware ~~glasses~~, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items

413734

sold to a vendor. However, a distributor that receives glassware at no charge on a no-charge invoice from a malt beverage manufacturer or importer may give such glassware to a vendor licensed to sell malt beverages for on-premises consumption. Each piece of glassware given to a vendor by a distributor must bear a permanent brand name intended to prominently advertise the brand. A distributor may not give a vendor more than 10 cases of glassware per calendar year per licensed premises. A vendor that receives a gift of glassware from a distributor may not sell the glassware or return it to a distributor for cash, credit, or replacement. A manufacturer or importer that sells or gives glassware to a distributor, a distributor that sells or gives glassware to a vendor, and such vendor must maintain records of such sale or gift of glassware. As used in this paragraph, the term:

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

And the title is amended as follows:

Delete line 10

and insert:

distributor for cash, credit, or replacement; requiring manufacturers, importers, distributors, and vendors to maintain certain records; defining

By Senator Bradley

5-00800-18 20181224__

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.42, F.S.; authorizing a malt beverage distributor to give branded glassware to vendors licensed to sell malt beverages for on-premises consumption; requiring that the glassware bear certain branding; providing an annual limit on the amount of glassware a distributor may give to a vendor; prohibiting a vendor from selling the branded glassware or returning it to a distributor for cash, credit, or replacement; defining the terms "case" and "glassware"; providing an effective date.

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

Section 1. Paragraph (a) of subsection (14) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(14) The division shall adopt reasonable rules governing promotional displays and advertising. Such rules may~~, which rules shall~~ not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof;

5-00800-18 20181224__

however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor licensed to sell malt beverages for on-premises consumption with branded expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glassware ~~glasses~~, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor. However, a distributor that has received glassware at no charge from a malt beverage manufacturer or importer may give such glassware to a vendor licensed to sell malt beverages for on-premises consumption. Each piece of glassware given to a vendor by a distributor must bear a permanent brand name intended to prominently advertise the brand. A distributor may not give a vendor more than 10 cases of glassware per calendar year per licensed premises. A vendor that receives a gift of glassware from a distributor may not sell the glassware or return it to a distributor for cash, credit, or replacement. As used in this paragraph, the term:

1. "Case" means a box containing up to 24 pieces of glassware.

2. "Glassware" means a single-service glass container that can hold no more than 23 ounces of liquid volume.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, may rent, loan without charge for

an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter.

(c) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, and may be sold without limitation in total value of such items sold to a vendor.

(d) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor's licensed premises.

(e) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverages, and any sales agent or sales person thereof or contracted third-party, may not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage tasting authorized under s. 563.09.

(f) A distributor of malt beverages may sell to a vendor draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and the distributor may exchange any parts that are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of malt beverages may furnish to a vendor at no

charge replacement parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers.

Section 2. This act shall take effect October 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1224

~~1246~~

Meeting Date

Bill Number (if applicable)

Topic Glassware

Amendment Barcode (if applicable)

Name Max Herrle

Job Title President

Address 117 S. Gadsden St

Street

Phone

TLH FL

City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing Tallahassee Bar & Hospitality Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22
Meeting Date

SB 1224
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Beer Glassware

Name Eric Criss

Job Title President

Address 110 S Monroe
Street

Tallahassee FL 3230
City *State* *Zip*

Phone 491 3903

Email ericc@floridabeer.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Beer Industry of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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)

February 22, 2018
Meeting Date

1224
Bill Number (if applicable)

Topic Alcoholic Beverages - Glassware

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title Attorney

Address 315 South Calhoun
Street

Phone 224-7000

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Brewers Guild

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18	SB 1224
Meeting Date	*Bill Number (if applicable)*
	Amendment Barcode (if applicable)

Topic: Beverage Law

Name: Brewster Bevis

Job Title: Senior Vice President

Address: 516 N. Adams St (*Street*)

Tallahassee (*City*) FL (*State*) 32301 (*Zip*)

Phone: 224-7173

Email: bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/22/18
Meeting Date

1224
Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Richard Turner

Job Title Senior VP Legal and Legislative Affairs

Address 230 S. Adams St.
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 and Lodging Asso.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1224
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Beverage Law

Name JAKE FARMER

Job Title Legislative Coordinator

Address 227 S Adams St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 352 359 6835

Email Jake@frf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

1224
Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Natalie King

Job Title VP / COO

Address 235 W Brandon Blvd #640 Phone 813 924 8218
Street

Brandon FL 33511 Email nataliea@bsaconsultinglla
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Pepsi Distributing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 1224
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Beverage Laws

Name Jonathan Rees

Job Title Senior Manager, State Affairs

Address 204 S. Monroe St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 570-0043

Email Jonathan.Rees@anheuser-busch.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Anheuser-Busch, 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

02-22-18 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1224

Meeting Date *Bill Number (if applicable)*

Topic Alcohol Beverages *Amendment Barcode (if applicable)*

Name Scott Dick

Job Title Lobbyist

Address 210 S. Monroe St. Phone 850 421-9100

Street

TLH Email Scott@skdgr.com

City *State* *Zip*

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

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

Representing ABC Liquors AND Florida Independent Spirits Association

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1226
INTRODUCER:	Criminal Justice Committee; and Senators Book and Hutson
SUBJECT:	Sentencing for Sexual Offenders and Sexual Predators
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Fav/CS**
2.	Forbes	Hansen	AP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1226 modifies definitions of the terms "permanent residence," "temporary residence," and "transient residence." These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3 days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The bill also requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws. The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

According to the Florida Department of Law Enforcement, the bill could have a fiscal impact on sheriff's offices if they have to expand registration hours. The Department of Corrections states that the impact on that department is indeterminate. See Section V. Fiscal Impact Statement.

II. Present Situation:

Florida's Sexual Predator and Sexual Offender Registration Laws

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.[1] 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[2] 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;[3]
- 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.[4]

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, 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.[5]

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.[6] Registration requirements may also

[1] Sections 775.21 and 943.0435, F.S.
[2] Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.
[3] 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.).
[4] Section 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.
[5] 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 DOC's supervision, also define the term "sexual offender."
[6] All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register per s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times

differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report certain information, including residence information, at registration and reregistration (see discussion, *infra*).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.[7] Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

Reporting Residence Information During Registration and Reregistration

Section 775.21, F.S., defines terms relevant to the reporting of residence information by sexual predators and sexual offenders (registrant):

- "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.[8]
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.[9]
- "Transient residence" means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.[10]

Provided below is a description of the registration and reregistration processes and the reporting of residence information for sexual predators and sexual offenders who are not in custody or under supervision of the DOC, the DJJ, or another agency.[11]

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per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

[7] 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 Feb. 1, 2018). 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 an institute of higher education. *See* http://offender.fdle.state.fl.us/offender/Search.jsp (last visited on Feb. 1, 2018).

[8] Section 775.21(2)(k), F.S.

[9] Section 775.21(2)(n), F.S.

[10] Section 775.21(2)(o), F.S.

[11] Registration and reregistration and reporting requirements for persons in those statuses are addressed not only in ss. 775.21 and 934.0435, F.S., but also in ss. 944.606, 944.607, 985.481, and 985.4815, F.S.

Upon initial registration, a registrant who is a sexual offender must report in person at the sheriff's office:

- In the county in which the registrant establishes or maintains a residence within 48 hours after:
  - Establishing a residence in this state; or
  - Being released from the custody, control, or supervision of the DOC or from the custody of a private correctional facility; or
- In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration, if the offender is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility.[12]

A registrant who is a sexual predator must register in person:

- At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and
- At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.[13]

At this registration, the registrant must report specified information, including residence information.[14]

Generally, within 48 hours after this registration, a registrant must report in person at a driver license office of the DHSMV. At the driver license office, the registrant must, if otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card. The registrant must provide any of the information required to be provided at initial registration, if requested. Each time a registrant's driver license or identification card is subject to renewal, and, without regard to the status of the registrant's driver license or identification card, within 48 hours after any change in the offender's residence, the registrant must report in person to a driver license office, and is subject to the same reporting requirements. A registrant who is unable to secure or update a driver license or an identification card with the DHSMV must report any change in the registrant's residence within 48 hours after the change to the sheriff's office in the county where the registrant resides or is located and provide confirmation that he or she reported such information to the DHSMV, but this reporting requirement does not negate the requirement for a registrant to obtain a Florida driver license or an identification card.[15]

A registrant who vacates a residence and fails to establish or maintain another one must, within 48 hours after vacating the residence, report in person to the sheriff's office of the county in which he or she is located. The registrant must specify the date upon which he or she intends to or did vacate the residence, and provide or update all of the registration information required to be reported at initial registration. The registrant must provide an address for the residence or

[12] Section 943.0435(2)(a), F.S.
[13] Section 775.21(6)(e) F.S.
[14] Sections 775.21(6)(a) and (e) and 943.0435(2), F.S.
[15] Sections 775.21(6)(f) and (g)1. and 943.0435(3) and (4)(a), F.S.

other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.[16]

A registrant must report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The registrant must provide the addresses and locations where he or she maintains a transient residence. A registrant who remains at a residence after reporting his or her intent to vacate the residence must, within 48 hours after the date upon which the registrant said he or she would or did vacate such residence, report in person to the agency to which he or she reported vacating the residence. The failure of a registrant to make this report is a second degree felony.[17] The failure of a registrant who maintains a transient residence to report in person to the sheriff's office every 30 days (as previously described) is a third degree felony.[18]

A registrant who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than this state must report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The registrant must provide to the sheriff the address, municipality, county, state, and country of intended residence. The failure of a registrant to provide his or her intended place of residence is a third degree felony.[19]

A registrant who indicates his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country and later decides to remain in this state must, within 48 hours after the date upon which the registrant indicated he or she would leave this state, report in person to the sheriff to which the registrant reported the intended change of residence, and report his or her intent to remain in this state. A registrant who reports his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country but who remains in this state without reporting to the sheriff (as previously described) commits a second degree felony.[20]

A registrant must report in person to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. Reregistration includes reporting any changes to residence information. Any registrant who fails to report in person as required at the sheriff's office or fails to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence commits a third degree felony.[21]

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[16] Sections 775.21(6)(g)2.a. and 943.0435(4)(b)1., F.S.
[17] A second degree felony is punishable by a prison sentence not exceeding 15 years, a fine not exceeding $10,000, or both. Sections 775.082 and 775.083, F.S.
[18] Sections 775.21(6)(g)2.b., 3., and 4., and 943.0435(4)(b)2., (c), and (d), F.S. A third degree felony is punishable by a prison sentence not exceeding 5 years, a fine not exceeding $5,000, or both. Sections 775.082 and 775.083, F.S.
[19] Sections 775.21(6)(i) and 943.0435(7), F.S.
[20] Sections 775.21(6)(j) and 943.0435(8), F.S.
[21] Sections 775.21(8)(a) and (10)(a), and 943.0435(14), 944.607(12), and 985.4815(13). F.S.

General Penalties under Sections 775.21 and 943.0435, F.S.

Sections 775.21 and 943.0435, F.S., contain a general penalties provision. Section 775.21(10)(a), F.S., provides that it is a third degree felony for a sexual predator to:

- Fail to register;
- Fail, after registration, to maintain, acquire, or renew a driver license or an identification card;
- Fail to provide required location information;
- Fail to provide electronic mail addresses, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name;
- Fail to provide all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information;
- Fail to make a required report in connection with vacating a permanent residence;
- Fail to reregister as required;
- Fail to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence;
- Knowingly provide false registration information by act or omission; or
- Otherwise fail, by act or omission, to comply with the requirements of s. 775.21, F.S., or s. 943.0435, F.S., as applicable.

Section 943.0435(9)(a), F.S., provides that a sexual offender who does not comply with the requirements of s. 943.0435, F.S., commits a third degree felony.

Community Control

Community control" is a form of intensive, supervised custody[22] in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.[23] "As with probation, violation of any community control condition may result in revocation by the court and imposition of any sentence which it might have imposed before placing the offender on community control supervision. Many of the offenders who are placed on community control are prison diversions."[24]

III. Effect of Proposed Changes:

The bill amends s. 775.21, F.S., to modify definitions of the terms "permanent residence," "temporary residence," and "transient residence." These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3

[22] The DOC describes it as "form of intensive supervised house arrest in the community[.]" *Community Supervision*, Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/annual/9798/stats/stat_cs.html (last visited on Feb. 1, 2018).
[23] Section 948.001(3), F.S.
[24] *Supra*, n. 22.

days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The definitions of these terms and corresponding changes to the definitions also apply to s. 943.435, F.S.[25]

The bill also amends the general penalties provisions in ss. 775.21 and 943.0435, F.S., to require mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of either of these statutes if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws (see "Present Situation" section of this analysis, *supra*). The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.[26]

Mandatory community control with electronic monitoring shall be imposed as follows:

- For a first offense committed on or after July 1, 2018, a mandatory minimum term of 6 months of community control with electronic monitoring;
- For a second offense committed on or after July 1, 2018, a mandatory minimum term of 1 year of community control with electronic monitoring; and
- For a third or subsequent offense committed on or after July 1, 2018, a mandatory minimum term of 2 years of community control with electronic monitoring.

Felony violations of ss. 775.21 and 943.0435, F.S., are ranked in Level 7 of the offense severity ranking chart of the Criminal Punishment Code.[27] A Level 7 offense scores sufficient sentence points to require a prison sentence,[28] which a sentencing court must impose absent mitigation of a prison sentence.[29] Therefore, if the court does not impose a prison sentence, and the mandatory community control provisions of the bill apply, this is because the court imposed a downward departure sentence.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[25] Section 943.0435(1)(f), F.S.
[26] *See* ss. 775.21(10)(g) and 943.0435(13), F.S. This prohibited act is not committed by a sexual predator or sexual offender. The act involves a person unlawfully facilitating the sexual predator's or sexual offender's noncompliance with registration requirements by the person withholding important information, providing false information, or harboring or concealing the noncompliant sexual predator or sexual offender.
[27] Section 921.0022(3)(g), F.S.
[28] A Level 7 offense scores 56 sentence points. Section 921.0024(1)(a), F.S. When total sentence points exceed 44 points, the lowest permissible sentence is a prison sentence. Section 921.0024(2), F.S.
[29] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the FDLE, the bill could have a fiscal impact on sheriff's offices if they have to expand registration hours.[30]

The DOC states that probation officers "who supervise sex offenders on community control with electronic monitoring have reduced caseloads due to the workload associated with this type of supervision and the monitoring required. Impact is indeterminate at this time as we are unable to estimate how many offenders will be sentenced under this requirement."[31]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.21 and 943.0435.

This bill also reenacts the following sections of the Florida Statutes: 775.25, 944.606, 985.481, and 985.4815, F.S.

[30] 2018 FDLE Legislative Bill Analysis (SB 1226) (Dec. 15, 2017), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).
[31] 2018 Agency Legislative Bill Analysis (SB 1226) (Jan. 19, 2018), Department of Corrections (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

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

CS by Criminal Justice on February 6, 2018:
The committee substitute:

- Requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence.
- Excludes from mandatory community control offenses relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senators Book and Hutson

591-02892-18 20181226c1

A bill to be entitled

An act relating to sentencing for sexual offenders and sexual predators; amending s. 775.21, F.S.; redefining the terms "permanent residence," "temporary residence," and "transient residence" by decreasing the amount of days a person abides, lodges, or resides in a certain place to qualify for that type of residency category; revising existing criminal penalties for sexual predators to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent felony violations if the court does not impose a prison sentence; amending s. 943.0435, F.S.; revising existing criminal penalties for sexual offenders to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent felony violations if the court does not impose a prison sentence; reenacting s. 775.25, F.S., relating to prosecutions for certain acts or omissions, to incorporate the amendments made to ss. 775.21 and 943.0435, F.S., in references thereto; reenacting ss. 944.606(1)(d), 985.481(1)(d), and 985.4815(1)(f), F.S., relating to sexual offenders and required notifications upon release, sexual offenders adjudicated delinquent and required notifications upon release, and notification to the Department of Law Enforcement of information on juvenile sexual offenders, respectively, to incorporate the amendment made to s. 775.21, F.S., in

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references thereto; providing an effective date.

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

Section 1. Paragraphs (k), (n), and (o) of subsection (2) and subsection (10) of section 775.21, Florida Statutes, are amended, and paragraph (d) of subsection (5) and paragraphs (g) and (i) of subsection (6) of that section are republished, to read:

775.21 The Florida Sexual Predators Act.—

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

(k) "Permanent residence" means a place where the person abides, lodges, or resides for 3 ~~5~~ or more consecutive days.

(n) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 ~~5~~ or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

(o) "Transient residence" means a county where a person lives, remains, or is located for a period of 3 ~~5~~ or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated

as a sexual predator as follows:

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard

to the status of the predator's driver license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f) and this paragraph shall also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this subparagraph do not negate the requirement for a sexual predator to obtain a Florida driver license or identification card as required by this section.

2.a. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall,

within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator shall provide or update all of the registration information required under paragraph (a). The sexual predator shall provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

b. A sexual predator shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual predator must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this sub-subparagraph. Reporting to the sheriff's office as required by this sub-subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this sub-subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual

predator to the department.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. The failure of a sexual predator who maintains a transient residence to report in person to the sheriff's office every 30 days as required by sub-subparagraph 2.b. is punishable as provided in subsection (10).

5.a. A sexual predator shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to

the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

b. A sexual predator shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported in this sub-subparagraph shall be reported within 48 hours after the change.

c. The department shall establish an online system through which sexual predators may securely access, submit, and update all electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of

higher education information.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual predator 21 days before the departure date must be reported to the sheriff's office as soon as possible before departure. The sexual predator shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual predator shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual predator's intended residence. The failure of a sexual predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(10) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver license or an

identification card; who fails to provide required location information; who fails to provide electronic mail addresses, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name; who fails to provide all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; who fails to reregister as required; who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence; who knowingly provides false registration information by act or omission; or who otherwise fails, by act or omission, to comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in s.

775.082, s. 775.083, or s. 775.084.

(c) For a felony violation of this section, excluding paragraph (10)(g), committed on or after July 1, 2018, if the court does not impose a prison sentence, the court shall impose a mandatory minimum term of community control, as defined in s. 948.001, as follows:

1. For a first offense, a mandatory minimum term of 6 months of community control with electronic monitoring.

2. For a second offense, a mandatory minimum term of 1 year of community control with electronic monitoring.

3. For a third or subsequent offense, a mandatory minimum term of 2 years of community control with electronic monitoring.

(d) ~~(c)~~ Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e) ~~(d)~~ A sexual predator who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was

committed, in the county of the last registered address of the sexual predator, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator, in the county where the sexual predator was released from incarceration, or in the county of the intended address of the sexual predator as reported by the predator prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

(f) ~~(e)~~ An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

~~(f)~~ Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

(g) Any person who has reason to believe that a sexual predator is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual predator in eluding a law enforcement agency that is seeking to find the sexual predator to question the sexual predator about, or to arrest the sexual predator for, his or her noncompliance with the requirements of this section:

1. Withholds information from, or does not notify, the law enforcement agency about the sexual predator's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual predator;

2. Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual predator;

3. Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual predator; or

4. Provides information to the law enforcement agency regarding the sexual predator which the person knows to be false information,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This paragraph does not apply if the sexual predator is incarcerated in or is in the custody of a state correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

Section 2. Subsection (9) of section 943.0435, Florida Statutes, is amended, and paragraph (f) of subsection (1), paragraph (d) of subsection (4), and subsection (7) of that

section are republished, to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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

(f) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

(4)

(d) The failure of a sexual offender who maintains a transient residence to report in person to the sheriff's office every 30 days as required in subparagraph (b)2. is punishable as provided in subsection (9).

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The sexual offender shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual offender shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel.

The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(9)(a) Except as otherwise specifically provided, a sexual offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) For a felony violation of this section, excluding subsection (13), committed on or after July 1, 2018, if the court does not impose a prison sentence, the court shall impose a mandatory minimum term of community control, as defined in s. 948.001, as follows:

1. For a first offense, a mandatory minimum term of 6 months of community control with electronic monitoring.

2. For a second offense, a mandatory minimum term of 1 year of community control with electronic monitoring.

3. For a third or subsequent offense, a mandatory minimum term of 2 years of community control with electronic monitoring.

(c) ~~(b)~~ A sexual offender who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for

designating a person as a sexual offender, in the county where the sexual offender was released from incarceration, or in the county of the intended address of the sexual offender as reported by the offender prior to his or her release from incarceration.

(d) ~~(c)~~ An arrest on charges of failure to register when the offender has been provided and advised of his or her statutory obligations to register under subsection (2), the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register. A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

~~(d)~~ Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual offender of criminal liability for the failure to register.

Section 3. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, section 775.25, Florida Statutes, is reenacted to read:

775.25 Prosecutions for acts or omissions.—A sexual

predator or sexual offender who commits any act or omission in violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s. 944.607, or former s. 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual predator or sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender, in the county where the sexual predator or sexual offender was released from incarceration, or in the county of the intended address of the sexual predator or sexual offender as reported by the predator or offender prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

Section 4. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 944.606, Florida Statutes, is reenacted to read:

944.606 Sexual offenders; notification upon release.—

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

(d) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 5. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 985.481, Florida Statutes, is reenacted to read:

985.481 Sexual offenders adjudicated delinquent;

notification upon release.—

(1) As used in this section:

(d) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 6. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (f) of subsection (1) of section 985.4815, Florida Statutes, is reenacted to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

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

(f) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 7. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on the Environment and Natural Resources, *Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Environmental Preservation and Conservation
Health Policy
Rules

SENATOR LAUREN BOOK
Democratic Leader Pro Tempore
32nd District

February 8, 2018

Chair Rob Bradley
Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Bradley,

I respectfully request that you place CS/SB 1226, relating to Sentencing for Sexual Offenders and Sexual Predators, on the agenda of the Committee on Appropriations at your earliest convenience.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Lauren Book

Senator Lauren Book
Senate District 32

cc: Mike Hansen, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
❒ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

1226
Bill Number (if applicable)

Topic Sentencing Sexual Offenders

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 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 Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

1226
Bill Number (if applicable)

Topic Sentencing Sexual Offenders T.F.

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 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 Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22-18
Meeting Date

1226
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street, Suite 2810
Street

Phone 305-979-7110

Miami | FL | 33128
City | *State* | *Zip*

Email jmm2@miamidade.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1308
INTRODUCER:	Appropriations Committee; Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senator Perry
SUBJECT:	Environmental Regulation
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	**Fav/CS**
2.	Cochran	Yeatman	CA	**Fav/CS**
3.	Reagan	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use in certain ways to increase the quantity of water available for water supply.

The bill requires the Department of Environmental Protection (DEP) to develop criteria for the application of an impact offset or a substitution credit to a CUP or to a minimum flows and levels recovery or prevention strategy and requires the DEP and the WMDs to enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP.

The bill provides criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material, including that residential recycling collectors and materials recovery facilities may not be required to collect, transport, or process contaminated recyclable material. The criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after July 1, 2018.

The bill revises the exemption from the requirement to obtain an environmental resource permit (ERP) for the replacement or repair of an existing dock or pier and prevents a local government from requiring that an individual claiming an exemption from and ERP provide further

verification from the DEP for all of the activities and projects exempted from the ERP requirements.

The bill creates the blue star collection system assessment and maintenance program for domestic sewer systems. The DEP will administer the program and codify program certification standards. Certification requires a demonstration of:

- An adequate rate of reinvestment;
- Periodic structural condition assessments, and as-needed maintenance and replacements;
- A program designed to limit fats, roots, oils, and grease in its collection system;
- For public utilities, a local requirement that the private pump stations and lateral lines connecting to the public system be free of defects and direct stormwater connections; and
- A power outage contingency plan.

Public and private utilities certified under the program could receive the following incentives:

- Publication on the DEP's website;
- Participation in the Clean Water State Revolving Loan Fund Program;
- Reduced penalties for a sanitary sewer overflow;
- Ten-year operating permits; and
- A presumption of compliance with state water quality standards for pathogens.

The bill expands the Small Community Sewer Construction Assistance Grant Program to include private utilities and expands the uses of the grants.

The DEP may incur indeterminate costs as a result of rulemaking to develop criteria for use of impact offsets or substitution credits. In addition, the DEP and the WMDs may incur indeterminate costs for developing a memorandum of agreement for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. These costs can be absorbed within existing resources.

II. Present Situation:

Water Supply and Constraints

By 2030, Florida's population is estimated to reach 23,609,000 – almost a 26 percent increase over 2010.[1] Fresh water demand is projected to reach 7.7 billion gallons per day by 2030, an additional 1.3 billion gallons more than the water use for the state in 2010.[2] In Florida, groundwater accounts for about 90 percent of public and domestic water supply.[3] The major source of groundwater supply in Florida is the Floridan Aquifer System, which underlies the entire state.[4]

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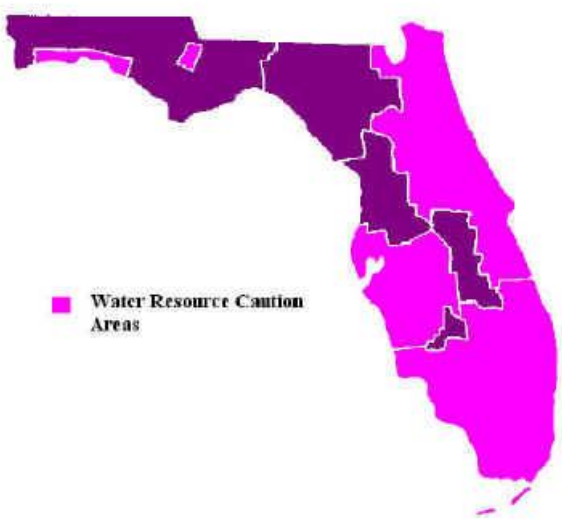
[1] Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 11 (December 1, 2015) *available at* https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf.
[2] *Id.*
[3] *Id*. at 14.
[4] DEP, *Aquifers*, *available at* https://fldep.dep.state.fl.us/swapp/Aquifer.asp# (last visited Feb. 1, 2018).



The Water Management Districts (WMDs) are required to ensure an adequate supply of water and water resources for all citizens and natural features, provide protection and improvement of natural systems and water quality, minimize harm to water resources, and promote the reuse of reclaimed water.[5] The WMDs set minimum flows and minimum levels (MFLs) for surface waters and groundwater, respectively. The purpose of setting MFLs is to prevent significant harm to the water resources or ecology of an area as a result of water withdrawals.[6] The WMDs regulate consumptive use of water through a permitting process.[7] The WMD governing boards are required to conduct regional water supply planning for areas where existing water sources are insufficient to meet projected 20-year demands while sustaining water resources and related natural systems. Those areas are also to be designated as Water Resource Caution Areas. Chapter 62-40 of the Florida Administrative Code requires the reuse of reclaimed water in these areas.[8]

Consumptive Use Permits (CUPs)

A consumptive use permit (CUP) establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- Be a "reasonable-beneficial use;"[9]
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.[10]

If two or more competing applications qualify equally, the applicable WMD or the DEP must give preference to a renewal application over an initial application.[11] If neither application is a renewal, preference is given to the applicant nearest the source.[12]

[5] Section 373.036, F.S.
[6] Section 373.042, F.S.
[7] Section 373.219, F.S. Note that a water management district may not require a permit for the use of reclaimed water. Section 373.250 (3)(b), F.S.
[8] *See also* s. 403.064(2), F.S.
[9] Section 373.019(16), F.S., defines reasonable-beneficial use as, "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest." *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.
[10] Fla. Admin. Code R. 62-40.410(1).
[11] Section 373.233(2), F.S.
[12] *Id.*

Reclaimed Water

Section 373.019(17), F.S., defines the term "reclaimed water" as "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility." Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives in ss. 403.064 and 373.250, F.S. Florida tracks its reuse inventory in an annual report compiled by the DEP.[13] In 2016, 478 domestic wastewater treatment facilities reported making reclaimed water available for reuse.[14] The 760 million gallons per day (mgd) of reclaimed water use represents approximately 44 percent of the total domestic wastewater flow in the state.[15] The 1,645 mgd of reuse capacity represents approximately 64 percent of the total domestic wastewater treatment capacity in the state.[16] Reclaimed water from these systems was used to irrigate 397,750 residences, 574 golf courses, 1,053 parks, and 381 schools.[17] Over 12,739 acres of edible crops on 65 farms were reported to be irrigated with reclaimed water.[18] Approximately 43 wastewater treatment facilities do not provide reuse of any kind.[19] Reclaimed water is a type of alternative water supply as defined in s. 373.019(1), F.S., and is eligible for alternative water supply funding.

Originally, water reuse was required only within water resource caution areas, unless such reuse was not economically, environmentally, or technically feasible as determined by a reuse feasibility study. Currently, chapter 62-40 of the Florida Administrative Code requires use of reclaimed water statewide. A domestic wastewater facility located within, discharging within, or serving a population within designated water resource caution areas is required to prepare a reuse feasibility study before receiving a domestic wastewater permit.[20] Section 403.064, F.S., provides that if the study shows that reuse is feasible, the permit applicant must give significant consideration to making reuse available.

Discharges of Reclaimed Water into Surface Waters
The DEP may issue permits for backup discharges. A "backup discharge" is a surface water discharge that occurs as part of a functioning reuse system which has been permitted under the DEP rules and which provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or for industrial cooling or other acceptable reuse purposes. Backup discharges may occur during periods of reduced demand for reclaimed water in the reuse system. Backup discharges of reclaimed water meeting advanced water treatment standards are presumed to be allowable and are permitted in all waters in the state at a reasonably accessible point where such discharge results in minimal negative impact. Discharges of reclaimed water must meet applicable water quality standards.[21]

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[13] DEP, *2016 Reuse Inventory*, *available at* https://floridadep.gov/sites/default/files/2016_reuse-report_0.pdf (last visited Feb. 1, 2018); compiled from reports collected pursuant to Fla. Admin. Code R. Ch. 62-610 (note that this report tracks wastewater facilities with permitted capacities of 0.1 million gallons per day or greater).
[14] *Id.* at 2.
[15] *Id*. at 3.
[16] *Id*.
[17] *Id*. at 2.
[18] *Id*., noting that "[a]round 79 percent of the farmland was dedicated to the production of citrus (i.e., oranges, tangerines, grapefruit, etc.)."
[19] *Id*. at 3.
[20] *Id.* at 20
[21] Section 403.086, F.S.

Impact Offsets and Substitution Credits

The water resource implementation rule (Florida Administrative Code Chapter 62-40), formerly known as the state water policy rule, is part of the Florida water plan and sets forth the goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.[22] The DEP adopts changes or additions to the water resource implementation rule and has adopted a rule establishing criteria for the use of proposed impact offsets and substitution credits when a water management district evaluates applications for CUPs.[23] Substitution credits may be considered if a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.

An impact offset is the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals. A substitution credit is the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, which then allows a different user, or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source.[24] The CUP permit applicants may propose impact offsets or substitution credits as part of a permit application. The portion of a surface water or groundwater allocation made available by an impact offset will be based on the beneficial water resource impact provided by the impact offset project. The proposed withdrawal, after application of a substitution credit, must result in no net adverse impact on the limited water resource or create a net positive impact if required by district rule as part of a strategy to protect or recover a water resource.[25]

Ground Water Regulations

The DEP regulates underground injection;[26] water well permitting;[27] water well construction;[28] source water and wellhead protection programs;[29] and ground water classes, standards, and monitoring.[30] The DEP's Aquifer Protection Program is responsible for regulatory programs affecting ground water.[31] The DEP exercises regulatory authority over ground water quality under Chapter 62-520 of the Florida Administrative Code. In Florida, ground waters of the state are delineated and assigned a class designation based on use and natural water quality. Appropriate water quality criteria and standards for those classes are established in rule and

[22] Section 373.036(1), F.S.
[23] Fla. Admin. Code R. 62-40.416.
[24] Section 373.250(5), F.S.
[25] Fla. Admin. Code R. 62-40.416.
[26] Fla. Admin. Code R. Ch. 62-528.
[27] Fla. Admin. Code R. Ch. 62-532.
[28] Fla. Admin. Code R. Chs. 62-531 (Water Well Contractors) and 62-532 (Water Well Permitting and Construction Requirements)
[29] Fla. Admin. Code R. Ch. 62-521.
[30] Fla. Admin. Code R. Ch. 62-520
[31] DEP, *Aquifer Protection Program- UIC, available at* https://floridadep.gov/water/aquifer-protection (last visited Feb. 1, 2018).

range from potable to non-potable use classes. By definition, a violation of any ground water standard or criterion constitutes pollution.[32]

The Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) is the federal law that protects public drinking water supplies throughout the nation.[33] Under the SDWA, the U.S. Environmental Protection Agency (EPA) sets standards for drinking water quality and, with its partners, implements various technical and financial programs to ensure drinking water safety.[34] Florida has the primary authority to implement the SDWA, having adopted a Florida SDWA that has been demonstrated to be at least as stringent as the federal law.[35] These statutes direct the DEP to formulate and enforce rules pertaining to drinking water. The rules adopt the federal primary and secondary drinking water standards and create additional rules to fulfill state requirements. Drinking water standards are set out in chapter 62-550 of the Florida Administrative Code.

Local Government Solid Waste Responsibilities

The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.[36] Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. Each county must have a recyclable materials recycling program that has a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.[37]

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. Each county must implement a program for recycling construction and demolition debris. If the state's recycling rate is below 60 percent by January 1, 2017; below 70 percent by January 1, 2019; or below 75 percent by January 1, 2021, the DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives. The report must identify those additional programs or statutory changes needed to achieve the state's recycling goals. The programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers;
- Aluminum cans;
- Steel cans;
- Glass;

[32] Florida Admin. Code s. 62-520.310.
[33] The Public Health Service Act, 42 U.S. ss. 300f to 300j-26 (2016).
[34] U.S. Environmental Protection Agency, *Summary of the Safe Water Drinking Act, available at* https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act (last visited Feb. 1, 2018).
[35] Sections 403.850-403.864, F.S.
[36] Section 403.706(1), F.S.
[37] Section 403.706(2), F.S.

- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.[38]

Each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.[39]

"Municipal solid waste" includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.[40] The DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to the DEP that:

- The achievement of the goal would have an adverse effect on the financial obligations of the county that are directly related to the county's waste-to-energy facility; and
- The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.

The goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.[41]

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must enter into negotiations with a franchisee who is operating exclusively to collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government. A market must exist for the recyclable materials and the local government must specifically intend for them to be recycled. Local governments are authorized to provide for the collection of the recyclable materials. Such ordinances may include, but are not limited to; provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.[42]

A local government may not:

[38] Section 403.706(2)(f), F.S.
[39] Section 403.706(3), F.S.
[40] Section 403.706(5), F.S.
[41] Section 403.706(6), F.S.
[42] Section 403.706(21), F.S.

- Require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government;
- Restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has registered with the DEP; and
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.[43]

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.[44]

Florida's Recycling Goal

In recognition of the volume of waste generated by Floridians and visitors every year and the value of some of these discarded commodities, the Legislature set a goal to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities by 2020.[45] The DEP established several programs and initiatives to reach that goal. In 2015, Florida's recycling rate was 54 percent, meeting the 50 percent target rate specified in statute.[46]

Florida achieved the interim recycling goals established for 2012 and 2014, but Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent. The current practices in Florida are not expected to increase significantly the recycling rate beyond the 56 percent rate. Without significant changes to Florida's current approach, the state's recycling rate will likely fall short of the 2020 goal of 75 percent.[47]

The DEP, in partnership with material recycling facilities (MRFs) across the state, has developed a statewide public education campaign, entitled "Rethink. Reset. Recycle." The campaign addresses the need to educate Florida residents on how to reduce single stream curbside recycling contamination. Plastic bags, cords, clothing and packaging are causing contamination problems that can shut down MRF operations and cause good loads of recyclables to become trash. The campaign also serves to remind Florida residents of the basics of curbside recycling: clean and dry aluminum and steel cans, plastic bottles and jugs, and paper and cardboard. The DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management processes;
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020, to market specific goals such as a food diversion goal or an organics recycling goal;

[43] Section 403.7046(3), F.S.
[44] Section 403.7046(3)(a), F.S.
[45] Section 403.7032, F.S.; DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5 https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).
[46] DEP, *Recycling*, http://www.dep.state.fl.us/waste/categories/recycling/default.htm (last visited Feb. 1, 2018).
[47] DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5 https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).

- Engaging Florida's state universities and the Florida Department of Education to review potential K-12 curriculum programs emphasizing waste reduction and recycling practices;
- Continuing to work with state agencies to identify recycling/cost saving measures specific to their operations; and
- Providing counties not achieving the 2016 interim recycling goal with assistance in analyzing, planning and executing opportunities to increase recycling.[48]

A number of counties and municipalities have instituted single stream recycling programs. Single stream recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling materials from paper and plastic bottles to metal cans and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the amount of recyclables collected and residential participation. While there are many advantages to single stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single stream recycling has been the collection of unwanted materials and poorly sorted recyclables, resulting in increased contamination originating in the curbside recycling cart.[49]

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts. Those items are often harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While MRFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement costs and delays. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling on unusable materials. Although some local governments have implemented successful single stream recycling programs with low contamination rates, contamination rates for other programs have continued to rise, in some case reaching contamination rates of more than 30-40 percent by weight.[50]

Exceptions to Requirements for Environmental Permits

An environmental resource permit (ERP) is required, if a project exceeds certain thresholds, for surface water management systems and, more specifically, for the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on or over wetlands or other surface waters).[51] However, for a number of low impact activities and projects that are narrow in scope, an environmental permit under state law is not required.[52] Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to an agency.[53] Activities exempted from an ERP are varied and include the installation of overhead transmission lines, installation and maintenance of boat ramps, work on sea walls and mooring

[48] *Id.* at 11.
[49] *Id.* at 13.
[50] *Id.*
[51] Fla. Admin. Code R. 62-330.010.
[52] Section 403.813, F.S.
[53] Fla. Admin. Code R. 62-330.50.

pilings, swales, and foot bridges, the removal of aquatic plants, construction of floating vessel platforms, and work on county roads and bridges, among many others.[54] Included among activities exempt from the requirement to obtain a permit is the replacement or repair of existing docks and piers, if fill material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.[55] Although permitting is not required for these activities, there may be a requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity.[56]

Wastewater Treatment Facility Permits

Domestic wastewater is wastewater derived principally from dwellings, business buildings, and institutions, commonly referred to as sanitary wastewater or sewage.[57] Domestic wastewater leaves these structures through a domestic wastewater collection system[58] for treatment at a domestic wastewater treatment facility.[59] There are approximately 1,900 domestic wastewater treatment facilities in the state serving roughly two-thirds of the state's population.[60] Treated effluent[61] and reclaimed water[62] from these facilities is over 1.5 billion gallons per day and includes disposal of through surface water outfalls, deep aquifer injection wells, and other groundwater disposal such as percolation ponds and spray fields.[63]

Domestic wastewater facilities that discharge to surface waters[64] must obtain a National Pollutant Discharge Elimination System (NPDES) permit. The NPDES program is a federal program established by the Clean Water Act (CWA) to control point source discharges.[65] The NPDES permit requirements for most domestic wastewater facilities are incorporated into a state-issued

[54] Section 403.813, F.S., Fla. Admin. Code R. 62-330.051.
[55] Section 403.813(1)(d), F.S.
[56] Section 403.813(1), F.S.
[57] Fla. Admin. Code R. 62-600.200(21).
[58] Section 403.866(1), F.S., defines "domestic wastewater collection system" to mean pipelines or conduits, pumping stations, and force mains and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
[59] Section 403.866(2), F.S., defines a "domestic wastewater treatment plant" to mean any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes.
[60] DEP, *General Facts and Statistics about Wastewater in Florida*, https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 27, 2018); The remainder of the state is served by on-site treatment and disposal systems regulated by the Department of Health.
[61] Fla. Admin. Code R. 62-600.200(22), defines "effluent" to mean, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.
[62] Fla. Admin. Code R. 62-600.200(54), Reclaimed water means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.
[63] DEP, *General Facts and Statistics about Wastewater in Florida*, https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 27, 2018).
[64] Section 403.031(13), F.S., defines "waters" to mean rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; Fla. Admin. Code R. 62-620.200(56).
[65] 33 U.S.C. §1342.

permit, giving the permittee one set of permitting requirements rather than separate requirements for each the state and federal permit.[66]

A domestic wastewater system is a stationary installation that is reasonably expected to be a source of water pollution[67] and must not be operated, maintained, constructed, expanded or modified without an appropriate and valid permit issued by the DEP, unless otherwise exempted by law.[68] A domestic wastewater treatment plant operating permit is issued for a term of five years.[69] As an incentive, certain wastewater treatment facilities that are not required to have a NPDES permit may request renewal of an operation permit for a term of up to 10 years for the same fee and under the same conditions as a five-year permit. These facilities must meet the following criteria:

- The waters from the treatment facility are not discharged to Class I municipal injection wells or the treatment facility is not required to comply with the federal standards under the Underground Injection Control Program;
- The treatment facility is not operating under a temporary operating permit or a permit with an accompanying administrative order and does not have any enforcement action pending against it by the United States Environmental Protection Agency (EPA), the DEP, or an approved local program;
- The treatment facility has operated under an operation permit for five years and, for at least the preceding two years, has generally operated in conformance with the limits of permitted flows and other conditions specified in the permit;
- The DEP has reviewed the discharge monitoring reports required by rule and is satisfied that the reports are accurate;
- The treatment facility has generally met water quality standards in the preceding two years, except for violations attributable to events beyond the control of the treatment plant or its operator (e.g., destruction of equipment by fire, wind, or other abnormal events that could not reasonably be expected to occur); and
- The DEP or an approved local program has conducted, in the preceding 12 months, an inspection of the facility and has verified in writing to the operator of the facility that it is not exceeding the permitted capacity and is in substantial compliance.[70]

Disinfection

Disinfection is the selective destruction of disease-producing organisms (pathogens)[71] in wastewater effluent, reclaimed water, and biosolids.[72] Most domestic wastewater treatment facilities must meet either basic disinfection for discharges to surface water or high-level disinfection for reuse systems.[73]

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[66] Section 403.0885, F.S.; Fla. Admin. Code R. Ch. 62-620; DEP, *Wastewater Permitting*, https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last accessed Jan. 28, 2018); DEP, *Types of Permits*, http://flwaterpermits.com/typesofpermits.html (last assessed Jan. 28, 2018).
[67] Section 403.031(7), F.S., defines "pollution."
[68] Section 403.087(1), F.S.
[69] Section 430.087(1), F.S.; Fla. Admin. Code R. 62-620.320(8).
[70] Section 403.087(3), F.S.
[71] Fla. Admin. Code R. 62-600.200(47).
[72] Fla. Admin. Code R. 62-600.200(18).
[73] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last accessed Jan. 27, 2018).

Basic disinfection essentially requires that the effluent after disinfection contain less than 200 fecal coliform values per 100 milliliter of sample.[74] High-level disinfection, which is used in conjunction with some types of reuse projects, including use to irrigate residential lawns, areas accessible to the public, and edible food crops, essentially requires that fecal coliforms be reduced below detection.[75] Filtration is required ahead of the disinfection process and serves as an important and integral part of the overall high-level disinfection process.[76]

Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.[77] Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the DEP is required to establish a TMDL for impaired waterbodies.[78] A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.[79] Waste load allocations are pollutant loads attributable to existing and future point sources. Load allocations are pollutant loads attributable to existing and future nonpoint sources. Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.[80]

Basin Management Action Plans and Best Management Practices

The DEP is the lead agency in coordinating the development and implementation of TMDLs. Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to achieve TMDLs. The BMAPs use existing planning tools to address the entire pollution load, including point and nonpoint discharges, for a watershed. The BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Non-regulatory and incentive-based programs, including best management practices (BMPs), cost sharing, waste minimization, pollution prevention, agreements, and public education;[81]

[74] Fla. Admin. Code R. 62-600.440(5).
[75] Fla. Admin. Code R. 62-600.440(6).
[76] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last accessed Jan. 27, 2018).
[77] Section 403.067, F.S.
[78] *Id*.
[79] Section 403.031(21), F.S.
[80] Fla. Admin. Code R. 62-620.200(37). Point source means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are essentially sources of pollution that are not point sources. They can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.
[81] Section 403.061, F.S., grants the Department of Environmental Protection (DEP) the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

- Public works projects, including capital facilities; and
- Land acquisition.[82]

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.[83] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality clean-up responsibilities.[84]

The BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the BMAP must be made as appropriate.[85]

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.[86] A nonpoint source discharger may be subject to enforcement action by the DEP or a WMD based on a failure to implement these requirements.[87] The BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and help reduce water use. The BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, silviculture (forestry) operations, and stormwater management.[88]

Presumption of Compliance

Where interim measures, BMPs, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction or in voluntary BMP programs implemented must be verified at representative sites by the DEP.[89] Implementation of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites by the DEP, provide a presumption of compliance with water quality standards (WQS) and the DEP is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants.[90]

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[82] Section 403.067(7), F.S.
[83] *Id*.
[84] DEP, *Basin Management Action Plans (BMAPs)*, *available at* https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Jan. 31, 2018).
[85] Section 403.067(7)(a)5., F.S.
[86] Section 403.067(7)(b)2.g., F.S. BMPs for agriculture, for example, include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.
[87] Section 403.067(7)(b)2.h., F.S.
[88] DEP, *NPDES Stormwater Program*, https://floridadep.gov/Water/Stormwater (last visited Jan. 31, 2018).
[89] Sections 403.067(7)(c)3., and (12)(b), F.S.
[90] Section 403.067(7)(c)3., F.S.

Penalties

It is a violation of state law for any person to cause pollution that harms or injures human health or welfare, animal, plant, or aquatic life or property.[91] Whoever commits such a violation is liable to the state for any damage caused and for civil penalties.[92] Any person who willfully commits such violation is guilty of a felony of the third degree, punishable by a fine of not more than $50,000 or by imprisonment for five years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.[93] It is the Legislature's intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance.[94]

Sanitary Sewer Overflows

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system is a SSO.[95]

Contributing factors may include:

- Build-up of solids and fats, oils and greases, in the wastewater collection system impeding flow;
- Too much rainfall infiltrating through the ground into leaky sanitary sewers, which are not intended to hold rainfall. Excess water also can flow through roof drains connected to sewers or poorly connected sewer lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from properly functioning. Tree roots can grow into the sewer. Sections of pipe can settle or shift so that pipe joints no longer match. Sediment and other material can build up and cause pipes to break or collapse; and
- A deteriorating or aging sewer system that can be expensive to repair. Some municipalities have found severe problems, necessitating costly correction programs.[96]

A key concern with SSOs entering rivers, lakes or streams is their negative effect on water quality. In addition, because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access; food that has been contaminated; and inhalation and skin absorption. The Department of Health issues health advisories when bacteria levels present a risk

[91] Section 403.161(1)(a), F.S.
[92] Section 403.161(2), F.S.; *see* s. 403.141, F.S., for civil penalties.
[93] Section 403.161(3), F.S.; ss. 775.082(3)(e) and 775.083(1)(g), F.S.
[94] Section 403.161(6), F.S.
[95] DEP, *Sanitary Sewer Overflows (SSOs), available at* https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 31, 2018).
[96] DEP, *Preventing SSOs, available at* https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf (last accessed Jan. 27, 2018); DEP, *SSOs, available at* https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 26, 2018).

to human health, and may post warning signs when bacteria affect public beaches or other areas where there is the risk of human exposure.[97]

Reduction of SSOs can occur through:
- Cleaning and maintaining the sewer system;
- Reducing infiltration and inflow through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer pump station or sewage treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.[98]

After an SSO event, the DEP reviews the data from the utilities to assess the overall impact to the environment in deciding whether to take additional action. The DEP looks at how serious the violation was; whether this was a first-time violation or a repeated violation; whether the violation was inadvertent or beyond reasonable control; and whether the damage to the environment can be undone or remediated quickly.[99] The DEP also takes into account the severity of the rain event (e.g., was it a hurricane or a storm, or if the area had received an unusually large amount of rainfall beyond historical averages). If the discharge was caused by an operator error or lack of a certified operator on-site at the time, then the DEP may consider additional training for operators to prevent similar errors from occurring in the future. In some circumstances, the DEP will meet with utilities to discuss infrastructure repairs and process improvements the utility is making and planning to implement in order to avoid further SSOs.[100]

Financing Wastewater Treatment Facilities

Asset Management

Renewing and replacing domestic wastewater treatment infrastructure is an ongoing task. Asset management can help a utility maximize the value of its capital as well as its operations and maintenance dollars. Asset management provides utility managers and decision makers with critical information on capital assets and timing of investments. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and developing plans to maintain, repair, and replace assets and to fund these activities.[101] The EPA provides guidance and reference manuals for utilities to aid in developing asset management plans (AMPs).[102]

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[97] DEP, *SSOs*, *available at* https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 31, 2018).
[98] *Id*.
[99] *Id*.
[100] *Id*.
[101] EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities (last visited Jan. 31, 2018).
[102] EPA, *Asset Management: A Best Practices Guide*, https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF; EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems*, (May 2014) https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf (last visited Jan. 31, 2018).

Many states, including Florida, provide financial incentives for the development and implementation of an AMP when requesting funding under a State Revolving Fund or other state funding mechanism.[103] Florida's incentives include priority scoring,[104] reduction of interest rates,[105] principal forgiveness for financially disadvantaged small communities,[106] and eligibility for small community wastewater facilities grants.[107]

Water and Wastewater Utility Reserve Fund

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund would be funded by a portion of the rates charged by the utility, by a secured escrow account or through a letter of credit.

The PSC, as required, adopted rules[108] governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for a PSC authorization before fund disbursements.[109] The PSC requires an applicant to provide a capital improvement plan or an AMP in seeking authorization to create a utility reserve fund.[110]

The Clean Water State Revolving Fund (CWSRF) Program

Florida's CWSRF is funded through money received from federal grants as well as state contributions. These funds then "revolve" through the repayment of previous loans and interest earned. While these programs offer loans, grant-like funding is also available for qualified small, disadvantaged communities, which reduces the amount owed on loans by the percentage that the community qualifies. The CWSRF Program provides low-interest loans to local governments to plan, design, and build or upgrade wastewater, stormwater, and nonpoint source pollution prevention projects. Certain agricultural best management practices may also qualify for funding. Very low interest rate loans, grants and other discounted assistance for small communities is available. Interest rates on loans are below market rates and vary based on the economic wherewithal of the community. Generally, local governments and special districts are eligible loan sponsors.[111] The EPA classifies eleven types of projects that are eligible to receive CWSRF assistance. They include projects:

- For a municipality or inter-municipal, interstate, or state agency to construct a publicly owned treatment works;
- For a public, private, or nonprofit entity to implement a state nonpoint source pollution management program;

[103] EPA, *State Asset Management Initiatives*, (August 2012), https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf (last visited Jan. 31, 2018).
[104] Fla. Admin. Code R. 62-503.300(e).
[105] Fla. Admin. Code R. 62-503.300(5)(b)1., 62-503.700(7).
[106] Fla. Admin. Code R. 62-503.500(4).
[107] Fla. Admin. Code R. 62-505.300(d), and 62-505.350(5)(c).
[108] Fla. Admin. Code R. 25-30.444.
[109] Section 367.081(2)(c), F.S.
[110] Fla. Admin. Code R. 25-30.444(2)(e) and (m).
[111] DEP, *State Revolving Fund, available at* https://floridadep.gov/wra/srf (last visited January 18, 2018).

- For a public, private, or nonprofit entity to develop and implement a conservation and management plan;
- For a public, private, or nonprofit entity to construct, repair, or replace decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- For a public, private, or nonprofit entity to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- For a municipality or inter-municipal, interstate, or state agency to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- For a public, private, or nonprofit entity to develop and implement watershed projects;
- For a municipality or inter-municipal, interstate, or state agency to reduce the energy consumption needs for publicly owned treatment works;
- For a public, private, or nonprofit entity for projects for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- For a public, private, or nonprofit entity to increase the security of publicly owned treatment works; and
- For any qualified nonprofit entity, to provide technical assistance to owners and operators of small and medium sized publicly owned treatment works to plan, develop, and obtain financing for CWSRF eligible projects and to assist each treatment works in achieving compliance with the CWA.[112]

Small Community Sewer Construction

The Small Community Sewer Construction Assistance Act requires the DEP to award grants to assist financially disadvantaged small communities with their needs for adequate sewer facilities.[113] In accordance with rules adopted by the Environmental Regulation Commission (ERC), the DEP may provide grants, for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.[114] The rules of the ERC must also:

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable;
- Require appropriate user charges, connection fees, and other charges to ensure the long-term operation, maintenance and replacement of the facilities constructed under each grant;
- Require grant applications to be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained;
- Establish a system to determine eligibility of grant applications;
- Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution abatement;
- Establish requirements for competitive procurement of engineering and construction services, materials and equipment; and

[112] EPA, *Learn about the CWSRF*, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Jan. 26, 2018).
[113] Section 403.1838(2), F.S.
[114] Section 403.1838(3)(a), F.S.

- Provide for termination of grants when program requirements are not met.[115]

Plant Operations Excellence Awards

Each year, the DEP presents awards to domestic wastewater and drinking water facilities around the state that demonstrate excellence in operation, maintenance, innovative treatment, waste reduction, pollution prevention, recycling or other achievements. These awards recognize facilities that demonstrate a special commitment to excellence in management through dedicated professionalism and that have an impeccable history of record-keeping compliance.[116]

III. Effect of Proposed Changes:

Impact Offsets and Substitution Credits

Section 1 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use to:

- Prevent or stop further saltwater intrusion;
- Raise aquifer levels;
- Improve the water quality of an aquifer; or
- Augment surface water to increase the quantity of water available for water supply.

The bill requires the water resource implementation rule to include criteria for the application of an impact offset or a substitution credit to a consumptive use permit or to a minimum flows and levels recovery or prevention strategy.

Memorandum of Agreement

Section 2 provides that the Legislature encourages the development of aquifer recharge for water reuse implementation. The bill requires the Department of Environmental Protection (DEP) and the WMDs to develop and enter into a memorandum of agreement (MOA) no later than December 1, 2018, providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The MOA must provide that the coordinated review is performed only if the applicant for such permits requests a coordinated review. The goal of the coordinated review is to share information, avoid the need for an applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

Contaminated Recyclable Material

Section 3 provides the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

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[115] Section 403.1838(3)(b), F.S.; Fla. Admin. Code R. Ch. 62-505.

[116] DEP, *DEP Presents 2017 Plant Excellence Award to Three South Florida Water Facilities* (Jan. 25, 2018) available at https://content.govdelivery.com/accounts/FLDEP/bulletins/1d59e36 (last visited Feb. 1, 2018).

- A residential recycling collector may not be required to collect or transport contaminated recyclable material, unless specified by contract.
- A materials recovery facility may not be required to process contaminated recyclable material, unless specified by contract.
- Contracts between a residential recycling collector and a county or municipality, each request for proposal for residential recyclable material, and contracts between a materials recovery facility and a county or municipality must include:
  - A definition of the term "contaminated recyclable material" that is appropriate for the local community, based on the available markets for recyclable material, available waste composition studies, and other relevant factors;
  - The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed;
  - The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, bins, or loads that contain contaminated recyclable material; and
  - The remedies that will be used if a container, cart, bin, or load contains contaminated recyclable material.
- Contracts between a collector and a county or municipality and each request for proposal for residential recyclable material must include the education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after July 1, 2018.

The bill provides that "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

Environmental Resource Permit (ERP) Exemptions for Repair or Replacement of Existing Docks or Piers/Verification from the DEP

Section 4 revises the ERP exemption for the repair or replacement of existing docks and piers. The bill prohibits a local government from requiring an individual claiming certain permit exemptions to provide further department verification. Existing law requires the replaced or repaired dock or pier to be in the same location and of the same configuration and dimensions as the deck or pier being replaced or repaired. The bill provides that, in order to be exempt from permitting, the replaced or repaired dock or pier must be within five feet of the same location and no larger in size than the existing dock or pier. It also requires that no additional aquatic resources be adversely and permanently impacted by the replacement or repair. The bill provides that for all of the activities and projects excluded from the requirement to obtain a permit, a local government may not require an individual claiming an exemption to provide further verification from the DEP.

Section 5 creates s. 403.1839, F.S., to create the blue star collection system assessment and maintenance program.

The bill defines terms and provides the following legislative findings:

- The implementation of domestic wastewater collection system assessment and maintenance practices has been shown to limit effectively sanitary sewer overflows and the unauthorized discharge of pathogens.
- The voluntary implementation of domestic wastewater collection system assessment and maintenance practices beyond those required by law has the potential to limit sanitary sewer overflows.
- The unique geography, community, growth, size, and age of domestic wastewater collection systems across the state require diverse responses, using the best professional judgment of local utility operators, to ensure that programs designed to limit sanitary sewer overflows are effective.

The bill establishes in the DEP a blue star collection system assessment and maintenance program and states that the purpose of this voluntary incentive program is to assist public and private utilities in limiting sanitary sewer overflows and the unauthorized discharge of pathogens.

The DEP must adopt rules to administer the program, including program certification standards, and must review and, if appropriate, approve public and private domestic wastewater utilities that apply for certification under the program or that demonstrate continued compliance with program certification requirements. A utility must provide reasonable documentation that it meets the following certification standards:

- Implementation of periodic collection system and pump station structural condition assessments and the performance of as-needed maintenance and replacement.
- Adequate reinvestment by the utility in its collection system and pump station structural condition assessment and maintenance and replacement program to reasonably maintain the working integrity of the system and station.
- Implementation of a program designed to limit the presence of fats, roots, oils, and grease in the collection system.
- If the applicant is a public utility, the existence of a local law or building code requiring the private pump stations and lateral lines connecting to the public system to be free of:
  - Cracks, holes, missing parts, or similar defects; and
  - Direct stormwater connections that allow the direct inflow of stormwater into the private system and the public domestic wastewater collection system.
- Adoption of a power outage contingency plan that addresses mitigation of the impacts of power outages on the utility's collection system and pump stations.

Program certifications expire after five years. During the five-year certification period, a utility must annually provide documentation to the DEP on the status of its implementation of the program and must demonstrate that it meets all program criteria in order to maintain its program certification.

The DEP must annually publish on its website a list of certified blue star utilities beginning on January 1, 2020, and must allow public and private, non-profit utilities to participate in the Clean Water State Revolving Fund Program for any purpose of the blue star collection system assessment and maintenance program which is consistent with federal requirements for participating in the Clean Water State Revolving Fund Program.

In the calculation of penalties for a sanitary sewer overflow, the DEP may reduce the penalty based on a utility's status as a certified blue star utility. The DEP may also reduce a penalty based on a certified blue star utility's investment in assessment and maintenance activities to identify and address conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

Section 6 amends s. 403.067(7)(c), F.S., relating to best management practices. The bill requires the DEP to provide a domestic wastewater utility that implements and maintains a program as a certified blue star utility a presumption of compliance with state water quality standards for pathogens when the utility demonstrates a history of compliance with wastewater disinfection requirements incorporated in the utility's operating permit for any discharge into the impaired surface water.

Section 7 amends s. 403.087, F.S., to require, subject to National Pollutant Discharge Elimination System (NPDES) permit duration limits for a utility, the DEP to issue 10-year permits to blue star certified utilities for the same fee and under the same conditions that apply to a five-year permit, upon approval of its application for renewal, if the certified blue star utility demonstrates that it:

- Is in compliance with any consent order or an accompanying administrative order related to its permit;
- Does not have any pending enforcement action against it by the United States Environmental Protection Agency (EPA), the DEP, or a local program; and
- If applicable, has submitted annual program implementation reports demonstrating progress in the implementation of the program.

Section 8 amends s. 403.161, F.S., to authorize, notwithstanding any other law, the DEP to reduce a penalty based on the person's investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility.

Section 9 amends s. 403.1838, F.S., to expand the eligibility for and uses of the Small Community Sewer Construction Grants. Under the bill, private, non-profit utilities serving financially disadvantaged small communities may also receive grants for up to 100 percent of the costs of planning, assessing, designing, constructing, upgrading, or replacing wastewater facilities. The use of grant funds for assessments is added to the section. The bill also provides that Small Community Sewer Construction Grants may also be used for planning and implementing domestic wastewater collection system assessment programs to identify conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

Sections 1-4 of the bill take effect upon the bill becoming a law. **Sections 5-9** of the bill take effect January 1, 2019.

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 may have a positive, indeterminate impact on private utilities that will now be eligible for Clean Water State Revolving Fund Program funds and Small Community Sewer Construction Assistance Grants.

C. Government Sector Impact:

The bill may have an indeterminate fiscal effect on local government recycling and waste removal services.

The bill may have an indeterminate, negative fiscal impact on the Department of Environmental Protection (DEP) as a result of the costs of rulemaking requirements of the bill. The bill may also have indeterminate negative fiscal impacts on the DEP and the water management districts as a result of the costs of developing an MOA for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The incentives associated with being blue star certified (e.g., reduced penalties, in-kind penalties, and 10-year operating permits) may reduce the amount of revenue generated from these activities. These costs can be absorbed within existing resources.

The bill may have a positive, indeterminate impact on local governments as it increases the eligible uses for Small Community Sewer Construction Assistance Grants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.250, 403.064, 403.067, 403.087, 403.161, 403.1838, 403.706, and 403.813.

This bill creates section 403.1839 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 February 22, 2018:
Provides that the Legislature encourage the development of aquifer recharge for water reuse implementation. The amendment also deletes a legislative finding that reuse through aquifer recharge is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems.

Creates the blue star collection system assessment and maintenance program for domestic sewer systems. The Department of Environmental Protection (DEP) will administer the program and codify program certification standards. Certification requires a demonstration of:

- An adequate rate of reinvestment;
- Periodic structural condition assessments, and as-needed maintenance and replacements;
- A program designed to limit fats, roots, oils, and grease in its collection system;
- For public utilities, a local requirement that the private pump stations and lateral lines connecting to the public system be free of defects and direct stormwater connections; and
- A power outage contingency plan.

Public and private utilities certified under the program could receive the following incentives:

- Publication on the DEP's website;
- Participation in the Clean Water State Revolving Loan Fund Program;
- Reduced penalties for a sanitary sewer overflow;
- Ten-year operating permits; and
- A presumption of compliance with state water quality standards for pathogens.

The bill expands the Small Community Sewer Construction Assistance Grant Program to include private utilities and expands the uses of the grants.

CS/CS by Community Affairs on February 13, 2018:
Maintains the ability for a homeowner, business, or local government to rebuild a dock or pier without going through the permitting process, making clear that a rebuilt dock or pier does not need to be exactly the same so long as it is within 5 feet of the same location and is no larger in size than the existing dock.

- Provides that, for all of the activities and projects excluded from the requirement to obtain a permit, a local government may not require an individual claiming an exemption to provide further verification from the DEP. The amendment removed language that had prohibited a local government from requiring further verification from the DEP.

CS by Environmental Preservation and Conservation on January 22, 2018:
The amendment removes provisions in the bill related to contaminated recycling and adds the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal for residential recyclable material, must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract and request for proposal must include.
- Each contract between a materials recovery facility and a county or municipality for processing residential recyclable material must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract must include.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The amendment provides that "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 95 - 102
and insert:
water is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. The Legislature further finds that for those wastewater treatment plants permitted and operated under an approved reuse program by the department, the reclaimed water shall be considered environmentally acceptable and not a threat to public

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health and safety. The Legislature encourages the development of aquifer recharge and incentive-

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

And the title is amended as follows:

Delete lines 7 - 8

and insert:

amending s. 403.064, F.S.; encouraging the use of aquifer recharge; requiring the Department of Environmental

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 646 - 650
and insert:
Section 1. Effective January 1, 2019, section 403.1839, Florida Statutes, is created to read:
403.1839 Blue star collection system assessment and maintenance program.—
(1) DEFINITIONS.—As used in this section, the term:
(a) "Domestic wastewater" has the same meaning as in s.


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367.021.

(b) "Domestic wastewater collection system" has the same meaning as in s. 403.866.

(c) "Program" means the blue star collection system assessment and maintenance program created pursuant to this section.

(d) "Sanitary sewer overflow" means the unauthorized overflow, spill, release, discharge, or diversion of untreated or partially treated domestic wastewater.

(2) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) The implementation of domestic wastewater collection system assessment and maintenance practices has been shown to effectively limit sanitary sewer overflows and the unauthorized discharge of pathogens.

(b) The voluntary implementation of domestic wastewater collection system assessment and maintenance practices beyond those required by law has the potential to further limit sanitary sewer overflows.

(c) The unique geography, community, growth, size, and age of domestic wastewater collection systems across the state require diverse responses, using the best professional judgment of local utility operators, to ensure that programs designed to limit sanitary sewer overflows are effective.

(3) ESTABLISHMENT AND PURPOSE.—There is established in the department a blue star collection system assessment and maintenance program. The purpose of this voluntary incentive program is to assist public and private utilities in limiting sanitary sewer overflows and the unauthorized discharge of pathogens.

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(4) APPROVAL AND STANDARDS.—

(a) The department shall adopt rules to administer the program, including program certification standards, and shall review and, if appropriate, approve public and private domestic wastewater utilities that apply for certification under the program or that demonstrate continued compliance with program certification requirements pursuant to paragraph (c).

(b) In order to be certified under the program, a utility must provide reasonable documentation that demonstrates that it meets the following certification standards:

1. Implementation of periodic collection system and pump station structural condition assessments and the performance of as-needed maintenance and replacement.

2. Adequate reinvestment by the utility in its collection system and pump station structural condition assessment and maintenance and replacement program to reasonably maintain the working integrity of the system and station.

3. Implementation of a program designed to limit the presence of fats, roots, oils, and grease in the collection system.

4. If the applicant is a public utility, the existence of a local law or building code requiring the private pump stations and lateral lines connecting to the public system to be free of:

a. Cracks, holes, missing parts, or similar defects; and

b. Direct stormwater connections that allow the direct inflow of stormwater into the private system and the public domestic wastewater collection system.

5. Adoption of a power outage contingency plan that addresses mitigation of the impacts of power outages on the

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utility's collection system and pump stations.

(c) Program certifications expire after 5 years. During the 5-year certification period, a utility must annually provide documentation to the department on the status of its implementation of the program and must demonstrate that it meets all program criteria in order to maintain its program certification.

(5) PUBLICATION.—Beginning on January 1, 2020, the department shall annually publish on its website a list of certified blue star utilities.

(6) FEDERAL PROGRAM PARTICIPATION.—The department shall allow public and private, nonprofit utilities to participate in the Clean Water State Revolving Fund Program for any purpose of the program which is consistent with federal requirements for participating in the Clean Water State Revolving Fund Program.

(7) REDUCED PENALTIES.—In the calculation of penalties for a sanitary sewer overflow pursuant to s. 403.161, the department may reduce the penalty based on a utility's status as a certified blue star utility in accordance with this section. The department may also reduce a penalty based on a certified blue star utility's investment in assessment and maintenance activities to identify and address conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

Section 2. Effective January 1, 2019, paragraph (c) of subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, where adopted by rule, must ~~shall~~ be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services must ~~shall~~ consult with the department, the Department of

Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12)(b) must be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, where applicable, must notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by


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those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from the provisions of s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, must ~~shall~~ revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

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5. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3. and 4. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

6. The provisions of subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

7. The department must provide a domestic wastewater utility that implements and maintains a program as a certified blue star utility in accordance with s. 403.1839 with a presumption of compliance with state water quality standards for pathogens when the utility demonstrates a history of compliance with wastewater disinfection requirements incorporated in the utility's operating permit for any discharge into the impaired surface water.

Section 3. Effective January 1, 2019, subsection (11) is

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added to section 403.087, Florida Statutes, to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(11) Subject to the permit duration limits for a utility permitted pursuant to s. 403.0885, the department must issue a blue star utility certified pursuant to s. 403.1839 a 10-year permit, for the same fee and under the same conditions that apply to a 5-year permit, upon approval of its application for permit renewal, if the certified blue star utility demonstrates that it:

(a) Is in compliance with any consent order or an accompanying administrative order related to its permit;

(b) Does not have any pending enforcement action against it by the Environmental Protection Agency, the department, or a local program; and

(c) If applicable, has submitted annual program implementation reports demonstrating progress in the implementation of the program.

Section 4. Effective January 1, 2019, present subsection (6) of section 403.161, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

403.161 Prohibitions, violation, penalty, intent.—

(6) Notwithstanding any other law, the department may reduce a penalty based on the person’s investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility.

Section 5. Effective January 1, 2019, paragraphs (a) and (b) of subsection (3) of section 403.1838, Florida Statutes, are


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amended to read:

403.1838 Small Community Sewer Construction Assistance Act.—

(3)(a) In accordance with rules adopted by the Environmental Regulation Commission under this section, the department may provide grants, from funds specifically appropriated for this purpose, to financially disadvantaged small communities and to private, nonprofit utilities serving financially disadvantaged small communities for up to 100 percent of the costs of planning, assessing, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses. Grants issued pursuant to this section may also be used for planning and implementing domestic wastewater collection system assessment programs to identify conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

(b) The rules of the Environmental Regulation Commission must:

1. Require that projects to plan, assess, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.

2. Require appropriate user charges, connection fees, and other charges sufficient to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant.

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3. Require grant applications to be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained.

4. Establish a system to determine eligibility of grant applications.

5. Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution abatement.

6. Establish requirements for competitive procurement of engineering and construction services, materials, and equipment.

7. Provide for termination of grants when program requirements are not met.

Section 6. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 7. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete lines 37 - 38

and insert:

creating s. 403.1839, F.S.; defining terms; providing legislative findings; establishing the blue star collection system assessment and maintenance program; specifying the purpose of the program; requiring the department to adopt rules and review and, if appropriate, approve applications for certification

under the program; requiring a utility applying for certification to provide reasonable documentation demonstrating that it meets specified certification standards; providing that certifications expire after a specified period of time; specifying requirements to maintain program certification; requiring the department to annually publish a list of certified blue star utilities, beginning on a specified date; requiring the department to allow public and private, nonprofit utilities to participate in the Clean Water State Revolving Fund Program for certain purposes; authorizing the department to reduce certain penalties for a certified utility under specified conditions; amending s. 403.067, F.S.; creating a presumption of compliance with certain total maximum daily load requirements for certified blue star utilities; amending s. 403.087, F.S.; requiring the department to provide extended operating permits when a certified blue star utility applies for permit renewal under certain conditions; amending s. 403.161, F.S.; authorizing the department to reduce a penalty based on certain system investments for permitted facilities; amending s. 403.1838, F.S.; allowing for additional recipients and uses of Small Community Sewer Construction grants; providing a directive to the Division of Law Revision and Information; providing effective dates.

By the Committees on Community Affairs; and Environmental Preservation and Conservation; and Senator Perry

578-03176-18 20181308c2

A bill to be entitled

An act relating to environmental regulation; amending s. 373.250, F.S.; deleting an obsolete provision; providing examples of reclaimed water use that may create an impact offset; revising the required provisions of the water resource implementation rule; amending s. 403.064, F.S.; revising legislative findings; requiring the Department of Environmental Protection and the water management districts to develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit; specifying the required provisions of such memorandum; specifying the date by which the memorandum must be developed and executed; amending s. 403.706, F.S.; requiring counties and municipalities to address contamination of recyclable material in specified contracts; prohibiting counties and municipalities from requiring the collection or transport of contaminated recyclable material by residential recycling collectors except under certain conditions; defining the term "residential recycling collector"; prohibiting counties and municipalities from requiring the processing of contaminated recyclable material by recovered materials processing facilities except under certain conditions; specifying required contract provisions in residential recycling collector and recovered materials processing facility

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contracts with counties and municipalities; providing applicability; amending s. 403.813, F.S.; prohibiting a local government from requiring an individual to provide further department verification for certain projects; revising the types of dock and pier replacements and repairs that are exempt from such verification and certain permitting requirements; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Subsection (5) of section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(5)(a) ~~No later than October 1, 2012, the department shall initiate rulemaking to adopt revisions to~~ The water resource implementation rule, as defined in s. 373.019(25), must ~~which shall~~ include:

1. Criteria for the use of a proposed impact offset derived from the use of reclaimed water when a water management district evaluates an application for a consumptive use permit. As used in this subparagraph, the term "impact offset" means the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals. Examples of reclaimed water use that may create an impact offset include, but are not limited to, the use of reclaimed water to:

a. Prevent or stop further saltwater intrusion;

b. Raise aquifer levels;

c. Improve the water quality of an aquifer; or

d. Augment surface water to increase the quantity of water available for water supply.

2. Criteria for the use of substitution credits where a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area. As used in this subparagraph, the term "substitution credit" means the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by water management district rule as part of a strategy to protect or recover a water resource.

3. Criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of the utility's or another user's consumptive use permit or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy under s. 373.0421.

(b) Within 60 days after the final adoption by the department of the revisions to the water resource implementation rule required under paragraph (a), each water management district must ~~shall~~ initiate rulemaking to incorporate those revisions by reference into the rules of the district.

Section 2. Subsection (1) of section 403.064, Florida

Statutes, is amended, and subsection (17) is added to that section, to read:

403.064 Reuse of reclaimed water.—

(1) The encouragement and promotion of water conservation, and reuse of reclaimed water, as defined by the department, are state objectives and are considered to be in the public interest. The Legislature finds that the reuse of reclaimed water, including reuse through aquifer recharge, is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. The Legislature further finds that for those wastewater treatment plants permitted and operated under an approved reuse program by the department, the reclaimed water shall be considered environmentally acceptable and not a threat to public health and safety. The Legislature encourages the development of incentive-based programs for reuse implementation.

(17) The department and the water management districts shall develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The memorandum of agreement must provide that the coordinated review is performed only if the applicant for such permits requests a coordinated review. The goal of the coordinated review is to share information, avoid requesting the applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit in accordance with s.

373.250(5). The department and the water management districts must develop and execute such memorandum of agreement no later than December 1, 2018.

Section 3. Present subsection (22) of section 403.706, Florida Statutes, is renumbered as subsection (23), and a new subsection (22) is added to that section, to read:

403.706 Local government solid waste responsibilities.—

(22) Counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material based upon the following:

(a) A residential recycling collector may not be required to collect or transport contaminated recyclable material, except pursuant to a contract consistent with paragraph (c). As used in this subsection, the term "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

(b) A recovered materials processing facility may not be required to process contaminated recyclable material, except pursuant to a contract consistent with paragraph (d).

(c) Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal or other solicitation for residential recyclable material, must define the term "contaminated recyclable material." The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and

other relevant factors. The contract and request for proposal or other solicitation must include:

1. The respective strategies and obligations of the county or municipality and the residential recycling collector to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;

3. The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material; and

4. The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

(d) Each contract between a recovered materials processing facility and a county or municipality for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, must define the term "contaminated recyclable material." The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal must include:

1. The respective strategies and obligations of the county or municipality and the facility to reduce the amount of contaminated recyclable material being collected and processed;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material; and

3. The remedies authorized to be used if a container or load contains contaminated recyclable material.

(e) This subsection applies to each contract between a municipality or county and a residential recycling collector or recovered materials processing facility executed or renewed after July 1, 2018.

Section 4. Subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, and a local government may not require an individual claiming this exemption to provide further department verification, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(a) The installation of overhead transmission lines, having ~~with~~ support structures that ~~which~~ are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation and repair of mooring pilings and dolphins associated with private docking facilities or piers and the installation of private docks, piers, and recreational

docking facilities, or piers and recreational docking facilities of local governmental entities when the local governmental entity's activities will not take place in any manatee habitat, any of which docks:

1. Has 500 square feet or less of over-water surface area for a dock ~~which is~~ located in an area designated as Outstanding Florida Waters or 1,000 square feet or less of over-water surface area for a dock ~~which is~~ located in an area that ~~which~~ is not designated as Outstanding Florida Waters;

2. Is constructed on or held in place by pilings or is a floating dock ~~which is~~ constructed so as not to involve filling or dredging other than that necessary to install the pilings;

3. May ~~Shall~~ not substantially impede the flow of water or create a navigational hazard;

4. Is used for recreational, noncommercial activities associated with the mooring or storage of boats and boat paraphernalia; and

5. Is the sole dock constructed pursuant to this exemption as measured along the shoreline for a distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot.

~~Nothing in~~ This paragraph does not ~~shall~~ prohibit the department from taking appropriate enforcement action pursuant to this chapter to abate or prohibit any activity otherwise exempt from permitting pursuant to this paragraph if the department can demonstrate that the exempted activity has caused water pollution in violation of this chapter.

(c) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists or the installation of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state, and the maintenance to design specifications of such ramps; however, the material to be removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material into the waters of the state.

(d) The replacement or repair of existing docks and piers, except that fill material may not be used and the replacement or repaired dock or pier must be within 5 feet of the same location and no larger in size than the existing dock or pier, and additional aquatic resources may not be adversely and permanently impacted by such replacement or repair ~~in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired~~. This does not preclude the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches waterward of, their previous locations. However, this may ~~shall~~ not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(f) The performance of maintenance dredging of existing

manmade canals, channels, intake and discharge structures, and previously dredged portions of natural water bodies within drainage rights-of-way or drainage easements which have been recorded in the public records of the county, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state, provided that no more dredging is to be performed than is necessary to restore the canals, channels, and intake and discharge structures, and previously dredged portions of natural water bodies, to original design specifications or configurations, provided that the work is conducted in compliance with s. 379.2431(2)(d), provided that no significant impacts occur to previously undisturbed natural areas, and provided that control devices for return flow and best management practices for erosion and sediment control are utilized to prevent bank erosion and scouring and to prevent turbidity, dredged material, and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. Further, for maintenance dredging of previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements, an entity that seeks an exemption must notify the department or water management district, as applicable, at least 30 days before ~~prior to~~ dredging and provide documentation of original design specifications or configurations where such exist. This exemption applies to all canals and previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements constructed before ~~prior to~~ April 3, 1970, and to those canals and previously dredged portions of natural

water bodies constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption does not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters. When no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water. The Board of Trustees of the Internal Improvement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material; however, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Internal Improvement Trust Fund.

(g) The maintenance of existing insect control structures, dikes, and irrigation and drainage ditches, provided that spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive, as determined by the Department of Health, pursuant to s. 403.088(1), that it will inhibit proposed insect control, then-existing spoil sites or dikes may be used, upon

notification to the department. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications.

(h) The repair or replacement of existing functional pipes or culverts the purpose of which is the discharge or conveyance of stormwater. In all cases, the invert elevation, the diameter, and the length of the culvert may ~~shall~~ not be changed. However, the material used for the culvert may be different from the original.

(i) The construction of private docks of 1,000 square feet or less of over-water surface area and seawalls in artificially created waterways where such construction will not violate existing water quality standards, impede navigation, or affect flood control. This exemption does not apply to the construction of vertical seawalls in estuaries or lagoons unless the proposed construction is within an existing manmade canal where the shoreline is currently occupied in whole or part by vertical seawalls.

(j) The construction and maintenance of swales.

(k) The installation of aids to navigation and buoys associated with such aids, provided the devices are marked

pursuant to s. 327.40.

(l) The replacement or repair of existing open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width, provided that no more dredging or filling of submerged lands is performed other than that which is necessary to replace or repair pilings and that the structure to be replaced or repaired is the same length, the same configuration, and in the same location as the original bridge. No debris from the original bridge shall be allowed to remain in the waters of the state.

(m) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters in the state, except in Class I and Class II waters and aquatic preserves, provided no dredging or filling is necessary.

(n) The replacement or repair of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state.

(o) The construction of private seawalls in wetlands or other surface waters where such construction is between and adjoins at both ends existing seawalls; follows a continuous and uniform seawall construction line with the existing seawalls; is no more than 150 feet in length; and does not violate existing water quality standards, impede navigation, or affect flood control. However, in estuaries and lagoons the construction of vertical seawalls is limited to the circumstances and purposes stated in s. 373.414(5)(b)1.-4. This paragraph does not affect the permitting requirements of chapter 161, and department rules must clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(p) The restoration of existing insect control impoundment dikes which are less than 100 feet in length. Such impoundments shall be connected to tidally influenced waters for 6 months each year beginning September 1 and ending February 28 if feasible or operated in accordance with an impoundment management plan approved by the department. A dike restoration may involve no more dredging than is necessary to restore the dike to its original design specifications. For the purposes of this paragraph, restoration does not include maintenance of impoundment dikes of operating insect control impoundments.

(q) The construction, operation, or maintenance of stormwater management facilities which are designed to serve single-family residential projects, including duplexes, triplexes, and quadruplexes, if they are less than 10 acres total land and have less than 2 acres of impervious surface and if the facilities:

1. Comply with all regulations or ordinances applicable to stormwater management and adopted by a city or county;

2. Are not part of a larger common plan of development or sale; and

3. Discharge into a stormwater discharge facility exempted or permitted by the department under this chapter which has sufficient capacity and treatment capability as specified in this chapter and is owned, maintained, or operated by a city, county, special district with drainage responsibility, or water management district; however, this exemption does not authorize discharge to a facility without the facility owner's prior written consent.

(r) The removal of aquatic plants, the removal of tussocks,

the associated replanting of indigenous aquatic plants, and the associated removal from lakes of organic detrital material when such planting or removal is performed and authorized by permit or exemption granted under s. 369.20 or s. 369.25, provided that:

1. Organic detrital material that exists on the surface of natural mineral substrate shall be allowed to be removed to a depth of 3 feet or to the natural mineral substrate, whichever is less;

2. All material removed pursuant to this paragraph shall be deposited in an upland site in a manner that will prevent the reintroduction of the material into waters in the state except when spoil material is permitted to be used to create wildlife islands in freshwater bodies of the state when a governmental entity is permitted pursuant to s. 369.20 to create such islands as a part of a restoration or enhancement project;

3. All activities are performed in a manner consistent with state water quality standards; and

4. No activities under this exemption are conducted in wetland areas, as defined in s. 373.019(27), which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys, except when a governmental entity is permitted pursuant to s. 369.20 to conduct such activities as a part of a restoration or enhancement project.

The department may not adopt implementing rules for this paragraph, notwithstanding any other provision of law.

(s) The construction, installation, operation, or

maintenance of floating vessel platforms or floating boat lifts, provided that such structures:

1. Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;

2. Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water, when associated with a dock that is exempt under this subsection or associated with a permitted dock with no defined boat slip or attached to a bulkhead on a parcel of land where there is no other docking structure;

3. Are not used for any commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners, as defined in s. 253.141;

4. Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where seagrasses are least dense adjacent to the dock or bulkhead; and

5. Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund and, with the exception of those structures attached to a bulkhead on a parcel of land where there is no docking structure, may ~~shall~~ not be subject to any more stringent permitting requirements, registration requirements, or other regulation by any local government. Local governments may require either permitting or one-time registration of floating vessel platforms to be attached to a bulkhead on a parcel of land where there is no other docking structure as necessary to ensure compliance with local ordinances, codes, or regulations. Local governments may require either permitting or one-time registration of all other floating vessel platforms as necessary to ensure compliance with the exemption criteria in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning, which are no more stringent than the exemption criteria in this section or address subjects other than subjects addressed by the exemption criteria in this section; and to ensure proper installation, maintenance, and precautionary or evacuation action following a tropical storm or hurricane watch of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure. The exemption provided in this paragraph shall be in addition to the exemption provided in paragraph (b). The department shall adopt a general permit by rule for the construction, installation, operation, or maintenance of those floating vessel platforms or

floating boat lifts that do not qualify for the exemption provided in this paragraph but do not cause significant adverse impacts to occur individually or cumulatively. The issuance of such general permit shall also constitute permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund. No local government shall impose a more stringent regulation, permitting requirement, registration requirement, or other regulation covered by such general permit. Local governments may require either permitting or one-time registration of floating vessel platforms as necessary to ensure compliance with the general permit in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning that are no more stringent than the general permit in this section; and to ensure proper installation and maintenance of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure.

(t) The repair, stabilization, or paving of existing county maintained roads and the repair or replacement of bridges that are part of the roadway, within the Northwest Florida Water Management District and the Suwannee River Water Management District, provided:

1. The road and associated bridge were in existence and in use as a public road or bridge, and were maintained by the county as a public road or bridge on or before January 1, 2002;

2. The construction activity does not realign the road or expand the number of existing traffic lanes of the existing road; however, the work may include the provision of safety shoulders, clearance of vegetation, and other work reasonably

necessary to repair, stabilize, pave, or repave the road, provided that the work is constructed by generally accepted engineering standards;

3. The construction activity does not expand the existing width of an existing vehicular bridge in excess of that reasonably necessary to properly connect the bridge with the road being repaired, stabilized, paved, or repaved to safely accommodate the traffic expected on the road, which may include expanding the width of the bridge to match the existing connected road. However, no debris from the original bridge shall be allowed to remain in waters of the state, including wetlands;

4. Best management practices for erosion control shall be employed as necessary to prevent water quality violations;

5. Roadside swales or other effective means of stormwater treatment must be incorporated as part of the project;

6. No more dredging or filling of wetlands or water of the state is performed than that which is reasonably necessary to repair, stabilize, pave, or repave the road or to repair or replace the bridge, in accordance with generally accepted engineering standards; and

7. Notice of intent to use the exemption is provided to the department, if the work is to be performed within the Northwest Florida Water Management District, or to the Suwannee River Water Management District, if the work is to be performed within the Suwannee River Water Management District, 30 days before ~~prior to~~ performing any work under the exemption.

Within 30 days after this act becomes a law, the department

shall initiate rulemaking to adopt a no fee general permit for the repair, stabilization, or paving of existing roads that are maintained by the county and the repair or replacement of bridges that are part of the roadway where such activities do not cause significant adverse impacts to occur individually or cumulatively. The general permit shall apply statewide and, with no additional rulemaking required, apply to qualified projects reviewed by the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District under the division of responsibilities contained in the operating agreements applicable to part IV of chapter 373. Upon adoption, this general permit shall, pursuant to ~~the provisions of~~ subsection (2), supersede and replace the exemption in this paragraph.

(u) Notwithstanding any provision to the contrary in this subsection, a permit or other authorization under chapter 253, chapter 369, chapter 373, or this chapter is not required for an individual residential property owner for the removal of organic detrital material from freshwater rivers or lakes that have a natural sand or rocky substrate and that are not Aquatic Preserves or for the associated removal and replanting of aquatic vegetation for the purpose of environmental enhancement, providing that:

1. No activities under this exemption are conducted in wetland areas, as defined in s. 373.019(27), which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys.

2. No filling or peat mining is allowed.

3. No removal of native wetland trees, including, but not limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

4. When removing organic detrital material, no portion of the underlying natural mineral substrate or rocky substrate is removed.

5. Organic detrital material and plant material removed is deposited in an upland site in a manner that will not cause water quality violations.

6. All activities are conducted in such a manner, and with appropriate turbidity controls, so as to prevent any water quality violations outside the immediate work area.

7. Replanting with a variety of aquatic plants native to the state shall occur in a minimum of 25 percent of the preexisting vegetated areas where organic detrital material is removed, except for areas where the material is removed to bare rocky substrate; however, an area may be maintained clear of vegetation as an access corridor. The access corridor width may not exceed 50 percent of the property owner's frontage or 50 feet, whichever is less, and may be a sufficient length waterward to create a corridor to allow access for a boat or swimmer to reach open water. Replanting must be at a minimum density of 2 feet on center and be completed within 90 days after removal of existing aquatic vegetation, except that under dewatered conditions replanting must be completed within 90 days after reflooding. The area to be replanted must extend waterward from the ordinary high water line to a point where normal water depth would be 3 feet or the preexisting vegetation line, whichever is less. Individuals are required to make a reasonable effort to maintain planting density for a period of 6 months

after replanting is complete, and the plants, including naturally recruited native aquatic plants, must be allowed to expand and fill in the revegetation area. Native aquatic plants to be used for revegetation must be salvaged from the enhancement project site or obtained from an aquatic plant nursery regulated by the Department of Agriculture and Consumer Services. Plants that are not native to the state may not be used for replanting.

8. No activity occurs any farther than 100 feet waterward of the ordinary high water line, and all activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

9. The person seeking this exemption notifies the applicable department district office in writing at least 30 days before commencing work and allows the department to conduct a preconstruction site inspection. Notice must include an organic-detrital-material removal and disposal plan and, if applicable, a vegetation-removal and revegetation plan.

10. The department is provided written certification of compliance with the terms and conditions of this paragraph within 30 days after completion of any activity occurring under this exemption.

(v) Notwithstanding any other provision in this chapter, chapter 373, or chapter 161, a permit or other authorization is not required for the following exploratory activities associated with beach restoration and nourishment projects and inlet management activities:

1. The collection of geotechnical, geophysical, and

cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.

2. Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.

3. Incidental excavation associated with any of the activities listed under subparagraph 1. or subparagraph 2.

Section 5. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 6. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1308
Bill Number (if applicable)

Topic Environmental Regulation

Amendment Barcode (if applicable)

Name DAVID CHILDS

Job Title Legal Counsel

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing FWEA Utility Council

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1308
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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

Representing SIERRA CLUB FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 1300
Bill Number (if applicable)

Topic ENVIRONMENTAL REGULATION

Amendment Barcode (if applicable)

Name KEYNA CORY

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing NATIONAL WASTE & RECYCLING ASSN - FL CHAPTER

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/27/18
Meeting Date

1308
Bill Number (if applicable)

Topic Environmental Regulation

Amendment Barcode (if applicable)

Name JONATHAN WEBBER

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CONSERVATION VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1398
INTRODUCER:	Senator Benacquisto
SUBJECT:	Florida ABLE Program Trust Fund/State Board of Administration
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sikes	Elwell	AHE	**Recommend: Favorable**
2.	Sikes	Hansen	AP	**Favorable**

I. Summary:

SB 1398 re-creates, without modification, the Florida ABLE Trust Fund within the State Board of Administration and repeals the scheduled termination of the trust fund.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018

II. Present Situation:

Article III, s. 19(f) of the State Constitution requires the termination of a trust fund within four years of the effective date of the act authorizing the initial creation of the trust fund, unless the trust fund is exempted specifically by the constitution.

The Florida ABLE Trust Fund was created to hold appropriations and moneys acquired from private sources or other governmental sources for the Florida ABLE program. Trust fund assets are maintained, expended, and invested only to carry out the purposes of Florida ABLE program.[1]

Under the Florida ABLE Program, eligible individuals with disabilities, family members and others may contribute funds to an ABLE savings account without affecting the designated beneficiary's eligibility for state and federal benefits, such as Supplemental Security Income (SSI) and Medicaid. Those funds may be used for qualified disability expenses relating to the individual's disability. These expenses include education, housing, transportation, employment support, health, prevention, wellness, financial and legal expenses, and other expenses authorized through federal regulations.[2]
Since the Florida ABLE Program launched on July 1, 2016:

[1] Section 1009.988(2), F.S.
[2] State Board of Administration, 2018 *Agency Bill Analysis for SB 1398* (Jan. 3, 2018)

- 1,572 Floridians have enrolled in the program.
- The average age of a Florida ABLE account beneficiary is 29 years old.
- 68 percent of the individuals enrolled in the program have an intellectual or developmental disability.
- $6,974,665 in contributions have been made to participant accounts.[3]

The June 30, 2017 audited financial statements recorded a total trust fund balance of $6,988,300.[4]

The Florida ABLE Trust Fund is scheduled to be terminated on May 21, 2019.

III. Effect of Proposed Changes:

Section 1 re-creates The Florida ABLE Trust Fund within the State Board of Administration without modification.

Section 2 repeals s. 1009.988 (3), F.S., which terminates the trust fund on May 21, 2019.

IV. Within the State Board of Education 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:

None.

[3] State Board of Administration, 2018 *Agency Bill Analysis for SB 1398* (Jan. 3, 2018)
[4] Florida ABLE, Inc., *Financial Statements Report* (June 30, 2017) at 3

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.988 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.

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

February 8, 2018

The Honorable Rob Bradley
Senate Appropriations Committee, Chair
414 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1398 – The Florida ABLE Program Trust Fund

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 1398, relating to the Florida ABLE Program Trust Fund, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 27

Cc: Mike Hansen

REPLY TO:
❒ 2310 First Street, Unit 305, Fort Myers, Florida 33901 (239) 338-2570
❒ 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1402
INTRODUCER:	Senator Simmons and others
SUBJECT:	State Assumption of Federal Section 404 Dredge and Fill Permitting Authority
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	**Favorable**
2.	Reagan	Betta	AEN	**Recommend: Favorable**
3.	Reagan	Hansen	AP	**Favorable**

I. Summary:

SB 1402 provides the Department of Environmental Protection (DEP) with the power and authority to assume the dredge and fill permitting program established in section 404 of the federal Clean Water Act with the intent that the DEP assume and implement the program in conjunction with the state's environmental resource permitting program established in ch. 373, F.S. Specifically, the bill:

- Authorizes the DEP to adopt by rule any federal requirements, criteria, or regulations necessary to obtain assumption of the program and provides that any such rules adopted may not become effective or otherwise enforceable until the U.S. Environmental Protection Agency has approved the state's assumption application;
- Provides that state laws which conflict with the federal requirements necessary to obtain assumption of the section 404 permitting program do not apply to state-administered section 404 permits;
- Provides that a state-administered section 404 permit is not required for activities exempted from regulation in certain federal law and rule provisions and that certain state statutory exemptions from permitting requirements do not apply to state-administered section 404 permits;
- Provides that the DEP must grant or deny an application for a state-administered section 404 permit within the time allowed for permit review under federal rules and that the DEP is specifically exempted from the time limitations provided in state statute for its decisions on applications for state-administered section 404 permits;
- Requires that all state-administered section 404 permits be issued for a period of no more than five years and makes other provisions for the reissuance of permits, including the adoption by rule of an expedited permitting process, and the timeframes within which the DEP must make permitting decisions; and
- Authorizes the DEP to delegate administration of the section 404 permitting program if such delegation is in accordance with federal law.

The DEP will experience additional workload associated with the administration of a section 404 permitting program. The costs of this additional workload and the costs associated with reprogramming the permit tracking and compliance and enforcement applications and databases are indeterminate. The DEP has indicated that it can absorb the costs within its existing resources.

II. Present Situation:

Dredge and Fill Activities

Dredging means excavation in wetlands or other surface waters or excavation in uplands that creates wetlands or other surface waters.[1] Filling means deposition of any material in wetlands or other surface waters.[2] Dirt, sand, gravel, rocks, shell, pilings, mulch, and concrete are all considered fill if they are placed in a wetland or other surface water. Dredging and filling activities are regulated by local governments, the water management districts (WMDs), the Florida Department of Environmental Protection (DEP), and the U.S. Army Corps of Engineers (Corps).

The state of Florida regulates dredge and fill activities in all waters of the state[3] through the DEP's environmental resource permit (ERP) program.[4] The ERP program operates in addition to the federal regulatory program for dredge and fill activities. The Corps has been responsible for regulating activities in navigable waters[5] through the granting of permits since the passage of the Rivers and Harbors Act of 1899.[6] Section 404 of the Clean Water Act broadened the Corps authority over "dredging and filling" in the waters of the United States.[7] The Corps administers these dredge and fill programs and the U.S. Environmental Protection Agency (EPA) provides oversight of the Corps' dredge and fill program in waters of the United States.[8] Federal section 404 permits and state ERP permits overlap in that both must be obtained for impacts above regulatory thresholds in federal waters. Activities confined to state waters, beyond the limits of federal jurisdiction, require only a state ERP permit.

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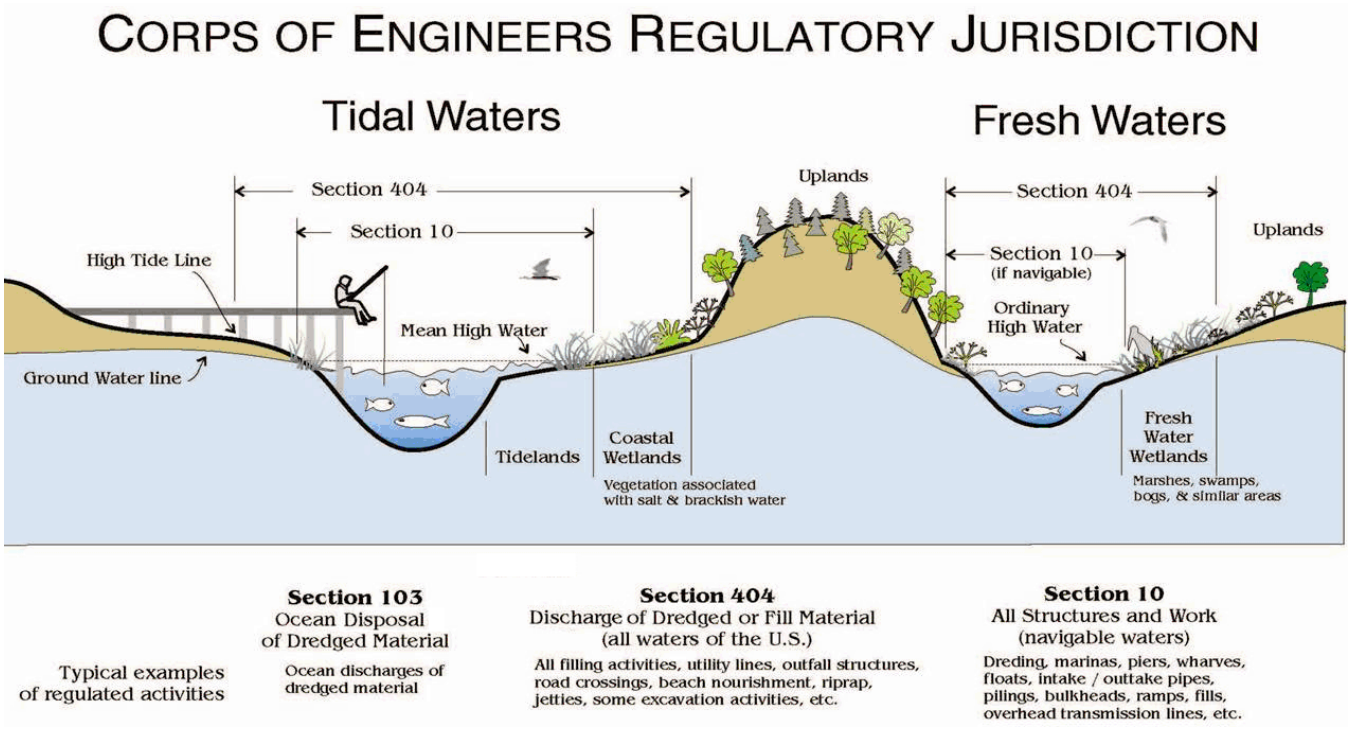
[1] Section 373.403(13), F.S.
[2] Section 373.403(14), F.S.
[3] Section 373.019(22), F.S., defines the term "waters of the state" as any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.
[4] *See* Part IV, Ch. 373, F.S., especially s. 373.4131, F.S.
[5] Navigable waters (section 10 waters) are a subset of section 404 waters, extend to the high tide line, and include any adjacent non-tidal 404 waters to the ordinary high water mark or the limit of the adjacent wetlands.
[6] Department of Environmental Protection (DEP), *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, 2 (Sept. 30, 2005) *available at* https://www.aswm.org/pdf_lib/consolidation_program.pdf.
[7] Waters of the United States are surface waters such as navigable waters and their tributaries, all interstate waters and their tributaries, natural lakes, all wetlands adjacent to other waters, and all impoundments of these waters. However, the precise definition of "waters of the United States" is subject to multiple interpretations. The U.S. Court of Appeals has stayed a 2015 revised regulatory definition for the Sixth Circuit. In response, the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers have reverted to the definition promulgated in 1986 and 1988 as interpreted by subsequent Supreme Court decisions and guidance documents. *See Solid Waste Agency of Northern Cook County v. Army Corps of Engineers*, 531 U.S. 159 (2001) and *Rapanos v. United States*, 547 U.S. 715 (2006).
[8] 33 U.S.C. s. 1344 (2012).

Federal Dredge and Fill Permits

The federal government regulates dredge and fill activities in navigable waters through section 10 of the Rivers and Harbors Act of 1899.[9] The federal government regulates a broader category of waters, "waters of the United States," pursuant to section 404 of the Clean Water Act. Section 404 establishes a program for permits for the discharge of dredged or fill material into navigable waters, including wetlands, at specified disposal sites. Activities that are regulated under this program include fill for development, water resource projects, infrastructure development, and mining projects.[10] The illustration below is descriptive of the Corps jurisdiction over dredge and fill activities.[11]



Requirements for a Section 404 permit

The Corps administers section 404 permits under the EPA established guidelines, subject to an EPA veto on a case-by-case basis.[12] The basic premise of the permitting program is that no discharge of dredged or fill material may be permitted if:

- A practicable alternative exists that is less damaging to the aquatic environment; or

[9] 33 U.S.C. s. 403 (2012).
[10] DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, 2 (Sept. 30, 2005) *available at* https://www.aswm.org/pdf_lib/consolidation_program.pdf.
[11] U.S. Army Corps of Engineers (Corps), *Regulatory Jurisdiction Overview*, http://www.spn.usace.army.mil/Missions/Regulatory/Jurisdiction-Determinations/ (last visited Jan. 10, 2018).
[12] O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1255 (1995) *available at* http://digitalcommons.law.umaryland.edu/mlr/vol54/iss4/6/ (last visited Jan. 9, 2018).

- The nation's waters would be significantly degraded.[13]

An individual permit is required for potentially significant impacts. The Corps evaluates applications under a public interest review, as well as the environmental criteria set forth by the EPA.[14] The guidelines provide a sequential review process which first requires a permit applicant to demonstrate that all available alternatives to the discharge of dredged or fill material have been considered and that no practicable alternative exists which would have a less adverse impact on the aquatic ecosystem, and which also would not have other significant adverse environmental consequences.[15] Practicable alternatives, include, but are not limited to:

- Activities that do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters.
- Discharges of dredged or fill material at other locations in waters of the United States or ocean waters.[16]

An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Practicable alternatives could include moving the proposed activity to an area not presently owned by the applicant.[17] If the activity associated with a discharge is not water dependent, practicable alternatives that do not involve wetlands or other special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, practicable alternatives to a proposed discharge into a wetland, which do not themselves involve a discharge into a special aquatic site, are presumed to have less adverse impact on the aquatic ecosystem, unless otherwise clearly demonstrated.[18] A discharge cannot be permitted if it would violate other applicable laws, including state water quality standards, toxic effluent standards, the Endangered Species Act, and marine sanctuary protections.[19] Further, the discharge cannot cause or contribute to significant degradation of wetlands by adversely impacting human health or welfare, wildlife, ecosystem integrity, recreation, aesthetics, and economic values.[20] If all of these guidelines are met, then the applicant must show that all appropriate and practicable steps will be taken to minimize adverse impacts of the discharge on wetlands.[21]

After avoidance and minimization criteria are satisfied, the Corps considers mitigation. The purpose of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States. In establishing mitigation requirements, the Corps strives to achieve a goal of no overall net loss of natural wetland values and functions. The developer can be required to enhance, restore, or create wetlands on or near the development site.[22]

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[13] EPA, *Section 404 Permitting Program*, http://www.epa.gov/cwa-404/section-404-permit-program (last visited Jan. 9, 2018).
[14] *Id*.
[15] 40 C.F.R. § 230.10(a)(1).
[16] *Id*.
[17] 40 C.F.R. § 230.10(a)(2).
[18] 40 C.F.R. § 230.10(a)(4).
[19] 40 C.F.R. § 230.10(b).
[20] 40 C.F.R. § 230.10(c).
[21] 40 C.F.R. § 230.10(d).
[22] 40 C.F.R. § 230.93.

Section 404 Exemptions

Discharges of dredged or fill material are not prohibited or otherwise subject to regulation if they are associated with normal ongoing farming, ranching, and forestry activities, such as plowing, seeding, cultivating, or harvesting food, fiber, or forest products; minor drainage; maintenance of drainage ditches; construction and maintenance of irrigation ditches; construction and maintenance of farm or stock ponds; construction and maintenance of farm or forest roads, in accordance with best management practices; construction of temporary sedimentation basins on a construction site; and maintenance of dams, dikes, and levees. These discharges are exempt from the 404 permitting requirements if they do not convert a wetland to an upland area through the discharge of dredged or fill material. In addition, discharges resulting from an activity with respect to which a state has an approved program under section 1288(b)(4) are exempt. Such programs are intended to remediate areas having substantial water quality control problems and address control of dredge and fill discharge of agriculture and silviculture nonpoint sources of pollution, mine-related sources of pollution, construction activity related sources of pollution, salt water intrusion, residual waste, or disposal of pollutants on land or in subsurface excavations.[23]

State Dredge and Fill Permits

Florida regulates dredge and fill activities through its ERP program, which is administered primarily under part IV of ch. 373, F.S. It is a statewide program implemented jointly by the DEP and the WMDs under operating agreements that provide a division of responsibilities between the agencies. Provisions exist for local programs to be delegated authority to implement the program on behalf of the DEP and the WMDs. Currently Broward County is the only local program to have received delegation.[24]

ERPs are required for alterations to the landscape that exceed permitting thresholds or that are not otherwise exempt by statute or rule from regulation.[25] Such alterations are generally referred to as surface water management systems and include the management of the flow of water across the land surface and activities involving the construction, alteration, operation, maintenance or repair, removal, and abandonment of dams, impoundments, reservoirs, and appurtenant works. It also includes alterations of uplands and dredging and filling in wetlands and other surface waters, including isolated wetlands. Activities regulated by the ERP program include clearing; grading; paving; erection, alteration, or removal of structures; and the construction of new or altered stormwater management systems. Certain permitting thresholds exist, specific to each WMD, and exemptions from permitting also exist by statute and rule.[26]

[23] 33 U.S.C. s. 1344(f); 33 C.F.R. § 323.4; 40 C.F.R. § 232.3.
[24] DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 2 (Feb. 23, 2011).
[25] Section 373.413(1), F.S.; DEP, *Environmental Resource Permit Applicant's Handbook, Volume 1*, AH 1.0, incorporated by reference in Fla. Admin. Code R. 62-330.010(4), (Oct. 1, 2013) available at https://www.flrules.org/gateway/reference.asp?No=Ref-03174 (last visited Jan. 15, 2018).
[26] DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 4 (Feb. 23, 2011).

ERP Exemptions

Under ss. 373.406 and 403.927, F.S., most routine, customary agricultural, silvicultural, floricultural, and horticultural activities do not require an ERP permit. Any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture has the right to alter the topography of the land for purposes consistent with the practice of such occupation, provided the alteration is not for the sole or predominant purpose of impounding or obstructing surface waters. All five state WMDs have adopted specific rules to regulate other agricultural activities, including the adoption of noticed general permits.[27] The review of all agricultural activities, including permitting, compliance, and enforcement, is the responsibility of the WMDs.[28] The Department of Agriculture and Consumer Services (DACS), in cooperation with the DEP and the WMDs, have developed various best management practices handbooks to assist the agriculture community in working in a manner that will minimize adverse impacts to wetlands and other surface waters.[29]

Other exempt activities include activities permitted by other agencies, maintenance activities on already impacted areas, maintenance of deepwater ports, and other minor structures.

The DEP and the WMDs may establish by rule activities that they determine will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district.[30] The DEP has identified 60 activities that are exempt from ERP requirements.[31] Further, the DEP and the WMDs may determine, on a case-by-case basis, whether a specific activity only minimally or insignificantly has an individual or cumulative adverse impact on the water resources. These are known as *de minimis* exemptions.[32]

Certain other activities have been exempted by statute or rule from the need for regulatory permits. Most of these exemptions are established in s. 403.813, F.S. Examples of exempt activities include:

- Construction of small, private docks, maintenance dredging, repair and replacement of seawalls, and installation of new seawalls and rip rap in artificial waters;
- Maintenance dredging of existing navigational channels and canals;
- Construction and alteration of boat ramps within certain size limits; and
- Certified aquaculture activities that apply appropriate best management practices adopted under s. 597.004, F.S.[33]

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[27] Fla. Admin. Code Ch. 62-113, accessible at: https://floridadep.gov/ogc/ogc/content/operating-agreements, (last visited Jan. 15, 2018).
[28] DEP, *Environmental Resource Permit Applicant's Handbook, Volume 1*, AH 1.0, incorporated by reference in Fla. Admin. Code R. 62-330.010(4), (Oct. 1, 2013) *available at* https://www.flrules.org/gateway/reference.asp?No=Ref-03174 (last visited January 15, 2018).
[29] DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 4, 12 (Feb. 23, 2011); s. 570.93, F.S.
[30] Section 373.406, F.S.
[31] Rule 62-330.051, F.A.C.
[32] DEP, *Environmental Resource Permit Applicant's Handbook*, Volume 1, AH 3.2.7, incorporated by reference in r. 62-330.010(4), F.A.C. (October 1, 2013) *available* at: https://www.flrules.org/gateway/reference.asp?No=Ref-03174 (last visited January 16 2018).
[33] Section 403.813, F.S.

ERP Permit Standards

The ERP application is issued, withdrawn, or denied in accordance with state statutory and rule criteria.[34] Any activities requiring a permit may not:

- Cause adverse water quantity impacts to receiving waters and adjacent lands;
- Cause adverse flooding to on-site or off-site property;
- Cause adverse impacts to existing surface water storage and conveyance capabilities;
- Adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters;
- Adversely affect the quality of receiving waters such that state water quality standards, which includes surface waters and groundwater, will be violated. Special provisions apply to allow no degradation of the water quality of Outstanding Florida Waters (OFWs);[35]
- Cause adverse secondary impacts to water resources;
- Adversely impact the maintenance of surface or groundwater levels or surface water flows; or
- Adversely impact a work of a WMD.[36]

In addition, activities requiring a permit must:

- Be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed;
- Be conducted by an entity with the financial, legal, and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and
- Comply with applicable special basin or geographic area criteria adopted by rule.[37]

Activities in wetlands and other surface waters must not be contrary to the public interest, or, if the activity is located in an OFW, the activity must be clearly in the public interest.[38] Direct, secondary, and cumulative impacts are considered for all activities requiring a permit. Secondary impacts are those actions or actions that are very closely related and directly linked to the activity under review that may affect wetlands and other surface waters and that would not occur but for the proposed activity. Cumulative impacts are residual adverse impacts to wetlands and other surface waters in the same drainage basin that have or are likely to result from similar activities (to that under review) that have been built in the past, that are under current review, or that can reasonably be expected to be located in the same drainage basin as the activity under review. Mitigation that fully offsets impacts within the drainage basin where the project impacts occur is assumed to have no adverse cumulative impacts. Consideration is given to upland buffers that are designed to protect the functions that uplands provide to wetlands and other surface waters. Special provisions also exist to protect waters used for shellfish harvesting.[39]

[34] *Id.* at 2, 3; s. 373.406, F.S.; s. 373.4131, F.S.; Fla. Admin. Code Ch. 62-330.
[35] Listed in Fla. Admin. Code Ch. 62-302.
[36] Fla. Admin. Code R. 62-330.301(1).
[37] *Id.*
[38] Section 373.414, F.S.
[39] DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 6, 7 (Feb. 23, 2011).

ERP Permit Processing

The DEP, the WMD, or delegated local government initially receive the ERP application. A joint application is forwarded to the Corps. Upon receipt of the ERP application, the DEP, the WMDs, and delegated local governments immediately send a copy of the application to the Corps if the activity involves work in wetlands or other surface waters. Also upon receipt, the DEP, the WMDs, and delegated local governments have 30 days to review the application and inform the applicant of any material needed to evaluate the application in accordance with statutory and rule criteria.[40]

For the DEP, an applicant has 90 days to respond to the request, and upon receipt of new material submitted by the applicant, the agencies have another 30 days to review the material for completeness. The WMD processing procedures vary to accommodate the requirements of their different governing boards. The DEP and the WMDs must issue or deny an ERP within 60 days of receiving a complete application. Application completeness is determined by whether the applicant has submitted all the materials required by review as specified by rule and statute.

Upon receipt of an application, a copy also is initially sent to the state's Fish and Wildlife Conservation Commission (FWC). Comments and suggestions regarding listed species and other wildlife impacts from the FWC are considered during processing of the application. The FWC also may object to issuance of an ERP or wetland resource permit under Florida's Approved Coastal Zone Management Act coordination process. The DEP and the WMDs do not rely on, but will also consider, comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service when such comments are made in a timely manner during the processing of a state permit.

ERP permits are valid for the life of the system, including all structures and works authorized for construction or land alteration. The ERP permit does not automatically expire after the construction phase, and continues to cover the operation and use of the system.[41]

State Assumption of the Federal Section 404 Program

A state may apply to the EPA for state assumption of the federal section 404 program. The application for state assumption must include a complete description of the state program it proposes to administer and establish under state law.[42] In addition, the application must include a statement testifying that the laws of the state provide for adequate authority to carry out the described program.[43] The EPA then conducts a rigorous assessment of the state's program and

[40] *Id. at 10*.
[41] DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 10, 11 (February 23, 2011), DEP, *Environmental Resource Permit Applicant's Handbook, Volume 1*, AH 5.5.3.5, incorporated by reference in Fla. Admin. Code R. 62-330.010(4), (October 1, 2013) available at: https://www.flrules.org/gateway/reference.asp?No=Ref-03174 (last visited January 15, 2018), s. 373.4141, F.S.
[42] 33 U.S.C. s. 1344(g).
[43] *Id*.

ensures that it is no less stringent than the federal program.[44] To date, only two states (Michigan and New Jersey) have assumed section 404 permitting authority.[45]

A state that is approved by the EPA to administer the section 404 permitting program serves as the regulatory entity over dredge and fill activities within section 404 waters in place of the Corps. However, under federal law, waters that are, or could be, used to transport interstate or foreign commerce, tidal waters, and wetlands adjacent to these waters are non-assumable.[46] Thus, the Corps retains jurisdiction over these waters. [47] For coastal states, the extent of jurisdiction retained by the Corps may be an impediment to state assumption. Additionally, there is uncertainty regarding what specific waters the Corps retains jurisdiction over and the extent to which their adjacent wetlands extend landward.[48]

To curtail some uncertainty over the scope of assumable waters and wetlands, the EPA formed the Assumable Waters Subcommittee to provide advice and develop recommendations on how the EPA can best clarify which waters a state may assume, and which waters the Corps retains jurisdiction over. The report recommended that the Corps retain authority over waters included on the lists of waters regulated under section 10 of the Rivers and Harbors Act, which are developed by the Corps.[49] The report also recommends that each state and the Corps agree to an administrative boundary that would determine the authority the Corps would retain over all wetlands adjacent to the retained navigable waters. If a default is not agreed upon, the report recommends a 300-foot national administrative default line.[50]

Therefore, the DEP and the Corps may negotiate an administrative boundary for the adjacent wetlands of section 10 waters in order to conform the boundary to existing state regulations or natural features or, alternatively, use a national administrative default boundary of 300 feet from retained navigable waters.[51] Florida could potentially assume authority to administer the federal dredge and fill regulations for those waters classified as section 404 waters, excluding navigable section 10 waters.

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[44] David Evans, *Clean Water Act §404 Assumption: What is it, how does it work, and what are the benefits?*, Vol. 31, No.3 National Wetlands Newsletter, 18 (May-June 2009) *available at* http://www.aswm.org/pdf_lib/evans_2009.pdf (last visited Jan. 9, 2018).
[45] *See* 40 C.F.R. §§233.70 and 233.71.
[46] Association of State Wetland Managers (ASWM), *Section 404 Program Assumption: A Handbook for States and Tribes*, 5 (Aug. 2011).
[47] *Id*; *see* 33 U.S.C. s. 403 (2012).
[48] Assumable Waters Subcommittee, *Draft Final Report of the Assumable Waters Subcommittee Submitted to the National Advisory Council for Environmental Policy and Technology*, 1 (May 2017) *available at* https://www.epa.gov/sites/production/files/2017-05/documents/draft_aw_subcommittee_final_report_5.2.17.pdf (last visited Jan. 10, 2018).
[49] *Id*. at 3; See *http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/other_permitting_factors/Jacksonville%20District%20Section%2010%20Waters.pdf* for the Section 10 Rivers and Harbors Act listed waters in Florida.
[50] ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 4 (Aug. 2011).
[51] Environmental Protection Agency (EPA), *Final Report of the Assumable Waters Subcommittee*, vi (May 2017) https://www.epa.gov/sites/production/files/2017-06/documents/awsubcommitteefinalreprort_05-2017_tag508_05312017_508.pdf (last visited Jan. 15, 2018).

Assumption Requirements

In order to be eligible to assume administration of the section 404 permitting program, a state must meet the following specified criteria:

- The state must have jurisdiction over all waters, including wetlands that are under federal jurisdiction. Dredge and fill activities in lakes, streams, and other waters defined in federal regulations must be regulated by the state in addition to wetlands.
- The state's laws must regulate at least the same activities as those regulated under federal law. State regulations can be broader than federal regulations but cannot exempt activities that require a federal permit.
- The state laws must ensure compliance with federal regulations, including the section 404(b)(1) guidelines. State regulations can provide greater resource protection but cannot be less stringent that federal regulations.
- The state program must have adequate enforcement authority. Under a state-assumed program, primary responsibility for enforcement rests with the state.[52]

A state must have the authority necessary to assume responsibility for the entire section 404 permitting program. It is not possible to assume only a portion of the program.[53]

While a state is not required to adopt the federal wetland delineation methodology, it must show that the state methodology is equally as, or more, protective. The three categories of wetland indicators considered in determining whether a certain area is considered a wetland are hydrologic indicators, hydric soils, and wetland plant species.[54] Currently, the federal delineation methodology and Florida's delineation methodology use the same hydrologic indicators, the same hydric soil definition and index, and align substantially the same on wetland plant species, with a few exceptions like slash pine and gallberry. For a location to be deemed a wetland under the Corp's wetland delineation manual, indicators from all three categories of indicators must be present at the same time for such location.[55] Under the DEP's wetland methodology, only two of the three indicators must be present for the location to be deemed a wetland.[56] Thus, every instance where the Corps would deem a location a wetland, the location would be delineated as a wetland under the DEP's methodology as well.

State Program Operation and Federal Oversight

A state must provide public notice of state-administered section 404 permit applications and provide a reasonable period, normally 30 days, for interested parties to provide comment.[57] Interested parties may request a public hearing on a state-administered section 404 permit

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[52] EPA, *Final Report of the Assumable Waters Subcommittee*, 2 (May 2017) available at https://www.epa.gov/sites/production/files/2017-06/documents/awsubcommitteefinalreprort_05-2017_tag508_05312017_508.pdf (last visited Jan. 15, 2018).
[53] ASWM, *Clean Water Act Section 404 State Assumption*, 3, *available at* https://www.aswm.org/pdf_lib/cwa_section_404_state_assumption_factsheets.pdf (last visited Jan. 13, 2018).
[54] EPA, *Section 404 of the Clean Water Act: How Wetlands are Defined and Identified*, https://www.epa.gov/cwa-404/section-404-clean-water-act-how-wetlands-are-defined-and-identified (last visited Jan. 10, 2018).
[55] Corps, *Corps of Engineers Wetlands Delineation Manual*, (Jan. 1987), *available at* http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/Wetlands/1987WetlandDelineation.pdf (last visited Jan. 10, 2018).
[56] Fla. Admin. Code R. 62-300(2)(d).
[57] 40 C.F.R. § 233.32(b).

application. A state must hold a public hearing when it determines there is a significant degree of public interest in a state-administered section 404 permit application or a draft general permit. A state may also hold a hearing, at its discretion, whenever it determines a hearing may be useful to a decision on the state-administered section 404 permit application.[58]

If the EPA does not comment on a state-administered section 404 permit application, the state must make its final permit decision at the close of the public comment period.[59] If the EPA comments on the state-administered section 404 permit application, the state must follow a specific procedure.[60] In the event that the state neither satisfies the EPA's objections or requirements for a permit condition nor denies the state-administered section 404 permit, the Corps must process the permit application. Significantly, if the EPA objects to issuance of a permit, the state may not issue a section 404 permit unless the objection is resolved. There is no federal provision for the automatic issuance of a permit based on the running of time.[61]

The EPA has responsibility for oversight of state-assumed section 404 permitting programs. An approved state section 404 program is operated under the provisions of the EPA's 404 state program regulations, found at 40 C.F.R. Part 233. These regulations define the process for requesting approval of a state program and operation of a state program.

A Memorandum of Agreement (MOA) between the EPA and the state, signed at the time of program approval, clarifies the roles and responsibilities of both parties, and the scope of federal oversight. Similarly, an MOA entered into between the state and the Secretary of the Army includes a description of the waters within the state over which the Corps retains jurisdiction, the procedures for transferring to the state pending 404 permit applications, and the identification of all general permits to be administered and a plan for transferring those permits to the state. While all permit applications received by the state are subject to review by the EPA, the EPA typically waives review of all but a small percentage (two to five percent on an annual basis). These applications include:

- Those public notices for which review is mandated under the federal regulations, including projects with the potential to impact critical resource areas such as wetlands that support federally listed species, sites listed under the National Historical Preservation Act, components of the National Wild and Scenic River System, and similar areas; and
- State-specific categories of projects negotiated in the state program MOA. States also provide the EPA with an annual report that summarizes permitting and enforcement actions taken during the year.[62]

Section 404 permits issued by the state must include conditions prescribed by the EPA.[63] This includes that state-administered section 404 permits may not exceed five years.[64] Section 404 permits issued by the Corps and Florida's ERPs have longer or indefinite durations. Applicants

[58] 40 C.F.R. § 233.33.
[59] 40 C.F.R. § 233.35(b).
[60] 40 C.F.R. § 233.35(a).
[61] 33 U.S.C. § 1344(j); 40 C.F.R. § 233.50(j).
[62] ASWM, *Clean Water Act Section 404 State Assumption*, 3, 4, 10, *available at* https://www.aswm.org/pdf_lib/cwa_section_404_state_assumption_factsheets.pdf (last visited Jan. 13, 2018).
[63] 40 C.F.R. § 233.23.
[64] 33 U.S.C. § 1344(h)(1)(A)(ii); 40 C.F.R. § 233.23(b).

may seek to extend the duration of their state-administered section 404 permits, but the extension may not last beyond five years from the original effective date.[65] A state may continue the Corps or state issued section 404 permits until the effective date of the new permits, if state law allows.[66]

Endangered Species Act

Once a state assumes section 404 permitting authority, the permits become state permits issued under state law. Therefore, provisions of federal law, which apply to federal permit actions, including section 7 of the Endangered Species Act (ESA), no longer apply.[67] Section 7 of the ESA requires direct consultation with the United States Fish and Wildlife Service (USFWS) for any federal activity that may affect a federally listed species.

To ensure that federally listed species do not lose protections, state assumption requirements necessitate that the EPA review all permit applications that have a reasonable potential for affecting federally listed species.[68] In this review, the EPA coordinates with the USFWS, as well as the National Marine Fisheries Service (NMFS) and the Corps as applicable, and retains the authority to prohibit the state from issuing a section 404 permit if the EPA objects.[69]

A state is prohibited from issuing a section 404 permit if the issuance of the permit would jeopardize the continued existence of a listed federal species or result in the likelihood of the destruction or adverse modification of critical habitat, unless an exemption has been granted by the Endangered Species Commission.[70] The section 404(b)(1) guidelines require full consideration of impacts to threatened and endangered species and require that any such impacts be considered in making factual determinations and the findings of compliance or non-compliance.[71]

In some states with a considerable number of endangered species, like Florida, the need for coordination under the ESA could prove to be a significant impediment to state program assumption. The coordinated-review process with the EPA and the USFWS for applications that may affect federally listed species may be achieved through an MOA.[72] The DEP has stated that it intends to develop such an agreement that maintains section 7 consultation with the DEP standing in like a federal agency. The agreement will specify which permit applications need to be reviewed by the USFWS and the timing of the process.[73]

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[65] 40 C.F.R. § 233.36(c)(2)(v).
[66] 40 C.F.R. § 233.38.
[67] ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 24 (Aug. 2011) *available at* https://www.aswm.org/pdf_lib/cwa_section_404_program_assumption.pdf (last visited Jan. 10, 2018).
[68] 40 C.F.R. § 230.30.
[69] ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 25 (Aug. 2011).
[70] 40 C.F.R. §230.10(b)(3).
[71] 40 C.F.R. Part 230.
[72] ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 25 (Aug. 2011).
[73] Email from Kevin Cleary, Legislative Affairs Director, DEP (Dec. 15, 2017) (on file with the Senate Committee on Environmental Preservation and Conservation).

Funding

The initial evaluation and development of a state-administered section 404 permitting program can be significant. The EPA has estimated that states spend an average of $225,000 when investigating the option to assume the section 404 program.[74] The EPA does provide federal financial assistance through Wetland Program Development Grants to states fully considering assumption.[75]

While federal funds may be available for gaining state assumption, no federal funds are allocated to a state for administration of the state program. Federal law requires all pending section 404 permit applications to be transferred to the state program upon assumption.[76] Annual costs for the ongoing administration of a state program varies from state to state.[77] For states that already expend funds operating a state permit program, such as Florida's ERP program, the added cost of state assumption may not be as significant.[78]

Existing State Authority

In 2005, the Florida Legislature directed the DEP to develop a strategy to consolidate, to the maximum extent practicable, federal and state wetland permitting and secure complete authority over dredge and fill activities affecting 10 acres or less of wetlands and other surface waters, including navigable waters, through the environmental resource-permitting program.[79] Florida law was later amended to authorize the DEP to obtain issuance from the Corps of an expanded state programmatic general permit or a series of regional general permits for Florida and to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 10 acres or less of wetlands or other surface waters.[80]

The Clean Water Act authorizes, and the Corps has developed, numerous alternative permitting procedures to reduce regulatory burdens. A "general permit" is a Corps authorization issued on a nationwide or regional basis for a category of activities that are substantially similar in nature and cause only minimal individual and cumulative impacts.[81] After the Corps issues a general permit, individual activities falling within the categories authorized by the general permits do not need to seek further authorization by the Corps.[82] The Corps currently implements 17 general permits specifically for Florida and 44 nationally. These activities include maintenance dredging, transmission lines, residential docks, and other minor structures.[83]

A state desiring to administer a general permit may submit to the Corps a description of the program the state proposes to establish and administer under state law.[84] If the Corps approves

[74] ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 14 (Aug. 2011).
[75] *Id*. at 26.
[76] 40 C.F.R. § 233.14(b)(2).
[77] ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 27 (Aug. 2011).
[78] *Id*.
[79] Ch. 2005-273, s. 3, Laws of Fla.
[80] Section 373.4144, F.S.
[81] 33 U.S.C. § 1344(e)(1).
[82] 33 C.F.R. § 325.2(e)(2).
[83] Corps, *Sourcebook*, http://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/ (last visited Jan. 16, 2018).
[84] 33 U.S.C. §1344(g)(1).

the state's program, the state takes over issuing the general permits.[85] Programmatic general permits are a type of general permit founded on an existing state, local, or federal agency program designed to avoid duplication with that program. The Corps has issued 12 programmatic general permits for Florida.[86]

III. Effect of Proposed Changes:

Authority for State Assumption

The bill:

- Defines the term "state assumed waters" to mean waters of the United States that the state assumes permitting authority over pursuant to federal law for the purposes of permitting the discharge of dredge or fill material;
- Provides that the Department of Environmental Protection (DEP) has the power and authority to assume, in accordance with federal law, the dredge and fill permitting program established in section 404 of the Clean Water Act;
- Authorizes the DEP to adopt by rule any federal requirements, criteria, or regulations necessary to obtain assumption of the section 404 permitting program, including, but not limited to, the section 404(b)(1) guidelines and the public interest review criteria in 33 C.F.R. s. 320.4(a);
- Provides that any such rules adopted may not become effective or otherwise enforceable until the Environmental Protection Agency (EPA) has approved the state's assumption application; and
- Provides that the authority granted to the DEP in the bill is intended to be sufficient to enable the DEP to assume and implement the federal section 404 dredge and fill permitting program in conjunction with the state's environmental resource permit (ERP) program.

Reconciliation of State Law

The bill provides that:

- The application of state law to further regulate discharges in state assumed waters is not prohibited if such state law does not conflict with the federal requirements necessary to obtain assumption of the section 404 permitting program;
- State laws that conflict with the federal requirements do not apply to state-administered section 404 permits.

Applicability of Federal and State Exemptions

A state-administered section 404 permit is not required for activities exempted from federal regulation. The bill clarifies that specified state statutory exemptions from permitting requirements continue to apply to ERPs, but those same exemptions do not apply to state-administered section 404 permits.

[85] 33 U.S.C. §1344(h).
[86] Corps, *Sourcebook*, http://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/ (last visited Jan. 16, 2018).

Implementation of Section 404 Program

The bill:

- Provides that upon state assumption of the section 404 permitting program, the DEP must grant or deny an application for a state-administered section 404 permit within the time allowed for permit review under federal rules;
- Specifically exempts the DEP from the time limitations provided in state statute for state-administered section 404 permits;
- Requires that all state-administered section 404 permits must be for a period of no more than five years;
- Provides that a state-administered section 404 permit does not expire until the DEP takes final action upon the application for reissuance of the permit or until the last day for seeking judicial review of the agency order or a later date fixed by order of a reviewing court;
- Provides that if the DEP fails to render a permitting decision within the time allowed by federal law and rule or a memorandum of agreement executed by the DEP and the EPA, whichever is shorter, the applicant may apply for an order from the circuit court requiring the DEP to render a decision within a specified time;
- Requires the DEP to adopt by rule an expedited permit review process that is consistent with federal law for the reissuance of state-administered section 404 permits where:
  - There have been no material changes in the scope of the project as originally permitted;
  - Site and surrounding environmental conditions have not changed; and
  - The applicant does not have a history of noncompliance with the existing permit; and
- Provides that a decision by the DEP to approve the reissuance of a state-administered section 404 permit is subject to state statutory provisions governing challenges and hearings of agency decisions only with respect to any material permit modification or material changes in the scope of the project as originally permitted.

The bill authorizes the DEP to delegate administration of the section 404 permitting program if such delegation is in accordance with federal law. If a delegation occurs, the DEP must retain the authority to review, modify, revoke, or rescind a state- administered section 404 permit issued by any delegated entity to ensure consistency with federal law.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Department of Environmental Protection (DEP) maintains that the provisions of this bill do not provide authority to collect a fee for 404 permit applications and that assumption of the section 404 program does not grant authority to collect fees. According to the DEP, despite any other provision of law that may provide authorization, it does not intend to charge additional fees for 404 permit applications.[87]

B. Private Sector Impact:

Indeterminate. Assumption of the 404 dredge and fill permitting program by the state may reduce the costs incurred by permit applicants because of the streamlined permitting process and may increase other efficiencies that result from dredge and fill permitting by a single government agency. State assumption may also reduce the length of time necessary to obtain a dredge and fill permit.[88]

C. Government Sector Impact:

The DEP will experience additional workload associated with the administration of a section 404 permitting program. The additional workload includes rulemaking to adopt federal requirements, criteria, and regulations necessary to obtain assumption of the section 404 permitting program and the actual processing of the additional section 404 permits. The costs of this additional workload and the costs associated with reprogramming the permit tracking and compliance and enforcement applications and databases are indeterminate. The DEP has indicated that it can absorb the additional workload within existing resources. The DEP does not anticipate an increase in permitting administration expenditures and believes that, upon assumption, the processing of state 404 permits, as well as enforcement activities for state 404 permits, can be absorbed without an increase in staffing or administrative costs.[89]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 373.4146 of the Florida Statutes.

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[87] Department of Environmental Protection, *Senate Bill 1402 Agency Legislative Bill Analysis* (January 17, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).
[88] *Id.*
[89] *Id.*

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

9-00612D-18 20181402__

A bill to be entitled

An act relating to state assumption of federal section 404 dredge and fill permitting authority; creating s. 373.4146, F.S.; defining the term "state assumed waters"; providing the Department of Environmental Protection with the power and authority to adopt rules to assume and implement the section 404 dredge and fill permitting program pursuant to the federal Clean Water Act; specifying that certain rules, standards, or other requirements are not effective or enforceable until such assumption is approved; providing legislative intent; providing applicability of other state law regulating discharges; specifying the applicability of certain exemptions; specifying department authority upon assumption of the section 404 dredge and fill permitting program; specifying certain procedures for permit applications; exempting the department from certain permitting timeframe limitations upon such assumption; specifying the maximum dredge and fill permit period for activities in state assumed waters; specifying certain procedures for permit reissuance; requiring the department to adopt rules to create an expedited permit review process; specifying applicability of certain administrative procedures; authorizing the department to delegate certain activities; specifying that the department must retain the authority to review, modify, revoke, or rescind any permit authorizing activities in state assumed waters which is issued by

9-00612D-18 20181402__

a delegated entity; providing an effective date.

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

Section 1. Section 373.4146, Florida Statutes, is created to read:

373.4146 State assumption of the federal Clean Water Act, section 404 dredge and fill permitting program.—

(1) As used in this section, the term "state assumed waters" means waters of the United States that the state assumes permitting authority over pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and rules promulgated thereunder, for the purposes of permitting the discharge of dredge or fill material.

(2) The department has the power and authority to assume, in accordance with 40 C.F.R. part 233, the dredge and fill permitting program established in s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and rules promulgated thereunder. The department may adopt any federal requirements, criteria, or regulations necessary to obtain assumption, including, but not limited to, the guidelines specified in 40 C.F.R. part 230 and the public interest review criteria in 33 C.F.R. s. 320.4(a). Any rule, standard, or other requirement adopted pursuant to the authority granted in this subsection for purposes of obtaining assumption may not become effective or otherwise enforceable until the United States Environmental Protection Agency has approved the state's assumption application. This legislative authority is intended to be sufficient to enable the department to assume and

implement the federal section 404 dredge and fill permitting program in conjunction with the environmental resource permitting program established in this chapter.

(3) To the extent that state law applies and does not conflict with the federal requirements identified in subsection (2), the application of such state law to further regulate discharges in state assumed waters is not prohibited. Provisions of state law which conflict with the federal requirements identified in subsection (2) do not apply to state administered section 404 permits.

(4) A state administered section 404 permit is not required for activities as specified in 33 U.S.C. s. 1344(f), 40 C.F.R. s. 232.3, or 33 C.F.R. s. 323.4. The exemptions established in ss. 373.406, 373.4145, and 403.813 still apply to environmental resource permits. However, the exemptions identified in ss. 373.406, 373.4145, and 403.813 may not be applied to state administered section 404 permits.

(5) Upon state assumption of the section 404 dredge and fill permitting program pursuant to subsection (2):

(a) The department must grant or deny an application for a state administered section 404 permit within the time allowed for permit review under 40 C.F.R. part 233, subparts D and F. The department is specifically exempted from the time limitations provided in ss. 120.60 and 373.4141 for state administered section 404 permits.

(b) All state administered section 404 permits issued under this section must be for a period of no more than 5 years. Upon an applicant's submittal of a timely application for reissuance, a state administered section 404 permit does not expire until

the department takes final action upon the application or until the last day for seeking judicial review of the agency order or a later date fixed by order of the reviewing court. If the department fails to render a permitting decision within the time allowed by s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., 40 C.F.R. part 233, subparts D and F, or a memorandum of agreement executed by the department and the United States Environmental Protection Agency, whichever is shorter, the applicant may apply for an order from the circuit court requiring the department to render a decision within a specified time. The department must adopt by rule an expedited permit review process that is consistent with federal law for the reissuance of state administered section 404 permits where there have been no material changes in the scope of the project as originally permitted, site and surrounding environmental conditions have not changed, and the applicant does not have a history of noncompliance with the existing permit. The decision by the department to approve the reissuance of any state administered section 404 permit issued pursuant to this section is subject to ss. 120.569 and 120.57 only with respect to any material permit modification or material changes in the scope of the project as originally permitted.

(c) The department may delegate administration of the state administered section 404 permitting program if such delegation is in accordance with federal law. The department must retain the authority to review, modify, revoke, or rescind a state administered section 404 permit issued by any delegated entity to ensure consistency with federal law.

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

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 14, 2018

I respectfully request that **Senate Bill 1402**, relating to State Assumption of Federal Section 404 Dredge and Fill Permitting Authority, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1402
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name John Truitt

Job Title Deputy Secretary - Regulatory Programs

Address 3900 Commonwealth Blvd. Phone 850-245-2140
Street

Tallahassee FL 32399 Email john.truitt@dep.state.fl.us
City *State* *Zip*

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

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

Representing Department of Environmental Protection

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1402
Bill Number (if applicable)

Topic 404 delegation

Amendment Barcode (if applicable)

Name Julie Wraithmell

Job Title Interim Executive Director

Address 308 N. Monroe St.
Street

Tallahassee 32301
City *State* *Zip*

Phone 850 339 5009

Email jwraithmell@audubon.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Audubon 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)

2-22-10
Meeting Date

SB 1402
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Federal Wetlands Program

Name BrendaLee Lennick

Job Title Retired USN

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Street

Phone 850-445-8456

Tallahassee FL 32301
City *State* *Zip*

Email mrs.sapience@gmail

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Our Future Youth

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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

2/22/2018 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1102

Meeting Date *Bill Number (if applicable)*

Topic GOV Assumption *Amendment Barcode (if applicable)*

Name Rusty Payton

Job Title CEO

Address 2600 Centennial Parkway Phone 567-1023

Street

Tallahassee FL 32308 Email rpayton@fhba.com

City *State* *Zip*

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

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

Representing Florida Home Builders Association

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1402
Bill Number (if applicable)

Topic 404 Permitting Assumption

Amendment Barcode (if applicable)

Name DAVID CHILDS

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City *State* *Zip*

Email DAVIDC@ITHLAW.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CHAMBER OF COMMERCE

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 1402
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic 404 Dredge Assumption

Name Brewster Bevis

Job Title Senior Vice President

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Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1402
Bill Number (if applicable)

Topic State Assumption of Federal Section 404

Amendment Barcode (if applicable)

Name Jonathan Webber

Job Title Deputy Director

Address 308 N. Monroe St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 954-593-4449

Email JWebber@fcvoters.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1402
Bill Number (if applicable)

Topic State Dredging / Permitting

Amendment Barcode (if applicable)

Name Amber Crooks

Job Title Environmental Policy Manager

Address 1495 Smith Preserve Way
Street

Phone 239.262.0304

Naples FL 34102
City *State* *Zip*

Email amber@conservancy.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Conservancy of Southwest Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 1402
Bill Number (if applicable)

Topic Wetlands Program

Amendment Barcode (if applicable)

Name Jenn Zipperer

Job Title Associate Director of Communications

Address 1607 Sharkey St
Street

Tallahassee FL 32304
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ReThink Energy Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 1402
Bill Number (if applicable)

Topic Wetlands Program

Amendment Barcode (if applicable)

Name Charlie Cordell

Job Title

Address 1607 Sharkey St
Street

Tallahassee FL 32304
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ReThink Energy Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

02-22-18
Meeting Date

1402
Bill Number (if applicable)

Topic WETLANDS PROGRAM

Amendment Barcode (if applicable)

Name JOHN LORENZ

Job Title ~~REP~~ WAVE AGAIST - RETIRED

Address 2517 ARTHUR'S COURT LN.
Street

TALLAHASSEE FL
City *State* *Zip*

Phone 850-877-1756

Email parkbit@Gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing REThink ENERGY FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

1402
Bill Number (if applicable)

Topic Wetlands Program

Amendment Barcode (if applicable)

Name Dell Cates

Job Title retired

Address 2704 Laurelwood Lane
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-933-3

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Rethink Energy Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

1402
Bill Number (if applicable)

Topic Wetlands

Amendment Barcode (if applicable)

Name Kim Ross

Job Title Exec Dir

Address 919 Old Bainbridge Road
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 850-888-2565

Email admin@rethinkenergyflorida.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 (N/A)

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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)

Feb 22
Meeting Date

1402
Bill Number (if applicable)

Topic 404 Dredge and FIll Permits

Amendment Barcode (if applicable)

Name Sean Stafford

Job Title

Address 115 East Park
Street

Phone 8507275000

Tallahassee
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Nature Conservancy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1402
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1614 UNIVERSITY PKWY #296 Phone 941-323-2404
Street

SARASOTA FL 34243 Email cullenaoa@aol.com
City *State* *Zip*

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1426
INTRODUCER:	Senator Lee
SUBJECT:	Local Government Fiscal Transparency
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.	Babin	Hansen	AP	**Favorable**
3.			RC	

I. Summary:

SB 1426 creates the Local Government Fiscal Transparency Act. The act:

- Requires local governments to post on their websites the voting records related to taxes and debt.
- Requires property appraisers to maintain a website that includes certain property tax information.
- Requires local governments to provide additional notice of tax increases and new tax-supported debt.
- Requires local governments to undergo a debt affordability analysis before authorizing debt.
- Requires local government audits submitted to the Auditor General to be accompanied by an affidavit from the chair of the governing board stating that the local government has complied with the Local Government Fiscal Transparency Act.

The bill also:

- Requires the Auditor General, during its review of local government audit reports, to request evidence of corrective action from local governments found not to be in compliance under certain circumstances; and requires local governments to provide evidence of such correction action and evidence of completion of such action within a specified period.
- Revises the local government annual reporting requirements for economic development incentives.

The bill does not affect state or local government revenues.

II. Present Situation:

The present situation is included in Section III. Effect of Proposed Changes.

III. Effect of Proposed Changes:

General Provisions (Section 6)

The bill creates Part VIII of Chapter 218, F.S., titled the "Local Government Fiscal Transparency Act." The bill creates s. 218.803, F.S., providing that the purpose of the Act is to:

> Promote the fiscal transparency of local governments when using public funds by requiring additional public noticing of proposed local government actions that would increase taxes, enact new taxes, extend expiring taxes, or issue tax-supported debt and requiring voting records of local governing bodies related to such actions to be easily and readily accessible by the public.

The bill creates s. 218.805, F.S., defining the following terms:

- "Debt" is defined as bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanisms or financial arrangements, whether or not a debt for legal purposes, for financing or refinancing the acquisition, construction, improvement, or purchase of capital outlay projects.
- "Local government" is defined as any county, municipality, school district, special district dependent to a county or municipality, municipal service taxing unit, or independent special district, but does not include special dependent or independent districts established to provide hospital services, provided such special districts do not levy, assess, and collect ad valorem taxes.
- "Tax increase" is defined as:
  - For ad valorem taxes, any increase in a local government's millage rate above the rolled-back rate as defined in s. 200.065(1), F.S.
  - For all other taxes, a tax enactment, tax extension, or an increase in the tax rate.
- "Tax-supported debt" is defined as debt with a duration of more than 5 years secured in whole or in part by state or local tax levies, whether such security is direct or indirect, explicit or implicit, and includes, but is not limited to, debt for which annual appropriations pledged for payment are from government fund types receiving tax revenues or shared revenues from state tax sources. The term does not include debt secured solely by the revenues generated by the project that is financed with the debt.

Voting Record Access: Property Tax, Local Option Taxes, and New Debt Issuance (Section 6)

Current Situation

While the voting records of local governments' governing boards are public records[1] and subject to public disclosure, local governments are not required to make available, on their website, the voting records of their governing board on actions related to tax increases or the issuance of new tax-supported debt.

[1] *See generally* ch. 119, F.S., and s. 119.01, F.S.

However, there are public notice requirements for actions taken by local governments *related to* tax increases and new tax-supported debt issuance. For example, many of these actions by municipalities and counties require the adoption of an ordinance, and the adoption of an ordinance generally requires publication of notice in a newspaper at least ten days before the meeting when such adoption is scheduled to occur.[2]

Proposed Changes

The bill creates s. 218.81, F.S., to require each local government to post on its website, in a manner that is easily accessible to the public, the voting records of each action taken by the local governing board during the most recent four years related to tax increases or new tax-supported debt issuance. However, debt that was refinanced or refunded and that did not extend the term or increase the outstanding principal amount of the original debt need not be included. The bill phases these provisions in over four years.

The bill also requires that the local government provide links on its website to allow users to navigate to related sites for available supporting details or documentation. Additionally, the local government must include the website address in the public notice of a tax increase or the issuance of new tax-supported debt.

Tax History: Property Taxes (Section 6)

Current Situation

Each year, the county property appraiser delivers a "notice of proposed property taxes and non-ad valorem assessments" to each taxpayer listed on the current year's tax roll. This notice is commonly referred to as the truth-in-millage notice or TRIM notice, and it is sent on behalf of all taxing authorities and local governing boards levying ad valorem taxes or non-ad valorem assessments.[3] The TRIM notice contains parcel-specific information that allows the property owner to compare the prior year's taxes with the current year's estimated taxes based on the recommended local government budget, as well as the time and place of the budget hearing.[4] Several years' of TRIM notices and corresponding tax bills are commonly available on county tax collectors' and property appraisers' websites.

Proposed Changes

The bill creates s. 218.82, F.S., to require each county property appraiser to maintain a website that includes, in a manner easily accessible by the public, for each parcel of property, the TRIM notice and a minimum four-year history of the millage rate and the amount of tax levied by each taxing authority on each parcel. The bill phases-in these requirements for the millage and taxes levied as follows:

- By October 1, 2017, 2 years of history;
- By October 1, 2018, 3 years of history; and
- By October 1, 2019, and thereafter 4 years of history.

[2] *See* ss. 125.66(2)(a) and 166.041, F.S.
[3] *See* s. 200.069, F.S.
[4] Section 200.069(2), F.S.

The bill further requires each local government to post on its website, in a manner that is easily accessible to the public, a minimum of four years of history of its annual millage rates and the total annual amount of property tax revenue generated by each of these levies. The bill allows these provisions to be phased in over three years.

Public Notice: Local Option Tax Increases and New Debt Issuance (Section 6)

Current Situation

Current law requires public notice for certain actions taken by local governments related to tax increases and new tax-supported debt issuance. For instance, actions by municipalities and counties that require the adoption of an ordinance would be subject to public notice requirements for ordinances;[5] school districts are required to hold elections before the issuance of certain bonds,[6] and elections require publication of notice at least once a week for two consecutive weeks in a newspaper published in the district.[7]

Additionally, ch. 200, F.S., requires local governments to hold at least two public hearings to first adopt a tentative budget and then to adopt a final budget. The public meeting held to adopt the final budget requires publication of notice in a newspaper of general circulation in the county stating the governing board's intent to adopt a final millage rate and budget.[8]

Proposed Changes

The bill creates s. 218.83, F.S., to require an additional public meeting of the local governing board before the board takes final action on a tax increase[9] or final action on a new tax-supported debt issuance. Specifically, at least 14 days before the governing body meeting to take a final vote to approve a tax increase or to approve the issuance of any new tax-supported debt, the governing body must hold a public hearing to solicit public input on the proposed tax increase or new tax-supported debt issuance. The public is specifically allowed to speak and ask questions relevant to the proposed tax increase or debt issuance. The public hearing must be held after 5 p.m. if scheduled on a day other than Saturday and may not be held on a Sunday.

If, after the public hearing, the local government intends to proceed with a vote to approve a tax increase or the new issuance of tax-support debt, the local government must provide additional public notice at least ten days before the date of the scheduled meeting. The notice must be in an advertisement in a newspaper of general circulation in the county or counties where the local government is located. In lieu of publishing in a newspaper, the local government may mail a copy of the notice to each elector residing within the jurisdiction of the local government. However, the mailed notice must also be posted on the local government's website in a manner that is easily accessible to the public.

For tax increases, the notice must include, at a minimum:

[5] *See* discussion related to voting records access, page 2, *infra.*
[6] Section 1010.41(3), F.S.
[7] Section 1010.43, F.S.
[8] Section 200.065(2)(d), F.S.
[9] For the purposes of this section, a tax increase does not include an ad valorem tax increase.

- A statement prominently posted that the local government intends to vote on a proposed new tax enactment, tax extension, or tax rate increase;
- The time and place of the meeting;
- The amount of the tax increase, including both the rate and total amount of annual revenue expected to be generated and the expected annual revenue expressed as a percentage of the local government's general revenue fund;
- A detailed explanation of the intended uses of the levy; and
- A statement indicating whether the governing board expects to use the tax proceeds to secure debt.

For the new issuance of tax-supported debt, the notice must include, at a minimum:
- A statement prominently posted that the local government intends to vote on a proposed new issuance of tax-supported debt;
- The time and place of the meeting;
- A truth in bonding statement that includes the amount of the debt, the period of time over which the debt is expected to be repaid, a forecasted interest rate for the debt, the total amount of interest expected to be paid over the term of the debt issuance, the source of repayment or security for the debt, and a statement that the authorization of the debt will result in a specific amount of money being unavailable to finance the other services of the local government for each year of the term of the debt; and
- Presentation of the debt affordability ratios required to be calculated pursuant to s. 218.84, F.S. (see Debt Affordability Measures below).

New Debt Issuance: Debt Affordability Measures (Section 6)

Current Situation

Section 215.98, F.S., requires the state to annually prepare a debt affordability report. The report is required to include, at a minimum:
- A listing of state debt outstanding, other debt secured by state revenues, and other contingent debt;
- An estimate of revenues available for the next ten fiscal years to pay debt service, including general revenues plus any revenues specifically pledged to pay debt service;
- An estimate of additional debt issuance for the next ten fiscal years for the state's existing borrowing programs;
- A schedule of the annual debt service requirements, including principal and interest allocation, on the outstanding state debt and an estimate of the annual debt service requirements on the debt for each of the next ten fiscal years;
- An overview of the state's general obligation credit rating;
- Identification and calculation of pertinent debt ratios, including, but not limited to, debt service to revenues available to pay debt service, debt to personal income, and debt per capita for the state's net tax-supported debt;
- The estimated debt capacity available over the next ten fiscal years without the benchmark debt ratio of debt service to revenue exceeding six percent; and
- A comparison of the debt ratios prepared for the report with the comparable debt ratios for the ten most populous states.

Section 215.98, F.S., also requires legislative statements of determination (commonly referred to as "budget statements") in the legislative authorization of new tax-supported debt if the additional borrowing would exceed certain benchmark debt ratios. If the ratio of debt service to revenue available to pay debt service on tax-supported debt would exceed six percent as a result of the borrowing, the statement of determination is that such authorization and issuance is in the best interest of the state and should be implemented. If the same ratio would exceed seven percent, the Legislature must determine that such additional debt is necessary to address a critical state emergency.

Proposed Changes

The bill creates s. 218.84, F.S., to require local governments to conduct and consider a debt affordability analysis before approving the issuance of new tax-supported debt. The analysis must, at a minimum, consist of the calculation of the local government's actual debt affordability ratio for the five fiscal years before the year the debt is expected to be issued and a projection of the ratio for at least the two fiscal years in which the new debt is expected to be issued. The analysis must include a comparison of the debt affordability ratio with and without the new debt issuance. The debt affordability ratio is the total annual debt service for outstanding tax-supported debt divided by total annual revenues available to pay debt service on outstanding debt.

Consequences for Non-Compliance (Sections 1, 2, and 6)

Current Situation

Section 218.39, F.S., governs annual audit reports of local entities. 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, those entities must have an annual financial audit of its accounts and records completed within nine months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds. The types of local governments covered by this provision are:

- Each county;
- Any municipality with revenues or the total of expenditures and expenses in excess of $250,000;
- Any special district with revenues or the total of expenditures and expenses in excess of $100,000;
- Each district school board;
- Each charter school established under s. 1002.33, F.S; and
- Each charter technical center established under s. 1002.34, F.S.[10]

The auditor is required to prepare an audit report in accordance with the rules of the Auditor General. The audit report must be filed with the Auditor General within 45 days after delivery of the audit report to the governing body of the audited entity, but no later than nine months after

[10] Municipalities with revenues or total expenditures and expenses between $100,000 and $250,000, and special districts with revenues or total expenditures and expenses between $50,000 and $100,000 are also covered in certain circumstances. Section 218.39(1)(g)-(h), F.S.

the end of the audited entity's fiscal year. The audit report must include a written statement describing corrective actions to be taken in response to each of the auditor's recommendations included in the audit report.[11]

The Auditor General is required to notify the Legislative Auditing Committee of any audit report prepared pursuant to this section that indicates that an audited entity failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports.[12] The Legislative Auditing Committee may direct the governing body of the audited entity to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.[13] If the Legislative Auditing Committee determines that the written statement is not sufficient, it may require the chair of the governing body of the local governmental entity, the elected official of each county agency, the chair of the district school board, the chair of the board of the charter school, or the chair of the board of the charter technical career center, to appear before the committee.[14] If the Legislative Auditing Committee determines that an audited entity failed to take full corrective action for which there is no justifiable reason for not taking such action, or has failed to comply with committee requests made pursuant to this section, the committee may proceed in accordance with s. 11.40(2), F.S.[15]

Section 11.40, F.S., governs the Legislative Auditing Committee, its authority, and the actions it may take in specified circumstances. In the case of a local governmental entity or district school board, these actions include, but are not limited to, directing the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.[16]

Proposed Changes

Section 6 creates s. 218.88, F.S., to require the annual audit reports described above to include an affidavit executed by the chair of the governing board of the local government stating that the local government has complied with the requirements of Part VIII of Chapter 218, F.S. (the new provisions created by the bill). If the local government has not complied, the affidavit must include a description of the noncompliance and corrective action taken by the local government to correct the noncompliance and to prevent such noncompliance in the future.

Section 2 amends s. 11.45, F.S., to require local governments not in compliance with Part VIII of Chapter 218, F.S., to provide, upon request of the Auditor General, evidence of the initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date it is requested by the Auditor General. The Auditor General must notify the Legislative Auditing Committee if the

[11] Section 218.39(7), F.S.
[12] Section 218.39(8), F.S.
[13] Section 218.39(8)(a), F.S.
[14] Section 218.39(8)(b), F.S.
[15] Section 218.39(8)(c), F.S.
[16] Section 11.40(2)(a), F.S.

local government fails to comply with the Auditor General's request or is unable to take correction action within the required timeframe.

Failure to comply with Part VIII, Chapter 218, F.S., could ultimately result in the Legislative Auditing Committee directing the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.[17]

Section 1 amends s. 11.40, F.S., to authorize the Department of Financial Services and the Division of Bond Finance of the State Board of Administration to subject a local government entity, district school board, charter school, or charter technical career center to further state action if the entity fails to comply with Part VIII of Chapter 218, F.S.

Administrative Changes (Section 6)

Section 6 creates s. 218.89, F.S., to provide that if a local government is required to post information to its website, but does not operate a website, the local government must inform the county or counties within which the local government is located, of any information required to be posted. Each such county must post the required information from such local government on the county's website.

Economic Development Incentive Reporting (Sections 3 and 4)

Current Situation

Sections 125.045 and 166.021, F.S., require local governments to provide the Office of Economic and Demographic Research (EDR) with details regarding their economic development incentives in excess of $25,000 granted during the previous fiscal year. The EDR annually collects this data from local governments through an online survey, coupled with follow-up communications as necessary. The survey questions are guided by four categories of incentives: direct financial incentives of monetary assistance, indirect incentives in the forms of grants and loans, fee-based or tax-based incentives, and below-market rate leases or deeds for real property. The EDR compiles the economic development incentives provided by the local governments in a manner that shows the total of each class of incentives into a report and provides the report to the President of the Senate, Speaker of the House of Representatives, and the Department of Economic Opportunity.

Proposed Changes

Sections 3 and 4 amend ss. 125.045 and 166.021, F.S., respectively, to revise the local government reporting requirements for economic development incentives. Sections 3 and 4 require each county and municipality to report whether the incentive was provided directly to an individual business or by another entity on behalf of the local government and the source of local dollars, and any state or federal dollars obligated for the incentive.

[17] Section 11.40(2), F.S.

The bill also revises the classes of economic development incentives. The bill requires reporting on financial incentives; general assistance, services, and support; and business recruitment, retention, or expansion efforts.

Under sections 3 and 4, EDR must compare the results of the economic development incentives provided by all local governments with the results of state incentives provided in similar classes to the extent that such a comparison is possible.

Other Miscellaneous Provisions (Sections 5, 7, 8, and 9)

The bill transfers and renumbers s. 218.80 as s. 218.795, F.S., amends s. 218.32(1)(e), F.S., to conform a cross-reference, and contains a legislative finding that the act fulfills an important state interest.

The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill could require expenditures related to the provision of additional data on local government websites, additional noticing requirements and public meetings, and additional required analysis of debt affordability.

However, there are several exemptions and exceptions to the mandate requirements. The mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 was approximately $2.05 million or less.[18,19,20] If none of the exemptions or exceptions apply, the bill must contain a finding that the bill fulfills an important state interest and must be approved by two-thirds of the membership of each house of the Legislature.

Bill Section 8 provides that this act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[18] FLA. CONST. art. VII, s. 18(d).
[19] 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.
[20] Based on the Demographic Estimating Conference's population adopted on April 1, 2017. The executive summary is available at http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill does not directly affect state or local government revenues.

B. Private Sector Impact:

Households and businesses will have improved access to upcoming local government decisions regarding tax increases and new debt issuance.

C. Government Sector Impact:

The provisions of the bill are expected to require indeterminate expenditures by local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 125.045, 166.021, and 218.32.

This bill creates the following sections of the Florida Statutes: 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89.

This bill transfers and renumbers section 218.80 of the Florida Statutes as section 218.795 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Lee

20-00941-18 20181426__

A bill to be entitled

An act relating to local government fiscal transparency; amending s. 11.40, F.S.; expanding the scope of the Legislative Auditing Committee review to include compliance with local government fiscal transparency requirements; amending s. 11.45, F.S.; providing procedures for the Auditor General and local governments to comply with the local government fiscal transparency requirements; amending ss. 125.045 and 166.021, F.S.; revising reporting requirements for certain local government economic development incentives; transferring and renumbering s. 218.80, F.S.; creating part VIII of ch. 218, F.S., consisting of ss. 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89, F.S.; providing a short title; specifying the purpose of the local government fiscal transparency requirements; providing definitions; requiring local governments to post certain voting record information on their websites; requiring the posting of specified links to related sites if certain documentation or details are available; requiring property appraisers to post certain property tax information and history on their websites; requiring local governments to post certain property tax information and history on their websites; requiring public notices for public hearings and meetings before certain increases of local government tax levies or the issuance of new tax-supported debt; specifying noticing and advertising

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requirements for such public hearings and meetings; requiring local governments to conduct certain debt affordability analyses under specified conditions; requiring audits of financial statements of local governments to be accompanied by an affidavit signed by the chair of the local government governing board; requiring certain information to be included in affidavits filed with the Auditor General; providing a method for local governments that do not operate a website to post certain required information; amending s. 218.32, F.S.; conforming a cross-reference; providing that this act fulfills an important state interest; providing an effective date.

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

Section 1. Subsection (2) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s. 218.38, ~~or~~ s. 218.503(3), or part VIII of chapter 218, the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be

subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date such action shall begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may implement the provisions of this paragraph.

(b) In the case of a special district created by:

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the

Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0652, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

3. Any manner other than a special act or local ordinance, notify the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067(3).

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34.

Section 2. Present paragraphs (d) through (j) of subsection (7) of section 11.45, Florida Statutes, are redesignated as paragraphs (e) through (k), respectively, and a new paragraph (d) is added to that subsection, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(d) During the Auditor General's review of audit reports, he or she shall contact each local government, as defined in s. 218.805(2), that is not in compliance with part VIII of chapter 218 and request evidence of corrective action. The local government shall provide the Auditor General with evidence of the initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date

it is requested by the Auditor General. If the local government fails to comply with the Auditor General's request or is unable to take corrective action within the required timeframe, the Auditor General shall notify the Legislative Auditing Committee.

Section 3. Subsection (5) of section 125.045, Florida Statutes, is amended to read:

125.045 County economic development powers.—

(5)(a) By January 15 of each year~~, 2011, and annually thereafter~~, each county shall report to the Office of Economic and Demographic Research ~~the~~ economic development incentives in excess of $25,000 given to businesses ~~any business~~ during the county's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the counties into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. The county shall identify whether the economic development incentive is provided directly by the county or by another entity on behalf of the county, as well as the source of local dollars, and any state or federal dollars obligated for the incentive. Economic development incentives, for purposes of this report, are classified as follows ~~include~~:

1. Class one: ~~Direct~~ Financial incentives ~~of monetary assistance~~ provided to an individual ~~a~~ business ~~from the county or through an organization authorized by the county~~. Such incentives include:~~, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.~~

a. Grants.

b. Tax-based credits, refunds, or exemptions.

c. Fee-based credits, refunds, or exemptions.

d. Loans, loan insurance, or loan guarantees.

e. Below-market rate leases or deeds for real property.

f. Job training or recruitment.

g. Subsidized or discounted government services.

h. Infrastructure improvements.

2. Class two: General assistance, services, and support provided collectively to businesses with a common interest or purpose. Such incentives include:

a. Technical assistance and training.

b. Business incubators and accelerators.

c. Infrastructure improvements ~~Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development~~.

3. Class three: Business recruitment, retention, or expansion efforts provided to benefit an individual business or class of businesses. Such incentives include:

a. Marketing and market research.

b. Trade missions and trade shows.

c. Site selection.

d. Targeted assistance with the permitting and licensing process.

e. Business plan or project development ~~Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions~~.

~~4. Below-market rate leases or deeds for real property.~~

(b) A county shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

(c) The Office of Economic and Demographic Research shall compile the economic development incentives provided by each county in a manner that shows the total of each class of economic development incentives provided by each county and all counties. To the extent possible, the office shall compare the results of the economic development incentives provided by all counties to the results of state incentives provided in similar classes.

Section 4. Paragraph (e) of subsection (8) of section 166.021, Florida Statutes, is amended to read:

166.021 Powers.—

(8)

(e)1. By January 15 of each year~~, 2011, and annually thereafter~~, each municipality having annual revenues or expenditures greater than $250,000 shall report to the Office of Economic and Demographic Research ~~the~~ economic development incentives in excess of $25,000 given to businesses ~~any business~~ during the municipality's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the municipalities into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. The municipality shall identify whether the economic development incentive was provided directly by the municipality or by another entity on behalf of the municipality, as well as the source of local dollars, and any state or federal dollars

obligated for the incentive. Economic development incentives, for purposes of this report, are classified as follows ~~include~~:

a. Class one: ~~Direct~~ Financial incentives ~~of monetary assistance~~ provided to an individual ~~a~~ business ~~from the municipality or through an organization authorized by the municipality~~. Such incentives include:~~, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.~~

(I) Grants.

(II) Tax-based credits, refunds, or exemptions.

(III) Fee-based credits, refunds, or exemptions.

(IV) Loans, loan insurance, or loan guarantees.

(V) Below-market rate leases or deeds for real property.

(VI) Job training or recruitment.

(VII) Subsidized or discounted government services.

(VIII) Infrastructure improvements.

b. Class two: General assistance, services, and support provided collectively to businesses with a common interest or purpose. Such incentives include:

(I) Technical assistance and training.

(II) Business incubators and accelerators.

(III) Infrastructure improvements ~~Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development~~.

c. Class three: Business recruitment, retention, or expansion efforts provided to benefit an individual business or class of businesses. Such incentives include:

(I) Marketing and market research.

(II) Trade missions and trade shows.

(III) Site selection.

(IV) Targeted assistance with the permitting and licensing process.

(V) Business plan or project development ~~Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions~~.

~~d. Below-market rate leases or deeds for real property.~~

2. A municipality shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

3. The Office of Economic and Demographic Research shall compile the economic development incentives provided by each municipality in a manner that shows the total of each class of economic development incentives provided by each municipality and all municipalities. To the extent possible, the office shall compare the results of the economic development incentives provided by all municipalities to the results of state incentives provided in similar classes.

Section 5. Section 218.80, Florida Statutes, is transferred and renumbered as section 218.795, Florida Statutes.

Section 6. Part VIII of chapter 218, Florida Statutes, consisting of sections 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89, is created to read:

PART VIII

LOCAL GOVERNMENT FISCAL TRANSPARENCY ACT

218.801 Short title.—This part may be cited as the "Local Government Fiscal Transparency Act."

218.803 Purpose.—The purpose of this part is to promote the fiscal transparency of local governments when using public funds by requiring additional public noticing of proposed local government actions that would increase taxes, enact new taxes, extend expiring taxes, or issue tax-supported debt and requiring voting records of local governing bodies related to such actions to be easily and readily accessible by the public.

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

(1) "Debt" means bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanisms or financial arrangements, whether or not a debt for legal purposes, for financing or refinancing the acquisition, construction, improvement, or purchase of capital outlay projects.

(2) "Local government" means any county, municipality, school district, special district dependent to a county or municipality, municipal service taxing unit, or independent special district, but does not include special dependent or independent districts established to provide hospital services, provided such special districts do not levy, assess, and collect ad valorem taxes.

(3) "Tax increase" means:

(a) For ad valorem taxes, any increase in a local government's millage rate above the rolled-back rate as defined in s. 200.065(1).

(b) For all other taxes, a tax enactment, tax extension, or an increase in the tax rate.

(4) "Tax-supported debt" means debt with a duration of more than 5 years secured in whole or in part by state or local tax

levies, whether such security is direct or indirect, explicit or implicit, and includes, but is not limited to, debt for which annual appropriations pledged for payment are from government fund types receiving tax revenues or shared revenues from state tax sources. The term does not include debt secured solely by revenues generated by the project that is financed with the debt.

218.81 Voting record access.—

(1) Each local government shall post on its website, in a manner that is easily accessible to the public, a history of the voting record of each action taken by the local governing board which addressed a tax increase or new tax-supported debt issuance, except debt that was refinanced or refunded and that did not extend the term or increase the outstanding principal amount of the original debt, as follows:

(a) By October 1, 2018, the voting record history from the preceding year;

(b) By October 1, 2019, the voting record history from the preceding 2 years;

(c) By October 1, 2020, the voting record history from the preceding 3 years; and

(d) By October 1, 2021, and thereafter, the voting record history required pursuant to this subsection from the preceding 4 years.

(2) The website must provide links to allow users to navigate to related sites if supporting details or documentation are available.

(3) In any public notice of a tax increase or the issuance of new tax-supported debt, each local government shall include

with the public notice the website address where the voting records can be accessed.

218.82 Property tax information and history.—

(1) Each county property appraiser, as defined in s. 192.001, shall maintain a website that includes, in a manner easily accessible to the public, links that provide access to:

(a) The notice of proposed property taxes and non-ad valorem assessments required under s. 200.069 for each parcel of property in that county; and

(b) A history of the millage rate and the amount of tax levied by each taxing authority on each parcel, as follows:

1. By October 1, 2018, the history from the 2 preceding years;

2. By October 1, 2019, the history from the 3 preceding years; and

3. By October 1, 2020, and thereafter, the history from the 4 preceding years.

This subsection does not apply to information that is otherwise exempt from public disclosure.

(2) Each local government shall post on its website, in a manner that is easily accessible to the public, links that provide access to a history of each of its millage rates and the total annual amount of revenue generated by each of these levies, as follows:

(a) By October 1, 2018, the history from the 2 preceding years;

(b) By October 1, 2019, the history from the 3 preceding years; and

(c) By October 1, 2020, and thereafter, the history from the 4 preceding years.

218.83 Expanded public noticing of tax increases and new tax-supported debt issuance.—

(1) For the purpose of this section, the term "tax increase" does not include an ad valorem tax increase.

(2) A local government that intends to vote on a proposed tax increase or the issuance of new tax-supported debt shall advertise a public hearing to solicit public input concerning the proposed tax increase or new tax-supported debt issuance. This public hearing must occur at least 14 days prior to the date that the local governing body meets to take a final vote on the tax increase or issuance of new tax-supported debt. Any hearing required under this subsection shall be held after 5 p.m. if scheduled on a day other than Saturday. No hearing shall be held on a Sunday. The general public shall be allowed to speak and to ask questions relevant to the tax increase or the tax-supported debt issuance. The local government shall provide public notice as set forth in subsection (4).

(3)(a) If, following the public hearing required under subsection (2), the local government intends to proceed with a vote to approve a tax increase or the new issuance of tax-supported debt, the local government shall provide public notice in the manner set forth in subsection (4) at least 10 days prior to the date of the scheduled public meeting.

(b) For a tax increase, the notice shall also include, at a minimum:

1. A statement prominently posted that the local government intends to vote on a proposed new tax enactment, tax extension,

or tax rate increase.

2. The time and place of the meeting.

3. The amount of the tax increase, including both the rate and total amount of annual revenue expected to be generated and the expected annual revenue expressed as a percentage of the government's general fund revenue.

4. A detailed explanation of the intended uses of the levy.

5. A statement indicating whether the local government expects to use the proceeds to secure debt.

(c) For new tax-supported debt issuance, the notice shall also include, at a minimum:

1. A statement prominently posted that the local government intends to vote on a proposed new issuance of tax-supported debt.

2. The time and place of the meeting.

3. A truth in bonding statement in substantially the following form:

The ...(insert local government name)... is proposing to issue $...(insert principal)... of debt or obligation for the purpose of ...(insert purpose).... This debt or obligation is expected to be repaid over a period of ...(insert term of issue)... years. At a forecasted interest rate of ...(insert rate of interest)..., total interest paid over the life of the debt or obligation will be $...(insert sum of interest payments).... The source of repayment or security for this proposal is the ...(insert the local government name)... existing ...(insert fund).... Authorizing this debt or obligation will result in $...(insert the annual amount)... of ...(insert local government name)... ...(insert fund)... moneys

not being available to finance the other services of the ...(insert local government name)... each year for ...(insert the length of the debt or obligation)....

4. Presentation of the debt affordability ratios calculated pursuant to s. 218.84, described in substantially the following form:

The following ratios measure the affordability of outstanding and proposed new long-term, tax-supported debt issued by ...(insert local government name).... The ratios show debt service as a percentage of the revenues available to support that debt, including the new debt being proposed ...(insert 5 year history and 2 year projection of debt affordability ratio)....

(4) The notice provided by a local government announcing a public hearing to take public input as set forth in subsection (2) or the public meeting to take a final vote as set forth in subsection (3) must meet the following requirements:

(a) The local government must advertise the notice in a newspaper of general circulation in the county or counties where the local government exists. A local government may advertise in a geographically limited insert of a general circulation newspaper if the region encompassed by the insert contains the jurisdictional boundaries of the local government. The newspaper must be of general interest with readership in the community and not one of limited subject matter, pursuant to chapter 50. The advertisement must be at least one-quarter page in size of a standard size newspaper or a half-page in size of a tabloid size newspaper, and the headline in the advertisement must be in a type no smaller than 18 point. The advertisement may not be

placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must appear in a newspaper that is published at least 5 days a week unless the only newspaper in the county is published less than 5 days a week. If the advertisement appears in a geographically limited insert of a general circulation newspaper, the insert must be one that is published at least twice a week throughout the local government's jurisdiction. In lieu of publishing the notice set out in this paragraph, the local government may mail a copy of the notice to each elector residing within the jurisdiction of the local government; and

(b) The local government must post on its website in a manner that is easily accessible to the public the information required under subsections (2) and (3), as applicable.

(5) This section does not apply to the refinancing or refunding of debt that does not extend the term or increase the outstanding principal amount of the original debt.

218.84 Local government debt fiscal responsibility.—

(1) It is the public policy of this state to encourage local governments to exercise prudence in authorizing and issuing debt. Before a local government authorizes debt, it must consider its ability to meet its total debt service requirements in light of other demands on the local government's fiscal resources. Each local government shall perform a debt affordability analysis as set forth in subsection (2), and the governing board shall consider the analysis before approving the issuance of new tax-supported debt.

(2) The debt affordability analysis shall, at a minimum, consist of the calculation of the local government's actual debt

affordability ratio for the 5 fiscal years prior to the year the debt is expected to be issued and a projection of the ratio for at least the first 2 fiscal years in which the new debt is expected to be issued. The analysis shall include a comparison of the debt affordability ratio with and without the new debt issuance.

(3) The debt affordability ratio for a given fiscal year shall be a ratio:

(a) The denominator of which is the total annual revenues available to pay debt service on outstanding tax-supported debt of the local government; and

(b) The numerator of which is the total annual debt service for outstanding tax-supported debt of the local government.

218.88 Audits.—Audits of financial statements of local governments which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must be accompanied by an affidavit executed by the chair of the governing board of the local government stating that the local government has complied with this part. The affidavit must be filed with the Auditor General, or in the event the local government has not complied with this part, the affidavit shall instead include a description of the noncompliance and corrective action taken by the local government to correct the noncompliance and to prevent such noncompliance in the future.

218.89 Local government websites.—If a local government is required under this part to post information on its website, but does not operate an official website, the local government must provide the county or counties within which the local government is located the information required to be posted, and each such

county shall post the required information on its website.

Section 7. Paragraph (e) of subsection (1) of section 218.32, Florida Statutes, is amended to read:

218.32 Annual financial reports; local governmental entities.—

(1)

(e) Each local governmental entity that is not required to provide for an audit under s. 218.39 must submit the annual financial report to the department no later than 9 months after the end of the fiscal year. The department shall consult with the Auditor General in the development of the format of annual financial reports submitted pursuant to this paragraph. The format must include balance sheet information used by the Auditor General pursuant to s. 11.45(7)(g) ~~s. 11.45(7)(f)~~. The department must forward the financial information contained within the annual financial reports to the Auditor General in electronic form. This paragraph does not apply to housing authorities created under chapter 421.

Section 8. The Legislature finds that this act fulfills an important state interest.

Section 9. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Senate Committee on Appropriations

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #1426**, relating to **Local Government Fiscal Transparency**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
	1426

Topic LOCAL GOVT FISCAL TRANSPARENCY — Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title

Address 100 N. MONROE — Phone 254-1838

Street

TAL — 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 ASSOCIATION OF COUNTIES

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1426
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Local Gov. Transparency

Name Amber Hughes

Job Title Sr. Legislative Advocate

Address PO Box 1757
Street

Phone 850-701-3621

Tall. FL 32302
City *State* *Zip*

Email a.hughes@floites.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1500
INTRODUCER:	Senator Baxley
SUBJECT:	Direct-support Organization of the Florida Commission on Community Service
DATE:	February 14, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Favorable**
2.	Shettle	Hansen	AP	**Favorable**
3.			RC	

I. Summary:

SB 1500 removes the scheduled repeal date of October 1, 2018, for the Florida Commission on Community Service's direct support organization, the Volunteer Florida Foundation.

The bill has no impact on state revenues or expenditures.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Citizen Support Organizations and Direct-support Organizations

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

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 created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.[1] Specifically, the law requires each CSO and DSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:[2]

- The name, mailing address, telephone number, and website address of the organization;

[1] Chapter 2014-96, Laws of Fla.
[2] Section 20.058(1), F.S.

- 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 federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).[3]

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.[4] Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the information.[5] If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO or DSO.[6]

By August 15 of each year, each agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and Office of Program Policy Analysis and Government Accountability the information provided by the CSO or DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO or DSO.[7]

Lastly, a law creating or authorizing the creation of a CSO or DSO must state that the creation of or authorization for the CSO or DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. CSOs and DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019.[8]

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of $100,000 to provide for an annual financial audit of its accounts and records.[9] The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. 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.

Additionally, the Auditor General may conduct audits or other engagements of the accounts and records of the CSO or DSO, pursuant to his or her own authority, or at the direction of the

[3] 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.
[4] Section 20.058(2), F.S.
[5] Section 20.058(4), F.S.
[6] *Id.*
[7] Section 20.058(3), F.S.
[8] Section 20.058(5), F.S.
[9] 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.

Legislative Auditing Committee.[10] The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.[11]

CSO and DSO Ethics Code Requirements

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.[12]

Florida Volunteer and Community Service Act of 2001

The Legislature passed HB 47 (2001), the Florida Volunteer and Community Service Act of 2001 (Act) "to promote the development of better communities by fostering greater civic responsibility through volunteerism and service to the community."[13] The Act directed the Executive Office of the Governor to "establish policies and procedures which provide for the expenditure of funds to develop and facilitate initiatives by public agencies, scholastic institutions, private institutions, and individuals that establish and implement programs that encourage and reward volunteerism."[14] The programs and initiatives developed pursuant to the Act must have the following purposes and objectives:

- To place increased priority on citizen participation and volunteerism as a means of addressing the increasingly complex problems facing Florida's communities.
- To encourage local community leaders to implement strategies that expand civic participation.
- To promote the concept and practice of corporate citizenship.
- To build the enthusiasm, dedication, and combined expertise of individual citizens and public and private systems to find new and creative ways to effectively use volunteerism and community service.
- To foster the alignment of community volunteer resources with the goals of the state.
- To implement policy and administrative changes that encourage and enable individuals to participate in volunteer and community service activities.
- To encourage nonprofit agencies to interweave volunteers into the fabric of their service delivery as a means of increasing the effectiveness and efficiency of their services.
- To support and promote volunteer service to all citizens as an effective means to address community needs and foster a collective commitment to lifelong community service.
- To recognize National Volunteer Week as a time to encourage all citizens of Florida to participate in local service projects.
- To recognize the value of individual volunteers and volunteer and service organizations and programs and to honor and celebrate the success of volunteers.

[10] Section 11.45(3)(d), F.S.
[11] *Id*.
[12] Section 112.3251, F.S.
[13] Chapter 2001-84, L.O.F. and s. 14.295(2), F.S.
[14] *Id*.

- To encourage volunteer and service efforts to point children in the right direction and to endow them with the character and competence they need to achieve success in life.[15]

The Florida Commission on Community Service

The Florida Commission on Community Service (Commission),[16] administratively housed within the Executive Office of the Governor, serves as an advisory board to the Governor, the Cabinet,[17] the Legislature, and appropriate state agencies and entities on matters relating to volunteerism and community service.[18] The Commission is required to consist of no less than 15 and no more than 25 voting members,[19] which are appointed on a bipartisan basis by the Governor and confirmed by the Senate.[20] Voting members may represent one, or any combination of the following categories, so long as each of the respective categories is represented:

- A representative of a community-based agency or organization.
- The Commissioner of Education or designee thereof.
- A representative of local labor organizations.
- A representative of local government.
- A representative of business.
- An individual between the ages of 16 and 25, inclusive, who is a participant in or a supervisor of a service program for school-age youth, or of a campus-based or national service program.
- A representative of a national service program.
- An individual with expertise in the educational, training, and developmental needs of youth, particularly disadvantaged youth.
- An individual with experience in promoting service and volunteerism among older adults.[21]

Members of the Commission serve without compensation[22] for terms of 3 years[23] and meet at the call of its chair or at the request of a majority of its total voting membership, but shall meet at least biannually.[24] A majority of the total voting membership shall constitute a quorum, and the affirmative vote of a majority of a quorum is necessary to take official action.[25] The Commission is required to:

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[15] Section 14.295(3), F.S.
[16] The Commission is also known as Volunteer Florida. *See* About Us and History, VOLUNTEER FLORIDA, https://www.volunteerflorida.org/about/ (last visited on Jan. 24, 2018).
[17] Section 20.03(1), F.S., defines the term "Cabinet" to mean collectively the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, as specified in the s. 4, Art. IV of the State Constitution.
[18] Section 14.29(2), F.S. Any number of nonvoting members may be appointed by the Governor.
[19] Section 14.29(3)(a), F.S. Also, no more than 50 percent plus one of the voting members of the Commission may be aligned with the same political party. *See* Section 14.29(3)(b), F.S.
[20] Section 14.29(3)(a), F.S.
[21] *Id*. Other members may include educators, experts in the delivery of human educational, environmental, or public safety services, representatives of Indian tribes, out-of-school or at-risk youth, and representatives of programs that are administered by or receive assistance from the Domestic Volunteer Service Act of 1973, as amended.
[22] Section 14.29(6), F.S. Voting members may must be reimbursed for per diem and travel expenses in accordance with s. 112.061, F.S.
[23] Section 14.29(4), F.S.
[24] Section 14.29(5), F.S.
[25] *Id*.

- Annually elect a chair and a vice chair. To be eligible to serve as chair, an individual must be a voting member of the Commission.
- Employ an executive director, who shall be initially designated by the Governor, to carry out the provisions of this section. The executive director shall report directly to the Commission. The executive director shall be the chief administrative officer of the Commission.
- Prepare an annual report detailing its activities during the preceding year and, to the extent possible, compile and synthesize any reports that it accepted on behalf of the Governor. The Commission's report shall be presented to the Governor no later than January 15, with copies to the President of the Senate and the Speaker of the House of Representatives. The report shall also include specific recommendations for any necessary legislation, administrative, or regulatory reform, and the Commission's assessment of the state of volunteerism in Florida.[26]

The Commission is permitted, but not required, to perform the following actions:[27]

- Secure assistance from all state departments and agencies in order for the Commission to avail itself of expertise at minimal cost.
- Procure information and assistance from the state or any political subdivision, municipal corporation, public officer, or governmental department or agency thereof.
- Apply for and accept funds, grants, gifts, and services from local, state, or federal government, or from any of their agencies, or any other public or private source and is authorized to use funds derived from these sources to defray administrative costs, implement programs as may be necessary to carry out the Commission's charge, and assist agencies, institutions, and individuals in the implementation of programs pursuant to the Act. The Commission may also authorize Volunteer Florida Foundation, Inc., the Commission's nonprofit DSO, to assist in securing training, technical assistance, and other support needed to accomplish the intent and purposes of the Act.
- Contract for necessary goods and services.

The Commission administers $31.7 million in federal, state and local funding for national service and volunteer programs across the state."[28] The Commission administers national service programs like AmeriCorps, which offers Floridians the opportunity to engage in intensive service to their communities while increasing capacity for nonprofits and other service organizations. The Commission's grantees include schools, educational foundations, nonprofits, faith-based organizations, and other community organizations. The Commission is also the lead agency for coordinating volunteers and donations for the Florida Division of Emergency Management.[29]

DSO for the Florida Commission on Community Service

The Commission is authorized to create a DSO that is:

- A Florida corporation, not for profit, incorporated under the provisions of Chapter 617, F.S., and approved by the Secretary of State;
- Organized and operated exclusively to receive, hold, invest, and administer property and funds and to make expenditures to or for the benefit of the program; and

[26] Section 14.29(7), F.S.
[27] Section 14.29(8), F.S.
[28] *See* About Us, VOLUNTEER FLORIDA, https://www.volunteerflorida.org/about/ (last visited on Jan. 24, 2018).
[29] *Id*. *See* History, VOLUNTEER FLORIDA.

- An organization that the Commission, after review, has certified to be operating in a manner consistent with the goals of the program and in the best interests of the state.[30]

The DSO is required to operate under a written contract with the Commission. The contract must provide for:

- Approval of the articles of incorporation and bylaws of the DSO by the Commission.
- Submission of an annual budget for the approval of the Commission.
- Annual certification by the Commission that the DSO is complying with the terms of the contract and in a manner consistent with the goals and purposes of the Commission and in the best interest of the state.[31]
- The reversion to the Commission, or the state if the Commission ceases to exist, of moneys and property held in trust by the DSO if the DSO is no longer approved to operate.
- The fiscal year of the DSO, to begin July 1 of each year and end June 30 of the following year.
- The disclosure of material provisions of the contract and the distinction between the board of directors and the DSO to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.[32]

The members of the DSO's board of directors must include members of the Commission.[33] The Commission may authorize the DSO to use its personal services, facilities, and property, except money.[34] Additionally, the Commission is required to adopt rules prescribing the procedures by which the DSO is governed and any conditions with which it must comply to use property, facilities, or personal services of the Commission.[35]

Funds held by the DSO may be held in a separate depository account and subject to the provisions of the contract with the commission.[36] Such funds may include membership fees, private donations, income derived from fundraising activities, and grants applied for and received by the DSO. The DSO must provide for an annual financial audit in accordance with s. 215.981, F.S.[37]

The statutory authority for the Commission's DSO is scheduled to repeal on October 1, 2018, unless reviewed and saved from repeal by the Legislature.[38]

Volunteer Florida Foundation, Inc.

The Commission established a not-for-profit corporation, the Volunteer Florida Foundation, Inc. (VFF), in May 2010, to serve as its DSO. The VFF provides the mechanism for the state to secure private funding and to properly review organizations requesting funding. The VFF is

[30] Section 14.29(9)(a), F.S.
[31] The certification must be reported in the official minutes of a Commission meeting. *See* s. 14.29(9)(b)3., F.S.
[32] Section 14.29(9)(b), F.S.
[33] Section 14.29(9)(c), F.S.
[34] Section 14.29(9)(d), F.S.
[35] Section 14.29(9)(e), F.S.
[36] Section 14.29(9)(f), F.S.
[37] Section 14.29(9)(g), F.S.
[38] Section 14.29(9)(h), F.S.

governed by a board of directors subject to approval by the Commission.[39] The board must consist of not less than nine members and not more than fifteen members, each serving a term of 3 years.[40] The VFF board is responsible for raising funds, approving distribution of funds, and providing oversight of the funding used to support the Commission's programs.[41]

Additionally, the VFF administers the Florida Disaster Fund, the State of Florida's official private fund to assist communities in times of disaster.[42] In 2017, the Florida Disaster Fund provided $1,250,000 in grants to 59 non-profit partners to support four separate disaster events, including response following Hurricane Irma.

Senate Professional Staff Review of the Volunteer Florida Foundation

Section 14.29(9), F.S., the statutory authority for the Commission's DSO, is scheduled to repeal on October 1, 2018, unless reviewed and saved from repeal by the Legislature. Professional staff of the Senate Committee on Governmental Oversight and Accountability reviewed the VFF to verify its compliance with applicable Florida Statutes.

Staff found that VFF is a DSO that supports the Commission in its mission to "deliver high-impact national service and volunteer programs across the state."[43] During the 2017 interim, staff met with representatives of VFF and the Commission to discuss the DSO's operations and structure and to receive documents to assist with the review. After reviewing the submitted documents and reviewing the other requirements to which VFF is subject, staff concluded that it appears VFF is in compliance with its enabling legislation, s. 14.29, F.S., as well as the DSO requirements in s. 20.058, F.S.

Senate professional staff reviewed relevant VFF records from Fiscal Years 2013-2014, 2014-2015, 2015-2016, and 2016-2017, and found that the VFF is an active DSO that supports the Commission.

Senate professional staff identified minor technical deficiencies in which the VFF was not in full compliance with the applicable Florida Statutes.[44] These deficiencies are largely administrative or procedural. The VFF will resolve each deficiency presented by Senate professional staff and intend to comply with the applicable Florida Statues moving forward.

III. Effect of Proposed Changes:

Section 1 amends s. 14.29, F.S., to save from repeal the Commission's DSO, which is currently scheduled for repeal on October 1, 2018.

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[39] *See* About Us, Transparency, Governance, VOLUNTEER FLORIDA, https://www.volunteerflorida.org/volunteer-florida-foundation/ (last visited on Jan. 24, 2018).
[40] Rule 27O-1.001(2)(c), F.A.C. *See also* VFF Bylaws (copy on file with the Senate Governmental and Accountability Committee).
[41] Email from Bonnie Hazleton, Chief Operating Officer, Volunteer Florida (Dec. 18, 2017) (copy on file with the Senate Governmental Oversight and Accountability Committee).
[42] Volunteer Florida Foundation Fact Sheet (copy on file with the Senate Governmental and Accountability Committee).
[43] *Id*.
[44] *See* Florida Senate Review of the Florida Commission on Community Service Direct-support Organization, Staff Findings and Recommendations (Jan. 26, 2018) (on file with the Senate Governmental Oversight and Accountability Committee).

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By saving the DSO from repeal, this bill sustains a source of financial and other assistance to Floridians affected by natural disasters and supports Governor's initiatives such as Florida's Black History Month and Hispanic Heritage Month celebrations.

C. Government Sector Impact:

The bill has no fiscal impact on state government. However, if the DSO is not saved from repeal, the Commission may need to find another source of funding for the Florida Disaster Fund and initiatives for the Governor's office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 14.29 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Baxley

12-01456A-18 20181500__

A bill to be entitled

An act relating to the direct-support organization of the Florida Commission on Community Service; amending s. 14.29, F.S.; removing the scheduled repeal of provisions governing the commission's direct-support organization; providing an effective date.

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

Section 1. Subsection (9) of section 14.29, Florida Statutes, is amended to read:

14.29 Florida Commission on Community Service.—

(9)(a) The commission may establish a direct-support organization which is:

1. A Florida corporation, not for profit, incorporated under the provisions of chapter 617 and approved by the Secretary of State.

2. Organized and operated exclusively to receive, hold, invest, and administer property and funds and to make expenditures to or for the benefit of the program.

3. An organization which the commission, after review, has certified to be operating in a manner consistent with the goals of the program and in the best interests of the state.

(b) The direct-support organization shall operate under written contract with the commission. The contract must provide for:

1. Approval of the articles of incorporation and bylaws of the direct-support organization by the commission.

2. Submission of an annual budget for the approval of the

12-01456A-18 20181500__

commission. The budget must comply with rules adopted by the commission.

3. Certification by the commission that the direct-support organization is complying with the terms of the contract and in a manner consistent with the goals and purposes of the commission and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the commission.

4. The reversion to the commission, or the state if the commission ceases to exist, of moneys and property held in trust by the direct-support organization if the direct-support organization is no longer approved to operate for the commission or the commission ceases to exist.

5. The fiscal year of the direct-support organization, to begin July 1 of each year and end June 30 of the following year.

6. The disclosure of material provisions of the contract and the distinction between the board of directors and the direct-support organization to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.

(c) The members of the direct-support organization's board of directors must include members of the commission.

(d) The commission may authorize a direct-support organization to use its personal services, facilities, and property, except money, subject to the provisions of this section. A direct-support organization that does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin may not use the property, facilities, or personal services of the

commission. For the purposes of this subsection, the term "personal services" includes full-time personnel and part-time personnel as well as payroll processing.

(e) The commission shall adopt rules prescribing the procedures by which the direct-support organization is governed and any conditions with which the direct-support organization must comply to use property, facilities, or personal services of the commission.

(f) Moneys of the direct-support organization may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the contract with the commission. Such moneys may include membership fees, private donations, income derived from fundraising activities, and grants applied for and received by the direct-support organization.

(g) The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

~~(h) This subsection is repealed effective October 1, 2018, unless reviewed and saved from repeal by the Legislature.~~

Section 2. This act shall take effect July 1, 2018.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1526 (440736)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Higher Education) and Senator Gibson
SUBJECT:	Historically Black Colleges and Universities Matching Endowment Scholarship Program
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Favorable**
2.	Smith	Elwell	AHE	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**

I. Summary:

PCS/SB 1526 bill creates the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Program (program). The program will be administered by the Florida Department of Education (DOE) and will provide funds, subject to legislative appropriation, to participating Florida-based HBCUs for scholarships to enrolled students. Four HBCUs are located in Florida: Florida Agricultural and Mechanical University, Bethune-Cookman University, Edward Waters College, and Florida Memorial University.

The bill does not affect state revenues or expenditures. The program is contingent upon a legislative appropriation to the Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund. SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, does not provide an appropriation for the program.

The bill takes effect July 1, 2018.

II. Present Situation:

The Higher Education Act of 1965, as amended, defines an HBCU as: "… historically black college or university that was established prior to 1964, whose principal mission was, and is, the education of black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary [of Education] to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation."[1]

[1] U.S. Department of Education, *What is an HBCU?* https://sites.ed.gov/whhbcu/one-hundred-and-five-historically-black-colleges-and-universities/ (last visited Jan. 26, 2018).

Nationally, there are 107 HBCUs with more than 228,000 students enrolled. Fifty-six institutions are under private control, and 51 are public colleges and universities.[2]

The following four HBCUs are located in Florida:[3]

- **Florida Agricultural and Mechanical University** (FAMU) is a public university founded in 1887 and located in Tallahassee.[4] FAMU is regionally accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (SACSCOC).[5] FAMU enrolls nearly 11,000 students,[6] and tuition and fees for 30 credit hours for a resident, undergraduate student are $5,827.30.[7]
- **Bethune-Cookman University** (B-CU) is a private university founded in 1904 and located in Daytona Beach.[8] B-CU is regionally accredited by the SACSCOC.[9] Its fall, 2017 enrollment was 4,143 students[10] and the annual undergraduate tuition and fees for a full-time student are $14,410.[11]
- **Edward Waters College** (EWC) is a private college established in 1866[12] and located in Jacksonville. EWC is regionally accredited by SACSCOC.[13] Its current enrollment is 839 students[14] and the annual undergraduate tuition and fees for a full-time student are $13,525.[15]

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[2] U.S. Department of Education, *Historically Black Colleges and Universities and Higher Education Desegregation*, https://www2.ed.gov/about/offices/list/ocr/docs/hq9511.html (last visited Jan. 26, 2018).
[3] National Center for Education Statistics, *College Navigator*, https://nces.ed.gov/COLLEGENAVIGATOR/?s=FL&sp=4 (last visited Jan. 26, 2018).
[4] Florida Agricultural and Mechanical University, *History of Florida Agricultural and Mechanical University (FAMU)*, http://www.famu.edu/index.cfm?AboutFAMU&History (last visited Jan. 26, 2018).
[5] Florida Agricultural and Mechanical University, *Florida A&M University Southern Association of Colleges and Schools Commission on Colleges (FAMU SACSCOC) Office* http://www.famu.edu/index.cfm?sacs (last visited Jan. 26, 2018).
[6] Florida Agricultural and Mechanical University, *About FAMU*, http://www.famu.edu/index.cfm?AboutFAMU&Overview (last visited Jan. 26, 2018).
[7] Board of Governors, *State University System of Florida, Tuition and Required Fees, 2017-2018, available at* http://www.flbog.edu/board/office/budget/_doc/tuition/2017-18-SUS-Tuition-and-Fee-for-New-Students-at-Main-Campus-by-level.pdf, at 1.
[8] Bethune-Cookman University, *About B-CU*, http://www.cookman.edu/about_BCU/index.html (last visited Jan. 26, 2018).
[9] *Id.*
[10] Bethune-Cookman University, *Fall 2017 Institutional Profile, available at* http://www.cookman.edu/academics/IE/research/Institutional2017-2018FallProfile.pdf.
[11] Bethune-Cookman University, *Cost of Attendance*, http://www.cookman.edu/currentstudents/stud_accts/Tuition/index.html (last visited Jan. 26, 2018).
[12] Edward Waters College, *The History of Edward Waters College*, https://www.ewc.edu/about/our-history/ (last visited Jan. 26, 2018).
[13] Edward Waters College, *About Edward Waters College*, https://www.ewc.edu/about/ (last visited Jan. 26, 2018).
[14] *Id.*
[15] Edward Waters College, *Cost of Attendance, available at* https://www.ewc.edu/wp-content/uploads/2017/03/Cost-of-Attendance.pdf.

- **Florida Memorial University** (FMU) is a private university founded in 1879 and located in Miami Gardens.[16] FMU is regionally accredited by the SACSCOC.[17] FMU's undergraduate enrollment is 1,280 students[18] and the annual undergraduate tuition and fees for a full-time student are $15,536.[19]

III. Effect of Proposed Changes:

The bill creates s. 1009.984, F.S., to establish the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Program (program). The program will be administered by the Florida Department of Education (DOE) and will provide funds to participating Florida-based HBCUs for scholarships to enrolled students.

The Legislature may appropriate funds for the program, to be transferred to the Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund (trust fund). Contingent upon a legislative appropriation, each HBCU that wishes to participate in the program must provide matching funds equal to one-fourth of the legislative appropriation. All funds transferred to the trust fund for the program must be invested in accordance with the law.[20]

Annually, the DOE must allocate the interest accumulated in the trust fund equally to each participating HBCU to award scholarships to full-time undergraduate students who meet the general eligibility requirement for student financial aid, including residency, and demonstrate unmet financial need. Each HBCU may also establish additional eligibility criteria.

The State Board of Education must adopt rules and the Board of Governors (BOG) must adopt regulations for program administration. The bill requires the DOE to administer the program, so it is unclear if BOG regulations would be necessary to administer the program.

The creation of the Historically Black Colleges and Universities Matching Endowment Scholarship Program may provide additional financial aid for students enrolled at the HBCUs participating in the program.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[16] Florida Memorial University, *Our History*, http://www.fmuniv.edu/about/our-history/ (last visited Jan. 26, 2018).
[17] Florida Memorial University, *FMU At A Glance*, http://www.fmuniv.edu/about/fmu-at-a-glance/ (last visited Jan. 26, 2018).
[18] U.S. News & World Report, Florida Memorial University, https://www.usnews.com/best-colleges/florida-memorial-university-1486 (last visited Jan. 26, 2018).
[19] Florida Memorial University, *Tuition and Fees*, http://www.fmuniv.edu/administration/division-of-student-affairs/enrollment-management-and-financial-aid/financial-aid/tuition-and-fees/ (last visited Jan. 26, 2018).
[20] Chapter 215, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill establishes a scholarship program for students who attend historically black colleges and universities (HBCUs). Such scholarships may reduce the amount a student must contribute to attend such colleges.

Private HBCUs must provide matching funds equal to one-fourth of the legislative appropriation to participate in the scholarship program.

C. Government Sector Impact:

The bill does not affect state revenues or expenditures. The program is contingent upon a legislative appropriation to transfer the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Trust Fund (trust fund). SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, does not provide an appropriation for the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1009.894 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 by Appropriations Subcommittee on Higher Education on February 14, 2018:
The committee substitute:

- Removes the $2 million legislative appropriation and states the Legislature may appropriate funds for the program.
- Changes the required $500,000 matching fund contribution for each historically black college and university (HBCU) that wishes to participate to one-fourth of any legislative appropriation.
- Establishes basic eligibility criteria for the scholarship program, including requiring that a student:
  - Meet the general eligibility requirement for student financial aid, including residency;
  - Be a full-time undergraduate student;
  - Demonstrate unmet financial need; and
  - Meet any additional eligibility criteria established by the HBCU.

B. Amendments:

None.

440736

576-03264-18

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

A bill to be entitled

An act relating to the Historically Black Colleges and Universities Matching Endowment Scholarship Program; creating s. 1009.894, F.S.; establishing the Historically Black Colleges and Universities Matching Endowment Scholarship Program within the Department of Education; providing the purpose of the program; authorizing the Legislature to appropriate funds for the program; requiring a historically black college or university to provide a certain amount of matching funds to participate in the program; requiring specified funds to be invested; requiring certain funds to remain in the trust fund; providing that the interest the trust fund earns will be used to provide scholarships to certain students; providing for annual disbursement of the interest; requiring the State Board of Education and Board of Governors of the State University System to adopt rules and regulations, respectively; providing an effective date.

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

Section 1. Section 1009.894, Florida Statutes, is created to read:

1009.894 Historically Black Colleges and Universities Matching Endowment Scholarship Program.—

(1) There is established the Historically Black Colleges and Universities Matching Endowment Scholarship Program to be administered by the Department of Education. The program shall provide funds to participating historically black colleges and universities in the state to provide scholarships to students enrolled at the schools.

(2)(a) The Legislature may appropriate funds to be transferred to the Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund for the program.

(b) Contingent upon a legislative appropriation, each Historically Black College and University in the state which wishes to participate in the program must provide matching funds equal to one-fourth of the legislative appropriation to the Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund.

(c) All funds transferred to the trust fund for the program shall be invested in accordance with chapter 215. Notwithstanding s. 216.301 and pursuant to s. 216.351, the appropriated funds and all matching funds shall remain in the trust fund and the interest from such funds shall be used for scholarships for students enrolled at participating colleges and universities.

(3) Annually, by July 1, the department shall allocate equally the interest accumulated in the trust fund to each participating college and university to award scholarships to students enrolled at the school who:

(a) Meet the general requirements, including residency requirements, for student eligibility under s. 1009.40, except as otherwise provided in this section;

(b) Are enrolled as a full-time undergraduate student;

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440736

576-03264-18

(c) Demonstrate unmet financial need; and

(d) Meet any additional eligibility requirements established by the institutions.

(4) The State Board of Education shall adopt rules and the Board of Governors of State University System shall adopt regulations to administer this section.

Section 2. This act shall take effect July 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/SB 1526
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Higher Education) and Senator Gibson
SUBJECT:	Historically Black Colleges and Universities Matching Endowment Scholarship Program
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Favorable**
2.	Smith	Elwell	AHE	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Fav/CS**

I. Summary:

CS/SB 1526 bill creates the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Program (program). The program will be administered by the Florida Department of Education (DOE) and will provide funds, subject to legislative appropriation, to participating Florida-based HBCUs for scholarships to enrolled students. Four HBCUs are located in Florida: Florida Agricultural and Mechanical University, Bethune-Cookman University, Edward Waters College, and Florida Memorial University.

The bill does not affect state revenues or expenditures. The program is contingent upon a legislative appropriation to the Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund. SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, does not provide an appropriation for the program.

The bill takes effect July 1, 2018.

II. Present Situation:

The Higher Education Act of 1965, as amended, defines an HBCU as: "… historically black college or university that was established prior to 1964, whose principal mission was, and is, the education of black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary [of Education] to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation."[1]

[1] U.S. Department of Education, *What is an HBCU?* https://sites.ed.gov/whhbcu/one-hundred-and-five-historically-black-colleges-and-universities/ (last visited Jan. 26, 2018).

Nationally, there are 107 HBCUs with more than 228,000 students enrolled. Fifty-six institutions are under private control, and 51 are public colleges and universities.[2]

The following four HBCUs are located in Florida:[3]

- **Florida Agricultural and Mechanical University** (FAMU) is a public university founded in 1887 and located in Tallahassee.[4] FAMU is regionally accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (SACSCOC).[5] FAMU enrolls nearly 11,000 students,[6] and tuition and fees for 30 credit hours for a resident, undergraduate student are $5,827.30.[7]
- **Bethune-Cookman University** (B-CU) is a private university founded in 1904 and located in Daytona Beach.[8] B-CU is regionally accredited by the SACSCOC.[9] Its fall, 2017 enrollment was 4,143 students[10] and the annual undergraduate tuition and fees for a full-time student are $14,410.[11]
- **Edward Waters College** (EWC) is a private college established in 1866[12] and located in Jacksonville. EWC is regionally accredited by SACSCOC.[13] Its current enrollment is 839 students[14] and the annual undergraduate tuition and fees for a full-time student are $13,525.[15]

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[2] U.S. Department of Education, *Historically Black Colleges and Universities and Higher Education Desegregation*, https://www2.ed.gov/about/offices/list/ocr/docs/hq9511.html (last visited Jan. 26, 2018).
[3] National Center for Education Statistics, *College Navigator*, https://nces.ed.gov/COLLEGENAVIGATOR/?s=FL&sp=4 (last visited Jan. 26, 2018).
[4] Florida Agricultural and Mechanical University, *History of Florida Agricultural and Mechanical University (FAMU)*, http://www.famu.edu/index.cfm?AboutFAMU&History (last visited Jan. 26, 2018).
[5] Florida Agricultural and Mechanical University, *Florida A&M University Southern Association of Colleges and Schools Commission on Colleges (FAMU SACSCOC) Office* http://www.famu.edu/index.cfm?sacs (last visited Jan. 26, 2018).
[6] Florida Agricultural and Mechanical University, *About FAMU*, http://www.famu.edu/index.cfm?AboutFAMU&Overview (last visited Jan. 26, 2018).
[7] Board of Governors, *State University System of Florida, Tuition and Required Fees, 2017-2018, available at* http://www.flbog.edu/board/office/budget/_doc/tuition/2017-18-SUS-Tuition-and-Fee-for-New-Students-at-Main-Campus-by-level.pdf, at 1.
[8] Bethune-Cookman University, *About B-CU*, http://www.cookman.edu/about_BCU/index.html (last visited Jan. 26, 2018).
[9] *Id.*
[10] Bethune-Cookman University, *Fall 2017 Institutional Profile, available at* http://www.cookman.edu/academics/IE/research/Institutional2017-2018FallProfile.pdf.
[11] Bethune-Cookman University, *Cost of Attendance*, http://www.cookman.edu/currentstudents/stud_accts/Tuition/index.html (last visited Jan. 26, 2018).
[12] Edward Waters College, *The History of Edward Waters College*, https://www.ewc.edu/about/our-history/ (last visited Jan. 26, 2018).
[13] Edward Waters College, *About Edward Waters College*, https://www.ewc.edu/about/ (last visited Jan. 26, 2018).
[14] *Id.*
[15] Edward Waters College, *Cost of Attendance, available at* https://www.ewc.edu/wp-content/uploads/2017/03/Cost-of-Attendance.pdf.

- **Florida Memorial University** (FMU) is a private university founded in 1879 and located in Miami Gardens.[16] FMU is regionally accredited by the SACSCOC.[17] FMU's undergraduate enrollment is 1,280 students[18] and the annual undergraduate tuition and fees for a full-time student are $15,536.[19]

III. Effect of Proposed Changes:

The bill creates s. 1009.984, F.S., to establish the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Program (program). The program will be administered by the Florida Department of Education (DOE) and will provide funds to participating Florida-based HBCUs for scholarships to enrolled students.

The Legislature may appropriate funds for the program, to be transferred to the Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund (trust fund). Contingent upon a legislative appropriation, each HBCU that wishes to participate in the program must provide matching funds equal to one-fourth of the legislative appropriation. All funds transferred to the trust fund for the program must be invested in accordance with the law.[20]

Annually, the DOE must allocate the interest accumulated in the trust fund equally to each participating HBCU to award scholarships to full-time undergraduate students who meet the general eligibility requirement for student financial aid, including residency, and demonstrate unmet financial need. Each HBCU may also establish additional eligibility criteria.

The State Board of Education must adopt rules and the Board of Governors (BOG) must adopt regulations for program administration. The bill requires the DOE to administer the program, so it is unclear if BOG regulations would be necessary to administer the program.

The creation of the Historically Black Colleges and Universities Matching Endowment Scholarship Program may provide additional financial aid for students enrolled at the HBCUs participating in the program.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[16] Florida Memorial University, *Our History*, http://www.fmuniv.edu/about/our-history/ (last visited Jan. 26, 2018).
[17] Florida Memorial University, *FMU At A Glance*, http://www.fmuniv.edu/about/fmu-at-a-glance/ (last visited Jan. 26, 2018).
[18] U.S. News & World Report, Florida Memorial University, https://www.usnews.com/best-colleges/florida-memorial-university-1486 (last visited Jan. 26, 2018).
[19] Florida Memorial University, *Tuition and Fees*, http://www.fmuniv.edu/administration/division-of-student-affairs/enrollment-management-and-financial-aid/financial-aid/tuition-and-fees/ (last visited Jan. 26, 2018).
[20] Chapter 215, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill establishes a scholarship program for students who attend historically black colleges and universities (HBCUs). Such scholarships may reduce the amount a student must contribute to attend such colleges.

Private HBCUs must provide matching funds equal to one-fourth of the legislative appropriation to participate in the scholarship program.

C. Government Sector Impact:

The bill does not affect state revenues or expenditures. The program is contingent upon a legislative appropriation to transfer the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Trust Fund (trust fund). SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, does not provide an appropriation for the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1009.894 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute:

- Removes the $2 million legislative appropriation and states the Legislature may appropriate funds for the program.
- Changes the required $500,000 matching fund contribution for each historically black college and university (HBCU) that wishes to participate to one-fourth of any legislative appropriation.
- Establishes basic eligibility criteria for the scholarship program, including requiring that a student:
  - Meet the general eligibility requirement for student financial aid, including residency;
  - Be a full-time undergraduate student;
  - Demonstrate unmet financial need; and
  - Meet any additional eligibility criteria established by the HBCU.

B. Amendments:

None.

By Senator Gibson

6-01547-18 20181526__

A bill to be entitled

An act relating to the Historically Black Colleges and Universities Matching Endowment Scholarship Program; creating s. 1009.894, F.S.; establishing the Historically Black Colleges and Universities Matching Endowment Scholarship Program within the Department of Education; providing the purpose of the program; providing for an appropriation; requiring a historically black college or university to provide a certain amount of matching funds by a specified date to participate in the program; requiring specified funds to be invested; requiring certain funds to remain in the trust fund; providing that the interest the trust fund earns will be used to provide scholarships to certain students; providing for annual disbursement of the interest; requiring the State Board of Education and Board of Governors of the State University System to adopt rules and regulations, respectively; providing an effective date.

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

Section 1. Section 1009.894, Florida Statutes, is created to read:

1009.894 Historically Black Colleges and Universities Matching Endowment Scholarship Program.—

(1) There is established the Historically Black Colleges and Universities Matching Endowment Scholarship Program to be administered by the Department of Education. The program shall provide funds to participating historically black colleges and universities in the state to provide scholarships to students enrolled at the schools.

(2) The Legislature shall appropriate $2 million to be transferred to the Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund for the program. No later than June 30, 2019, each historically black college and university in the state that wishes to participate in the program shall provide $500,000 in matching funds. All funds transferred to the trust fund for the program shall be invested in accordance with the provisions of chapter 215. Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, the appropriated funds and all matching funds shall remain in the trust fund and the interest from such funds shall be used for scholarships for students enrolled at participating colleges and universities.

(3) Annually, the interest accumulated in the trust fund for the program shall be equally allocated by the Department of Education to each participating college and university to award scholarships to students enrolled at the school. Scholarships shall be awarded on a first-come, first-served basis at each participating college and university.

(4) The State Board of Education shall adopt rules and the Board of Governors of State University System shall adopt regulations to administer this section.

Section 2. This act shall take effect July 1, 2018.

Florida Senate - 2018 **SB 1526**

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 14, 2018

Senator Rob Bradley, Chair
Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Bradley,

I respectfully request that SB 1526, relating to Historically Black Colleges and Universities (HBCUs) Matching Endowment Scholarship Program and SB 1528 relating to the Matching Endowment Scholarship Trust Fund, be placed on the next committee agenda.

SB 1526, creates the HBCU program which enables historically black colleges and universities to offer scholarships in order to financially assist students enrolled in their institutions. SB 1528 will create the HBCU trust fund to receive funds for the scholarship program.

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

AP

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1528 (449902)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Higher Education) and Senator Gibson
SUBJECT:	Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund/DOE
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Favorable**
2.	Sikes	Elwell	AHE	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**

I. Summary:

PCS/SB 1528 creates the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Trust Fund (trust fund) within the Department of Education. The trust fund is established for use as a depository for funds to be used for purposes of the Historically Black Colleges and Universities Matching Endowment Scholarship Program. The bill specifies that moneys to be credited to the trust fund must consist of an appropriation from the Legislature and matching funds from participating HBCUs in the state.

The bill does not affect state revenues or expenditures.

The bill takes effect contingent upon, and concurrent with, passage of SB 1526, which takes effect July 1, 2018.

II. Present Situation:

Trust Funds

Establishment of Trust Funds

A trust fund may be created by law only by the Legislature and only if passed by a three-fifths vote of the membership of each house in a separate bill for that purpose only.[1] Except for trust funds being re-created by the Legislature, each trust fund must be created by statutory language that specifies at least the following:[2]

- The name of the trust fund.

[1] Section 215.3207, F.S.

[2] *Id.*

- The agency or branch of state government responsible for administering the trust fund.
- The requirements or purposes that the trust fund is established to meet.
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.

Florida Constitution Requirement for Trust Funds

The Florida Constitution requires that state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund.[3] The Legislature may set a shorter time period for which any trust fund is authorized.[4]

Review of Trust Funds

The Legislature must review all state trust funds at least once every 4 years.[5] Prior to the regular session of the Legislature immediately preceding the date on which any executive or judicial branch trust fund is scheduled to be terminated,[6] or such earlier date as the Legislature may specify,[7] the agency responsible for the administration of the trust fund and the Governor, for executive branch trust funds, or the Chief Justice, for judicial branch trust funds, must recommend to the President of the Senate and the Speaker of the House of Representatives whether the trust fund should be allowed to terminate or should be re-created.[8] Each recommendation must be based on a review of the purpose and use of the trust fund and a determination of whether the trust fund will continue to be necessary.[9] A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.[10]

When the Legislature terminates a trust fund, the agency or branch of state government that administers the trust fund must pay any outstanding debts or obligations of the trust fund as soon as practicable.[11] The Legislature may also provide for the distribution of moneys in that trust fund. If no such distribution is provided, the moneys remaining after all outstanding obligations of the trust fund are met must be deposited in the General Revenue Fund.[12]

Historically Black Colleges and Universities

The Higher Education Act of 1965, as amended, defines an Historically Black Colleges and University (HBCU) as: "…any historically black college or university that was established prior to 1964, whose principal mission was, and is, the education of black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the

[3] Art. III, s. 19(f)(2), Fla. Const.
[4] *Id*.
[5] Section 215.3208(1), F.S.
[6] Pursuant to Art. III, s. 19(f), Fla. Const.
[7] Section 215.3206(1), F.S.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] Section 215.3208(2)(a), F.S.
[12] *Id*. at (b).

Secretary [of Education] to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation."[13]

There are four HBCUs are located in Florida: Florida Agricultural and Mechanical University, Bethune-Cookman University, Edward Waters College, and Florida Memorial University.

III. Effect of Proposed Changes:

The bill creates s. 20.151, F.S., to establish the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Trust Fund (trust fund) within the Department of Education. The trust fund is established for use as a depository for funds to be used for purposes of the Historically Black Colleges and Universities Matching Endowment Scholarship Program.[14] The Historically Black Colleges and Universities Matching Endowment Scholarship Program, created by SB 1526, will be administered by the Florida Department of Education (DOE) and will provide funds to participating Florida-based HBCUs for scholarships to enrolled students. The moneys credited to the trust fund must consist of an appropriation from the Legislature and matching funds from participating HBCUs in the state.

The bill requires that, in accordance with the State Constitution,[15] the trust fund must be terminated on July 1, 2022, unless terminated sooner. The bill also requires that, before its scheduled termination, the trust fund must be reviewed in accordance with law.[16]

The bill will take effect on the same date as SB 1526 if such legislation is enacted in the same legislative session, and becomes law. SB 1526 takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Art. III, s. 19(f)(1) of the Florida Constitution specifies that a trust fund may be created or re-created only by a three-fifths vote of the membership of each house of the Legislature in a separate bill or that purpose only.

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[13] U.S. Department of Education, *What is an HBCU?* https://sites.ed.gov/whhbcu/one-hundred-and-five-historically-black-colleges-and-universities/ (last visited Jan. 26, 2018).
[14] Established in Senate Bill 1526, which created section 1009.894, F.S.
[15] Art. III, s. 19(f), Fla. Const.
[16] Section 215.3206(1) and (2), F.S.

Art. III, s. 19(f)(2) of the State Constitution specifies that state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund. By law the legislature may set a shorter time period for which any trust fund is authorized.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 20.151 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 by Appropriations Subcommittee on Higher Education on February 14, 2018:
The committee substitute specifies that the bill will take effect on the same date as SB 1526 if such legislation is enacted in the same legislative session, and becomes law.

B. Amendments:

None.

449902

576-03265-18

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

A bill to be entitled

An act relating to trust funds; creating s. 20.151, F.S.; creating the Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund within the Department of Education; providing for the purpose of the trust fund and source of funds; providing for future review and termination or re-creation of the trust fund; providing a contingent effective date.

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

Section 1. Section 20.151, Florida Statutes, is created to read:

20.151 Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund.—

(1) The Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund is created within the Department of Education.

(2) The trust fund is established for use as a depository for funds to be used for purposes of the Historically Black Colleges and Universities Matching Endowment Scholarship Program established under s. 1009.894.

(3) Moneys to be credited to the trust fund shall consist of an appropriation from the Legislature and matching funds from participating historically black colleges and universities in the state.

449902

576-03265-18

(4) In accordance with s. 19(f)(2), Art. III of the State Constitution, the trust fund shall, unless terminated sooner, be terminated on July 1, 2022. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

Section 2. This act shall take effect on the same date that SB 1526 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes law, and only if this act is enacted by a three-fifths vote of the membership of each house of the Legislature.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1528
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Higher Education) and Senator Gibson
SUBJECT:	Historically Black Colleges and Universities Matching Endowment Scholarship Trust Fund/DOE
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Favorable**
2.	Sikes	Elwell	AHE	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Fav/CS**

I. Summary:

CS/SB 1528 creates the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Trust Fund (trust fund) within the Department of Education. The trust fund is established for use as a depository for funds to be used for purposes of the Historically Black Colleges and Universities Matching Endowment Scholarship Program. The bill specifies that moneys to be credited to the trust fund must consist of an appropriation from the Legislature and matching funds from participating HBCUs in the state.

The bill does not affect state revenues or expenditures.

The bill takes effect contingent upon, and concurrent with, passage of SB 1526, which takes effect July 1, 2018.

II. Present Situation:

Trust Funds

Establishment of Trust Funds

A trust fund may be created by law only by the Legislature and only if passed by a three-fifths vote of the membership of each house in a separate bill for that purpose only.[1] Except for trust funds being re-created by the Legislature, each trust fund must be created by statutory language that specifies at least the following:[2]

- The name of the trust fund.

[1] Section 215.3207, F.S.

[2] *Id.*

- The agency or branch of state government responsible for administering the trust fund.
- The requirements or purposes that the trust fund is established to meet.
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.

Florida Constitution Requirement for Trust Funds

The Florida Constitution requires that state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund.[3] The Legislature may set a shorter time period for which any trust fund is authorized.[4]

Review of Trust Funds

The Legislature must review all state trust funds at least once every 4 years.[5] Prior to the regular session of the Legislature immediately preceding the date on which any executive or judicial branch trust fund is scheduled to be terminated,[6] or such earlier date as the Legislature may specify,[7] the agency responsible for the administration of the trust fund and the Governor, for executive branch trust funds, or the Chief Justice, for judicial branch trust funds, must recommend to the President of the Senate and the Speaker of the House of Representatives whether the trust fund should be allowed to terminate or should be re-created.[8] Each recommendation must be based on a review of the purpose and use of the trust fund and a determination of whether the trust fund will continue to be necessary.[9] A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.[10]

When the Legislature terminates a trust fund, the agency or branch of state government that administers the trust fund must pay any outstanding debts or obligations of the trust fund as soon as practicable.[11] The Legislature may also provide for the distribution of moneys in that trust fund. If no such distribution is provided, the moneys remaining after all outstanding obligations of the trust fund are met must be deposited in the General Revenue Fund.[12]

Historically Black Colleges and Universities

The Higher Education Act of 1965, as amended, defines an Historically Black Colleges and University (HBCU) as: "…any historically black college or university that was established prior to 1964, whose principal mission was, and is, the education of black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the

[3] Art. III, s. 19(f)(2), Fla. Const.
[4] *Id*.
[5] Section 215.3208(1), F.S.
[6] Pursuant to Art. III, s. 19(f), Fla. Const.
[7] Section 215.3206(1), F.S.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] Section 215.3208(2)(a), F.S.
[12] *Id*. at (b).

Secretary [of Education] to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation."[13]

There are four HBCUs are located in Florida: Florida Agricultural and Mechanical University, Bethune-Cookman University, Edward Waters College, and Florida Memorial University.

III. Effect of Proposed Changes:

The bill creates s. 20.151, F.S., to establish the Historically Black Colleges and Universities (HBCU) Matching Endowment Scholarship Trust Fund (trust fund) within the Department of Education. The trust fund is established for use as a depository for funds to be used for purposes of the Historically Black Colleges and Universities Matching Endowment Scholarship Program.[14] The Historically Black Colleges and Universities Matching Endowment Scholarship Program, created by SB 1526, will be administered by the Florida Department of Education (DOE) and will provide funds to participating Florida-based HBCUs for scholarships to enrolled students. The moneys credited to the trust fund must consist of an appropriation from the Legislature and matching funds from participating HBCUs in the state.

The bill requires that, in accordance with the State Constitution,[15] the trust fund must be terminated on July 1, 2022, unless terminated sooner. The bill also requires that, before its scheduled termination, the trust fund must be reviewed in accordance with law.[16]

The bill will take effect on the same date as SB 1526 if such legislation is enacted in the same legislative session, and becomes law. SB 1526 takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Art. III, s. 19(f)(1) of the Florida Constitution specifies that a trust fund may be created or re-created only by a three-fifths vote of the membership of each house of the Legislature in a separate bill or that purpose only.

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[13] U.S. Department of Education, *What is an HBCU?* https://sites.ed.gov/whhbcu/one-hundred-and-five-historically-black-colleges-and-universities/ (last visited Jan. 26, 2018).
[14] Established in Senate Bill 1526, which created section 1009.894, F.S.
[15] Art. III, s. 19(f), Fla. Const.
[16] Section 215.3206(1) and (2), F.S.

Art. III, s. 19(f)(2) of the State Constitution specifies that state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund. By law the legislature may set a shorter time period for which any trust fund is authorized.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 20.151 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute specifies that the bill will take effect on the same date as SB 1526 if such legislation is enacted in the same legislative session, and becomes law.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1552 (517024)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice; and Senator Bracy
SUBJECT:	Juvenile Justice
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	**Favorable**
2.	Sadberry	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Sadberry	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1552 makes numerous changes relating to juvenile justice.

The bill makes the following changes, effective July 1, 2018:

- Removes the requirement that the proceeds from the "Invest in Children" license plate must be allocated based on each county's proportionate share of the license plate annual use fee;
- Requires a prolific juvenile offender (PJO) who violates conditions of his or her nonsecure detention to be held in secure detention until a detention hearing is held; and
- Changes the minimum age in which a juvenile qualifies for transfer to adult court by discretionary direct file to 15 or 16 years of age (currently 14 or 15) if he or she is charged with an enumerated felony.

The bill also reenacts statutory authority (s. 985.672, F.S.) for the Department of Juvenile Justice (DJJ) to establish a direct-support organization (DSO) to provide assistance, funding, and support to assist the DJJ in furthering its goals. The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted. The bill requires the secretary of DJJ to appoint members to the DSO's board of directors according to the DSO's bylaws.

The bill also makes the following changes, effective July 1, 2019:

- Revises the Detention Risk Assessment Instrument (DRAI) used to determine placement of a juvenile in detention care; and
- Replaces the term "nonsecure" with "supervised release" and makes conforming changes throughout ch. 985, F.S., to be consistent with terminology and operation of the revised DRAI.

The Criminal Justice Impact Conference has not reviewed this bill but its provisions related to juveniles transferred to the adult system will likely increase DJJ's expenditures and reduce the Department of Corrections' expenditures. See Section V. Fiscal Impact Statement.

II. Present Situation:

"Invest in Children" License Plates

Section 320.08058(11)(a), F.S., establishes that the Department of Highway Safety and Motor Vehicles (DHSMV) must develop an "Invest in Children" license plate that is approved by the DHSMV. In 2017, there were 10,260 "Invest in Children" license plates sold.[1]

The proceeds of the license plate annual use fee[2] must be deposited into the Juvenile Crime Prevention and Early Intervention Trust Fund within the DJJ. Based on recommendations of the juvenile justice councils, the DHSMV must use the proceeds of the fee to fund programs and services that are designed to prevent juvenile delinquency. The DHSMV must allocate money within each county based on each county's proportionate share of the annual use fee collected by the county.[3]

Proceeds from the annual use fee for the "Invest in Children" license plate assist in funding:
- After-school activities;
- Mentoring;
- Tutoring;
- Job internships;
- Youth summits;
- Learning to live violence-free;
- Parent-child relationship building;
- Summer camp scholarships;
- Recreational programs for girls and boys; and
- Substance abuse prevention.[4]

[1] Florida Department of Highway Safety and Motor Vehicles, *2017 Specialty License Plate Rankings*, available at http://www.flhsmv.gov/specialtytags/tagsales.pdf (last visited February 15, 2018).
[2] The annual use fee is $20. *See* Florida Department of Highway Safety and Motor Vehicles, *Invest in Children*, available at http://www.flhsmv.gov/dmv/specialtytags/miscellaneous/invest_in_children.html (last visited February 14, 2018).
[3] Section 320.08058(11)(b), F.S.
[4] Florida Department of Juvenile Justice, Invest in Children, available at http://www.djj.state.fl.us/get-involved/license-plate (last visited February 14, 2018).

Juvenile Intake and Detention

When a juvenile is taken into custody by law enforcement or the court, the intake process begins, with the purpose of assessing the juvenile's needs and risks to determine the most appropriate treatment plan and setting for the juvenile.[5] Each juvenile undergoes an individualized assessment that begins with the standardized DRAI.[6]

The DRAI must indicate whether detention care is warranted.[7] Detention care is the temporary care of a child in secure or nonsecure detention, pending a court adjudication or disposition or execution of a court order.[8]

The DRAI must take into consideration, but need not be limited to:
- Prior history of failure to appear;
- Prior offenses;
- Offenses committed pending adjudication;
- Any unlawful possession of a firearm;
- Theft of a motor vehicle or possession of a stolen motor vehicle;
- Probation status at the time the child is taken into custody;
- Aggravating and mitigating circumstances;
- Targeting a narrower population of juveniles than s. 985.255, F.S.;[9] and
- The juvenile's history of abuse and neglect.[10]

The DRAI must indicate whether the juvenile should be placed into secure or nonsecure detention care.[11] Secure detention is the temporary custody of the juvenile while the juvenile is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.[12]

Nonsecure detention is the temporary, nonsecure custody of the juvenile while the juvenile is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment while under the supervision of the DJJ staff pending adjudication, disposition, or placement.[13] Forms of nonsecure detention include, but are not limited to:
- Home detention;
- Electronic monitoring;
- Day reporting centers;
- Evening reporting centers; and
- Nonsecure shelters.[14]

[5] Section 985.14(2), F.S.
[6] Section 985.14(3)(a), F.S.
[7] Section 985.245(2)(b), F.S.
[8] Section 985.03(18), F.S.
[9] Section 985.255, F.S., provides for the continued detention for a juvenile who has committed a specific offense or is a repeat offender.
[10] Section 985.245(2)(b), F.S.
[11] *Id.*
[12] Section 985.03(18)(a), F.S.
[13] Section 985.03(18)(b), F.S.
[14] Nonsecure detention may include other requirements imposed by the court. *See* s. 985.03(18)(b), F.S.

The DJJ must ensure that a DRAI establishing the juvenile's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court.[15]

A juvenile taken into custody and placed into detention care must be given a hearing within 24 hours after being taken into custody.[16] The court may order continued detention status at the hearing if:

- The juvenile 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;
- The juvenile is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony;
- The juvenile is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety;
- The juvenile is charged with committing an offense of domestic violence;
- The juvenile is charged with possession of or discharging a firearm on school property or illegal possession of a firearm;
- The juvenile is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., or a felony of the third degree that is also a crime of violence;
- The juvenile is alleged to have violated the conditions of the child's probation or conditional release supervision;
- The juvenile is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:
  - For an adjudicatory hearing on the same case regardless of the results of the DRAI; or
  - At two or more court hearings of any nature on the same case regardless of the results of the DRAI; or
- The juvenile is 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 juvenile:
  - Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
  - 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.[17]

While the initial decision as to the juvenile's placement into detention care is made by the DJJ and is based on the DRAI, a juvenile must be placed in secure detention until the detention hearing if the juvenile:

[15] Section 985.145(1)(d), F.S.
[16] Section 985.255(1), F.S.
[17] Section 985.255(1)(a)-(i), F.S.

- Is classified as a PJO pursuant to s. 985.255(1)(j), F.S.;
- Is charged with possessing or discharging a firearm on school property in violation of s. 790.115, F.S.; or
- Has been taken into custody on three or more separate occasions within a 60-day period.[18]

A juvenile may not be placed into or held in detention care for longer than 24 hours unless the court determines there is a need for continued detention and subsequently makes a special detention order.[19]

A juvenile may not be held in detention care under a special detention order for more than 21 days unless:

- An adjudicatory hearing for the case has been commenced in good faith by the court;
- Good cause is shown that the nature of the charge requires additional time for the prosecution or defense of the case; or
- The juvenile is classified as a PJO.[20]

Prolific Juvenile Offender

The PJO designation was established to apply to youth with excessively high recidivism.[21] A juvenile is classified as a PJO if he or she:

- 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, prior to the charge for which they are currently appearing; and
- Has five or more of any of the following, three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
  - An arrest event[22] for which a disposition[23] has not been entered;
  - An adjudication; or
  - An adjudication withheld.[24]

A juvenile who has been classified as a PJO is treated differently for purposes of detention care while awaiting disposition. While awaiting disposition, a PJO must be placed on nonsecure detention care with electronic monitoring or in secure detention care under a special detention order.[25]

If the court orders secure detention care, it must not exceed:

[18] Section 985.25(1)(a)-(b), F.S.
[19] Section 985.26(1), F.S.
[20] Section 985.26(2)(a)-(c), F.S.
[21] Section 985.255(1)(j), F.S., was created in 2017 by ch. 2017-164, L.O.F.
[22] "Arrest event" is an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction. Section 985.255(1)(j), F.S.
[23] "Disposition" is a declination to file under s. 985.15(1)(h), F.S.; the entry of 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.; a dismissal of the case; or an order of final disposition by the court. Section 985.26(2)(c), F.S.
[24] Section 985.255(1)(j), F.S.
[25] Section 985.26(2)(c), F.S.

- 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to s. 985.26(2)(b), F.S.;[26] or
- 15 days after the entry of an order of adjudication.[27]

Transferring of a Juvenile to Adult Court

There are three methods of transferring a juvenile to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. To transfer a juvenile pursuant to judicial waiver, the state attorney must file a motion and the court must approve of the transfer.[28] Section 985.556, F.S., provides three types of judicial waivers: voluntary waiver, involuntary discretionary waiver, and involuntary mandatory waiver.

Indictment by a Grand Jury

Section 985.56, F.S., specifies that a juvenile of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment by a grand jury. If the grand jury returns an indictment on the charge, the juvenile's case must be transferred to adult court.[29]

Direct File

Direct file is when a state attorney files an information charging a juvenile in adult court. Direct file under s. 985.557, F.S., can be either discretionary or mandatory and is accomplished exclusively by the state attorney without requiring the court's approval.[30] Direct file is the predominant transfer method to adult court, accounting for 97.7 percent of the transfers in 2016-17.[31]

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information (direct file a juvenile) in adult court when a juvenile is:

- 14 or 15 years of age and is charged with one of the following felony offenses:
  - Arson;

[26] Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional nine days if the juvenile is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual. Section 985.26(2)(b), F.S.
[27] Section 985.26(2)(c)1. and 2., F.S.
[28] Section 985.556, F.S.
[29] Section 985.56(1), F.S.
[30] Section 985.557, F.S.
[31] Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated juvenile abuse;
- Aggravated assault;
- Aggravated stalking;
- Murder;
- Manslaughter;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary in violation of s. 810.02(2)(b), F.S.;
- Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
- Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
- Aggravated battery;
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Grand theft in violation of s. 812.014(2)(a), F.S.;
- Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Carjacking;
- Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
- Grand theft of a motor vehicle valued at $20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.[32]

Department of Juvenile Justice Direct-Support Organization

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The purpose and functions of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

Florida Juvenile Justice Foundation, Inc.

From 1994-1999, the DJJ had an ongoing partnership with the Florida Business Partners for Prevention (FBPP). At the time, the DJJ lacked statutory authority to have a DSO. In 1999, the Legislature created s. 985.672, F.S., authorizing the DJJ to establish a DSO to provide assistance, funding, and support for the DJJ in carrying out its mission.[33] In 2000, the FBPP incorporated by the name of Florida Business Partners for Juvenile Justice, Inc., to provide such assistance,

[32] Section 985.557(1)(a)1.-19., F.S.
[33] Section 985.672, F.S., was created in 1999 by ch. 1999-284, L.O.F.

funding, and support to the DJJ.[34] The name was changed to the Florida Juvenile Justice Foundation, Inc. (Foundation) in 2006.[35]

Repeal of s. 985.672, F.S., and DSO Compliance Review

Section 20.058(5), F.S., provides that laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. This subsection further provides that CSOs or DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019. Section 985.672, F.S., provides that the section is repealed October 1, 2018, unless reviewed and saved from repeal by the Legislature.

Staff of the Senate Committee on Criminal Justice reviewed relevant materials to determine if the DJJ and the Foundation comply with the requirements of s. 985.672, F.S., and with other statutory requirements for DSOs: s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements); s. 215.981, F.S. (CSO/DSO Audit Requirements); and s. 112.3251, F.S. (CSO/DSO Ethics Code Requirements). Staff finds that the DJJ and the Foundation are in compliance with most of the relevant DSO statutory requirements.

Staff Review of Compliance with s. 985.672, F.S. (DSO to Florida Department of Juvenile Justice)

Establishment of DSO

Section 985.672, F.S., authorizes the DJJ to establish a DSO whose sole purpose is to support the juvenile justice system. For purposes of s. 985.672, F.S., "direct-support organization" means an organization that is:

- A corporation not-for-profit incorporated under ch. 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by the DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the adopted goals and mission of the DJJ.[36]

Staff Finding: Compliance. The Foundation meets the definition of "direct-support organization." In 2000, the Foundation was established.[37] The Foundation is a Florida non-profit corporation under ch. 617, F.S., and is approved by the Department of State.[38] The DJJ's mission is, "to increase public safety by reducing juvenile delinquency through effective prevention,

[34] Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Approved and filed January 28, 2000) (on file with the Senate Criminal Justice Committee).
[35] Articles of Amendment to Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Filed February 8, 2006) (on file with the Senate Criminal Justice Committee).
[36] Section 985.672(1)(a)-(c), F.S.
[37] *Supra*, n. 34.
[38] The Foundation's information is available at http://search.sunbiz.org/Inquiry/CorporationSearch/ByName by searching Florida Juvenile Justice Foundation, Inc. (last visited February 15, 2018).

intervention and treatment services that strengthen families and turn around the lives of troubled youth."[39] The Foundation works toward advancing the DJJ's mission by funding programs such as the Youth Investment Award program, which provides financial assistance designed to further the education and employability of juvenile justice-involved youth. Additionally, the Foundation funds back-to-school drives, Youth Success Week, the Human Trafficking Summit, in addition to running a national grant to support the Juvenile Detention Alternatives initiative.[40]

Expenditures of the Foundation

Section 985.672(1), F.S., provides that expenditures of the DSO shall be used for the prevention and amelioration of juvenile delinquency and may not be used for the purpose of lobbying as defined in s. 11.045, F.S.

Staff findings: Compliance. The Foundation's IRS Form 990 for 2015-16 shows that the majority of expenditures were for conferences, conventions, meetings, and youth programs. Additionally, the form shows that there were no expenditures made for the purposes of lobbying.[41]

Contractual Agreement between the DJJ and the Foundation

Section 985.672(2), F.S., provides that the DSO must operate under a written contract with the DJJ and the contract must include certain provisions.

Approval of the Articles of Incorporation and Bylaws

The contract must provide for approval of the articles of incorporation and bylaws of the DSO by the DJJ.[42]

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the approval of the Foundation's articles of incorporation and bylaws by the DJJ prior to adoption by the Foundation.[43]

Submission of an Annual Budget

The contract must provide for the DSO to submit an annual budget for the approval of the DJJ.[44]

[39] Florida Department of Juvenile Justice, *Mission*, available at http://www.djj.state.fl.us/about-us/mission (last visited February 15, 2018).
[40] Transmittal letter dated August 15, 2017, from the DJJ Secretary Christina K. Daly to Senate President Joe Negron, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF (last visited February 15, 2018).
[41] The IRS Form 990 for 2015-16 is the most recent tax form provided by the DJJ and the Foundation. According to DJJ staff, this is because the deadline for the submission of the tax form is in September, while the deadline to report information pursuant to DSO requirements found in s. 20.058, F.S. (described *infra*) is August. E-mail from DJJ staff to staff of the Senate Criminal Justice Committee, dated August 17, 2017 (on file with the Senate Criminal Justice Committee). *See also* IRS Form 990 for the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).
[42] Section 985.672(2)(a), F.S.
[43] Contract between the Florida Department of Juvenile Justice and the Florida Juvenile Justice Foundation, Inc. (executed June 4, 2009) (on file with the Senate Criminal Justice Committee).
[44] Section 985.672(2)(b), F.S.

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the review and approval of the Foundation's annual budget prior to adoption by the Foundation.[45]

Certification by the DJJ that the DSO is in Compliance

The contract must provide for certification by the DJJ that the DSO is complying with the terms of the contract and in a manner consistent with the goals and purposes of the DJJ and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the DSO.[46]

Staff findings: Not in compliance. The contract between the DJJ and the Foundation provides for such annual certification of the Foundation by the DJJ. However, the contract does not provide for the annual certification to be reported in the official minutes of a meeting of the Foundation and such certification has not been made in the minutes of a meeting as prescribed.[47]

Staff recommendation: The contract between the DJJ and the Foundation should be amended to provide for such annual certification to be reported in the official minutes of a meeting of the Foundation. Subsequently, the board of directors must report such annual certification in the official minutes of a meeting of the Foundation.

Reversion of Moneys and Property

The contract must provide for the reversion of moneys and property held in trust by the DSO for the benefit of the juvenile justice system to the state if the DJJ ceases to exist or to the DJJ if the DSO is no longer approved to operate for the DJJ, a county commission, or a circuit board or if the DSO ceases to exist.[48]

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such reversion of moneys and property.[49]

Fiscal Year of the DSO

The contract must provide for the fiscal year of the DSO to begin July 1 of each year and end June 30 of the following year.[50]

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such information.[51]

[45] *Supra*, n. 43.
[46] Section 985.672(2)(c), F.S.
[47] *Supra*, n. 43. Board meeting minutes of the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).
[48] Section 985.672(2)(d), F.S.
[49] *Supra*, n. 43.
[50] Section 985.672(2)(e), F.S.
[51] *Supra*, n. 43.

Disclosure Made to Donors

The contract must provide for the disclosure of material provisions of the contract, and the distinction between the DJJ and the DSO, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.[52]

Staff findings: Compliance. The contract provides that the Foundation must distinguish itself as "the 501(c)(3) direct-support organization for the Florida Department of Juvenile Justice" to all donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications. The contract further provides for the disclosure of material provisions of the contract to donors of gifts, contributions, or bequests.[53]

Board of Directors

Section 985.672(3), F.S., requires the Secretary of the DJJ to appoint a board of directors for the DSO. The board's membership must consist of representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large.[54]

Staff findings: Not in compliance. The board's membership is not in compliance with the statute's requirements because the juvenile justice system no longer utilizes service districts. Thus, the membership is not made up of representatives from each district.

Staff recommendation: Section 985.672(3), F.S., should be amended to reflect the current organization of the DJJ in order for the board membership to comply. Alternatively, the statute could be amended to provide the DJJ with broad discretion to appoint members to the board, without regard to specific representation as the statute currently prescribes.

Use of Property

Section 985.672(4), F.S., provides that the DJJ may permit, without charge, appropriate use by the DSO of fixed property, facilities, and personnel services of the juvenile justice system. The DJJ may prescribe any condition with which the DSO must comply in order to use such fixed property or facilities of the juvenile justice system. The DJJ may not permit the use of any fixed property or facilities of the juvenile justice system by the DSO if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. The DJJ must adopt rules prescribing the procedures by which the DSO is governed and any conditions with which a DSO must comply to use property or facilities of the DJJ.[55]

Staff findings: Compliance. The contract between the DJJ and the Foundation provides permission for the Foundation's use of the DJJ's property, facilities, and personnel services. However, the contract is silent on prohibiting the Foundation's use of the DJJ's property and facilities if the Foundation does not provide equal membership and employment opportunities to

[52] Section 985.672(2)(f), F.S.
[53] *Supra*, n. 43.
[54] Section 985.672(3), F.S.
[55] Section 985.672(4)(a)-(c), F.S.

all persons regardless of race, color, religion, sex, age, or national origin.[56] Further, the DJJ adopted rules prescribing the conditions in which the Foundation may use the DJJ's property, facilities, and personnel services.[57]

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include language that prohibits the Foundation's use of the DJJ's fixed property or facilities if the Foundation does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. This language is not required to be in the contract, but its inclusion would enable the DJJ and the Foundation to be in compliance with s. 985.672(4)(b), F.S., because it would apply broadly to the required practices of the Foundation.

Deposit of Funds

Section 985.672(5), F.S., provides that money may be held in a separate depository account in the name of the DSO and subject to the provisions of the contract with the DJJ.[58]

Staff findings: Not in compliance. The Foundation has a separate depository account in their name.[59] However, the contract between the DJJ and the Foundation does not include any provisions regarding the separate depository account.[60]

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include provisions addressing the separate depository account.

Annual Financial Audit

Section 985.672(6), F.S., requires the DSO to provide for an annual financial audit in accordance with s. 215.981, F.S.

Staff findings: Not currently applicable. Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of $100,000 to provide for an annual financial audit of its accounts and records.[61] The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. 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. 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.[62]

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[56] *Supra*, n. 43.
[57] Fla. Admin. Code R. 63J-1.002 (2007).
[58] Section 985.672(5), F.S.
[59] E-mail from the DJJ staff to staff of the Senate Criminal Justice Committee, dated January 16, 2017 (on file with the Senate Criminal Justice Committee).
[60] *Supra*, n. 43.
[61] 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. Section 215.981(1), F.S. 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. Section 215.981(2), F.S.
[62] Section 11.45(3)(d), F.S.

The Foundation does not have annual expenditures in excess of $100,000.[63] Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.[64]

Staff Review of Compliance with s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements)

Section 20.058, F.S., establishes a comprehensive set of transparency and reporting requirements for CSOs and DSOs.

Reporting Requirements

Section 20.058(1), F.S., requires each CSO and DSO to annually submit, by August 1, the following information to the agency it supports:

- The CSO or DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission and results obtained by the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;
- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.[65]

Staff findings: Compliance. In 2017, the Foundation reported all of the information required by s. 20.058(1), F.S.[66]

Transparency of Reported CSO or DSO Information

Section 20.058(2), F.S., provides that each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., shall make such information available to the public through the agency's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.

Staff findings: *Compliance*. The information required in s. 20.058(1), F.S., is available to the public through the DJJ's website.[67] Additionally, the DJJ provides a link to the Foundation's website.[68]

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[63] Total expenditures for 2015-16 were $97,254. IRS Form 990 for Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

[64] While the Foundation's expenditures do not currently exceed $100,000 and thus, the Foundation is not currently subjected to an annual financial audit pursuant to s. 215.981, F.S., the contract between the DJJ and the Foundation provides that the Foundation must provide a copy of its annual financial audit to the DJJ. *Supra*, n. 43.

[65] The IRS Form 990 is the an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. s. 501. The most recent Form 990 provided by the Foundation is from 2015-16 because the deadline for the form is September, while the deadline for the submission of the required information is August.

[66] Transmittal letter dated August 1, 2017, from Foundation Executive Director Caroline Ray to the DJJ Secretary Christina K. Daly, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF (last visited February 15, 2018).

[67] Florida Juvenile Justice Foundation, *2017 Annual Report*, available at http://www.djj.state.fl.us/fjjf/resources (last visited February 15, 2018).

[68] Florida Department of Juvenile Justice, "Get Involved" available at http://www.djj.state.fl.us/fjjf/foundation (last visited February 15, 2018).

Section 20.058(3), F.S., provides that, by August 15 of each year, each agency shall report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by each CSO and DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.

Staff findings: Compliance. The DJJ submitted its report by August 15, 2017, and the DJJ Secretary Daly expressed her strong recommendation for the continued collaboration and association between the DJJ and the Foundation. The letter explained that the DJJ and the Foundation share a long history of working together to improve the lives of at-risk juveniles and their families. The Foundation promotes delinquency prevention, intervention, and educational opportunities for youth, in addition to stewarding all funds raised to enhance the activities of the DJJ. "The Foundation is an integral part of the Department of Juvenile Justice and shares a long and collaborative relationship that is rare amongst direct-support organizations."[69]

Contract Requirements

Section 20.058(4), F.S., provides that any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting information pursuant to s. 20.058(1) and (2), F.S. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head shall terminate any contract between the agency and the organization.

Staff findings: Not in compliance. The contract between the DJJ and the Foundation is not contingent upon the Foundation's submission and posting of the information pursuant to s. 20.058(1) and (2), F.S. The contract also does not provide for the orderly cessation of operations and reversion to the state of state funds held in trust by the Foundation *within 30 days* after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. The contract also does not provide for the DJJ Secretary to terminate the contract between the DJJ and the Foundation in the event that the Foundation fails to submit the required information for two consecutive years.[70]

Staff recommendation: The DJJ and the Foundation should execute a revised contract that includes the requirements prescribed by s. 20.058(4), F.S. The contract between the DJJ and the Foundation was executed in 2009, while s. 20.058, F.S., was enacted by the Legislature in 2014.[71] Additionally, the contract provides that, "The parties agree to renegotiate this agreement and any affected agreements if revisions of any applicable laws or regulations make changes in this agreement necessary."[72]

[69] *Supra*, n. 40.
[70] *Supra*, n. 43.
[71] Section 20.058, F.S., was created in 2014 by ch. 2014-96, L.O.F.
[72] *Supra*, n. 43.

Staff Review of Compliance with s. 215.981, F.S. (CSO/DSO Audit Requirements)

As previously noted, s. 215.981(1), F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of $100,000 to provide for an annual financial audit of its accounts and records. (For a full description of the statute, see discussion, *supra*, of s. 985.672(6), F.S. (annual financial audit)).

Staff findings: Not currently applicable. As previously noted, the Foundation does not have annual expenditures in excess of $100,000. Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.[73]

Staff Review of Compliance with s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement)

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.[74] A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.[75]

Staff findings: Not in compliance. The Foundation has a code of ethics which is conspicuously posted on its website.[76] However, the Foundation's code of ethics is not in compliance with s. 112.313(2), (4), (5), and (8), F.S.

Staff recommendation: The Foundation should adopt a revised code of ethics to include requirements prescribed by s. 112.3251, F.S.

III. Effect of Proposed Changes:

The following provisions in the bill go into effect July 1, 2018

"Invest in Children" License Plates (Section 1, amending s. 320.08058, F.S.)

Current law requires proceeds from the sale of the "Invest in Children" license plate to be allocated within each county based on that county's proportionate share of the license plate fee collected by the county. The bill removes this requirement, and instead, permits the DHMSV to have discretion in determining how the proceeds from the license plate sales will be allocated, without regard to contributions based on county.

Prolific Juvenile Offender Violations of Nonsecure Detention (Section 10, amending s. 985.26, F.S.)

Current law contemplates the general treatment of a PJO awaiting a disposition hearing. However, the law does not address the treatment of a PJO who violates the terms of nonsecure detention. The bill provides that a PJO who is taken into custody for a violation of the conditions

[73] *Supra*, n. 63.
[74] 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.
[75] Section 112.3251, F.S.
[76] *Supra*, n. 67.

of his or her nonsecure detention must be held in secure detention until a detention hearing is held.[77]

Discretionary Direct File (Section 15, amending s. 985.557, F.S.)

Current law provides a state attorney with discretion to direct file a juvenile who was 14 or 15 years of age at the time an enumerated offense was allegedly committed.[78] The bill changes the age in which a juvenile can be transferred to adult court by discretionary direct file for committing an enumerated offense from 14 or 15 years of age to 15 or 16 years of age.

Department of Juvenile Justice DSO (Section 17, amending s. 985.672, F.S.)

The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted.

Current law requires the DSO's board of directors to consist of representatives from businesses, each juvenile justice service district, and one representative appointed at large. The bill amends the requirements relating to the DSO's board representation to require the DJJ to appoint members to the DSO's board of directors pursuant to the DSO's bylaws.

All changes related to the revised DRAI go into effect July 1, 2019

Supervised Release (Section 2, amending s. 985.03, F.S.)

The bill replaces the term "nonsecure" with "supervised release" and retains the definition of the term, defined as temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the DJJ staff pending adjudication or disposition, through programs that include, but are not limited to:

- Electronic monitoring;
- Day reporting centers; and
- Nonsecure shelters.

The bill removes home detention and evening reporting centers from this definition.

[77] The PJO would be held in secure detention for up to 24 hours until his or her detention hearing when the judge would decide whether the PJO will be released back to nonsecure detention or rather placed in secure detention. Section 985.255, F.S. *See also* Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

[78] The enumerated felonies are arson; sexual battery; robbery; kidnapping; aggravated juvenile abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary in violation of. s. 810.02(2)(b), F.S.; burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.; burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft in violation of s. 812.014(2)(a), F.S.; possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.; home invasion robbery; carjacking; grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or grand theft of a motor vehicle valued at $20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of ss. 812.014(2)(c)6., or 812.014(2)(b), F.S. *See* s. 985.557(1)(a)1.-19., F.S.

Risk Assessment Instrument (Section 7, amending s. 985.245, F.S.)

Current law requires the DRAI used by the DJJ in assessing whether a juvenile should be placed in detention care to take certain factors into consideration in making that determination. The bill requires the DRAI to take into consideration the following factors:

- Pending felony and misdemeanor offenses;
- Offenses committed pending adjudication;
- Prior offenses;
- Unlawful possession of a firearm;
- Violations of supervision;
- Supervision status at the time the child is taken into custody; and
- All statutory mandates for detention care.

The bill removes several requirements for the DRAI to take into consideration including theft of a motor vehicle and possession of a stolen motor vehicle.

For a juvenile who is under the supervision of the DJJ and is charged with committing a new offense, the bill removes consideration of the new offense from the scoring to be used in the DRAI.

Detention Intake (Section 8, amending s. 985.25, F.S.)

Current law provides that a juvenile who has been taken into custody on three or more separate occasions within a 60-day period must be placed in secure detention until the juvenile's detention hearing. The bill removes this criteria from the statute.

Detention Criteria (Section 9, amending s. 985.255, F.S.)

Current law provides for certain circumstances in which a court may order a continued detention status for a juvenile at the initial detention hearing. The bill adds an additional circumstance, providing that continued detention may be ordered at the hearing if the result of the DRAI indicates secure or supervised release detention.

The bill removes the following circumstances in which a court was permitted to order a continued detention status for a juvenile at the detention hearing:

- If the juvenile is charged with committing an offense of domestic violence;
- If the juvenile is charged with possession of or discharging a firearm on school property;
- If the juvenile is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., 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;
- If the juvenile is alleged to have violated the conditions of the child's probation or conditional release supervision;
- If the juvenile is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:
    - For an adjudicatory hearing on the same case regardless of the results of the DRAI; or
    - At two or more court hearings of any nature on the same case regardless of the results of the DRAI; or

- If the juvenile is 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 juvenile:
  - Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
  - 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.

Violation of Probation or Postcommitment Probation (Section 14, amending s. 985.439, F.S.)

The bill provides that a juvenile taken into custody pursuant to s. 985.101, F.S.,[79] for violating conditions of probation must be screened and detained or released based on his or her DRAI score. The bill eliminates the term "consequence unit" and references therein because consequence units are no longer in operation.

Revised Detention Risk Assessment Instrument (Sections 2-9, 11-14, 16)

The bill makes several changes throughout ch. 985, F.S., including replacing the term "nonsecure" with "supervised release," to be consistent with modifications being implemented with the DJJ's forthcoming use of the revised DRAI.

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.

[79] Section 985.101, F.S., provides circumstances in which a juvenile may be taken into custody.

B. Private Sector Impact:

The removal of the provision that repeals s. 985.672, F.S., enables the DJJ's DSO to sustain a source of financial and other direct assistance for advancing the DJJ's mission to increase public safety by reducing juvenile delinquency.

C. Government Sector Impact:

Prolific Juvenile Offender Costs for Violations Secure Detention

The Criminal Justice Impact Conference has not provided an estimate of the bill's impact. The department estimates that, while the requirement for requiring PJOs who violate non-secure detention to be held in secure detention overnight could result in increased utilization of secure detention, this change is not expected to have a substantive fiscal impact.[80] Of the 256 PJOs throughout the state, 86 are in nonsecure detention.[81] In the event that every PJO in nonsecure detention violated his or her conditions of detention, the DJJ will be able to provide accommodations to such juveniles and absorb such costs with existing resources.[82]

Reduction in Juveniles Transferred to Adult Court

Additionally, the bill is likely to reduce the number of juveniles transferred to the adult system, thus increasing the DJJ's population and reducing the DOC's prison population. The DJJ estimates that there will be an additional 19 juveniles in the care of the DJJ due to the juveniles no longer being eligible for transfer to adult court pursuant to the bill. The DJJ estimates that the detention and treatment cost for these additional juveniles would cost $1,355,086.[83] Additional facility costs to care for these additional juveniles is indeterminate.[84] The impact on the DOC's prison population is indeterminate.

Funding and Support to the DJJ from the DSO

The removal of the provision that repeals s. 985.672, F.S., enables the DSO to continue to provide assistance, funding, and support for activities authorized by the DJJ.

Implementing the Revised DRAI

All costs associated with the implementation of the modified DRAI have been or will be absorbed by the DJJ and this bill will not result in a fiscal impact on the DJJ with regards to such operational changes.

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[80] Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).
[81] Department of Juvenile Justice, *PJO Statewide Report*, (last updated January 22, 2018) (on file with the Senate Criminal Justice Committee).
[82] Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).
[83] *Id.*
[84] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 320.08058(11), F.S., currently authorizes the DHSMV to allocate the proceeds from the "Invest in Children" license plate annual use fee, while the DJJ allocates the proceeds in practice. Replacing the word "department" in statute with "Department of Juvenile Justice" would rectify this discrepancy.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.08058, 985.03, 985.037, 985.039, 985.101, 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.35, 985.439, 985.557, 985.601, and 985.672.

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 Criminal and Civil Justice on February 14, 2018:

The committee substitute:

- Removes the requirement that the proceeds from the "Invest in Children" license plate must be allocated based on each county's proportionate share of the license plate annual use fee;
- Revises the DRAI used to determine placement of a juvenile in detention care;
- Replaces the term "nonsecure" with "supervised release" and makes other conforming changes throughout ch. 985, F.S., to be consistent with terminology and operation of the revised DRAI;
- Changes the minimum age in which a juvenile qualifies for transfer to adult court by discretionary direct file to 15 or 16 years of age (currently 14 or 15) if he or she is charged with an enumerated felony;
- Removes provisions related to modifying the minimum age in which a juvenile can be transferred to adult court by judicial waiver, discretionary waiver for 16 and 17 year olds, and mandatory direct file; and
- Removes the repeal date for statutory authority (s. 985.672, F.S.) for the DJJ's DSO.

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 juvenile justice; amending s. 320.08058, F.S.; allowing the Department of Highway Safety and Motor Vehicles to distribute proceeds from the Invest in Children license plate annual use fee on a statewide basis; amending s. 985.03, F.S.; replacing the term "nonsecure detention" with the term "supervised release detention"; defining the term "supervised release detention"; amending ss. 985.037, 985.039, and 985.101, F.S.; conforming provisions to changes made by the act; amending s. 985.24, F.S.; deleting provisions authorizing the Department of Juvenile Justice to develop evening reporting centers; conforming provisions to changes made by the act; amending s. 985.245, F.S.; revising risk assessment instrument considerations; conforming provisions to changes made by the act; amending s. 985.25, F.S.; deleting a provision requiring mandatory detention for children taken into custody on three or more separate occasions within a 60-day period; amending s. 985.255, F.S.; revising the circumstances under which a continued detention status may be ordered; amending s. 985.26, F.S.; requiring the department to hold a prolific juvenile offender in secure detention pending a detention hearing following a violation of nonsecure detention; amending s. 985.26, F.S.; revising the definition of the term "disposition"; conforming

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provisions to changes made by the act; amending ss. 985.265 and 985.35, F.S.; conforming provisions to changes made by the act; amending s. 985.439, F.S.; deleting an authorization for placement of a child in a consequence unit in certain circumstances; allowing a child who violates conditions of probation to be detained or released based on the results of the detention risk assessment instrument; conforming provisions to changes made by the act; amending s. 985.557, F.S.; increasing the age of a child at which a state attorney may file an information against the child for prosecution as an adult; amending s. 985.601, F.S.; conforming provisions to changes made by the act; amending s. 985.672, F.S.; requiring the board of directors of the department's direct-support organization to be appointed according to the organization's bylaws; deleting the scheduled repeal of provisions governing the direct-support organization established by the department; providing effective dates.

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

Section 1. Paragraph (b) of subsection (11) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.—

(11) INVEST IN CHILDREN LICENSE PLATES.—

(b) The proceeds of the Invest in Children license plate annual use fee must be deposited into the Juvenile Crime

Prevention and Early Intervention Trust Fund within the Department of Juvenile Justice. Based on the recommendations of the juvenile justice councils, the department shall use the proceeds of the fee to fund programs and services that are designed to prevent juvenile delinquency. ~~The department shall allocate moneys for programs and services within each county based on that county's proportionate share of the license plate annual use fee collected by the county.~~

Section 2. Effective July 1, 2019, subsection (18) of section 985.03, Florida Statutes, is amended to read:

985.03 Definitions.—As used in this chapter, the term:

(18) "Detention care" means the temporary care of a child in secure or supervised release ~~nonsecure~~ detention, pending a court adjudication or disposition or execution of a court order. There are two types of detention care, as follows:

(a) "Secure detention" means temporary custody of the child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.

(b) "Supervised release ~~Nonsecure~~ detention" means temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication~~,~~ or disposition, through programs that ~~or placement. Forms of nonsecure detention~~ include, but are not limited to, ~~home detention,~~ electronic monitoring, day reporting centers, ~~evening reporting centers,~~ and nonsecure shelters. Supervised release ~~Nonsecure~~ detention may include other requirements imposed by the court.

Section 3. Effective July 1, 2019, subsection (5) of section 985.037, Florida Statutes, is amended to read:

985.037 Punishment for contempt of court; alternative sanctions.—

(5) ALTERNATIVE SANCTIONS COORDINATOR.—There is created the position of alternative sanctions coordinator within each judicial circuit, pursuant to subsection (3). Each alternative sanctions coordinator shall serve under the direction of the chief administrative judge of the juvenile division as directed by the chief judge of the circuit. The alternative sanctions coordinator shall act as the liaison between the judiciary, local department officials, district school board employees, and local law enforcement agencies. The alternative sanctions coordinator shall coordinate within the circuit community-based alternative sanctions, including supervised release ~~nonsecure~~ detention programs, community service projects, and other juvenile sanctions, in conjunction with the circuit plan implemented in accordance with s. 790.22(4)(c).

Section 4. Effective July 1, 2019, paragraph (a) of subsection (1) of section 985.039, Florida Statutes, is amended to read:

985.039 Cost of supervision; cost of care.—

(1) Except as provided in subsection (3) or subsection (4):

(a) When any child is placed into supervised release ~~nonsecure~~ detention, probation, or other supervision status with the department, or is committed to the minimum-risk nonresidential restrictiveness level, the court shall order the parent of such child to pay to the department a fee for the cost of the supervision of such child in the amount of $1 per day for

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each day that the child is in such status.

Section 5. Effective July 1, 2019, paragraph (d) of subsection (1) of section 985.101, Florida Statutes, is amended to read:

985.101 Taking a child into custody.—

(1) A child may be taken into custody under the following circumstances:

(d) By a law enforcement officer who has probable cause to believe that the child is in violation of the conditions of the child's probation, supervised release ~~nonsecure~~ detention, postcommitment probation, or conditional release supervision; has absconded from nonresidential commitment; or has escaped from residential commitment.

Nothing in this subsection shall be construed to allow the detention of a child who does not meet the detention criteria in part V.

Section 6. Effective July 1, 2019, subsections (2), (4), and (5) of section 985.24, Florida Statutes, are amended to read:

985.24 Use of detention; prohibitions.—

(2) A child alleged to have committed a delinquent act or violation of law may not be placed into secure or supervised release ~~nonsecure~~ detention care for any of the following reasons:

(a) To allow a parent to avoid his or her legal responsibility.

(b) To permit more convenient administrative access to the child.

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(c) To facilitate further interrogation or investigation.

(d) Due to a lack of more appropriate facilities.

~~(4) The department may, within its existing resources, develop nonsecure, nonresidential evening reporting centers as an alternative to placing a child in secure detention. Evening reporting centers may be collocated with a juvenile assessment center. If established, evening reporting centers shall serve children and families who are awaiting a child's court hearing and, at a minimum, operate during the afternoon and evening hours to provide a highly structured program of supervision. Evening reporting centers may also provide academic tutoring, counseling, family engagement programs, and other activities.~~

(4) ~~(5)~~ The department shall continue to identify and develop supervised release detention options ~~alternatives to secure detention care and shall develop such alternatives~~ and annually submit them to the Legislature for authorization and appropriation.

Section 7. Effective July 1, 2019, paragraph (b) of subsection (2) and subsection (4) of section 985.245, Florida Statutes, are amended to read:

985.245 Risk assessment instrument.—

(2)

(b) The risk assessment instrument shall take into consideration, but need not be limited to, pending felony and misdemeanor offenses, offenses committed pending adjudication, prior offenses, unlawful possession of a firearm, prior history of failure to appear, violations of supervision ~~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 supervision ~~probation~~ status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration all statutory mandates for detention care ~~appropriate aggravating and mitigating circumstances, and shall be designed to target a narrower population of children than s. 985.255~~. The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure or supervised release ~~nonsecure~~ detention care.

(4) For a child who is under the supervision of the department through probation, supervised release ~~nonsecure~~ detention, conditional release, postcommitment probation, or commitment and who is charged with committing a new offense, the risk assessment instrument may be completed and scored based on the underlying charge for which the child was placed under the supervision of the department ~~and the new offense~~.

Section 8. Effective July 1, 2019, paragraph (b) of subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

(1) The department shall receive custody of a child who has been taken into custody from the law enforcement agency or court and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is appropriate.

(b) The department shall base the decision whether to place the child into detention care on an assessment of risk in

accordance with the risk assessment instrument and procedures developed by the department under s. 985.245, except that a child shall be placed in secure detention care until the child's detention hearing if the child meets the criteria specified in s. 985.255(1)(f) or ~~985.255(1)(j),~~ is charged with possessing or discharging a firearm on school property in violation of s. 790.115~~, or has been taken into custody on three or more separate occasions within a 60-day period~~.

Under no circumstances shall the department or the state attorney or law enforcement officer authorize the detention of any child in a jail or other facility intended or used for the detention of adults, without an order of the court.

Section 9. Effective July 1, 2019, subsection (1) and paragraph (a) of subsection (3) of section 985.255, Florida Statutes, are amended to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into detention care shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order a continued detention status if:

(a) The result of the risk assessment instrument pursuant to s. 985.245 indicates secure or supervised release detention.

(b) 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.

(c) ~~(b)~~ The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.

(d) ~~(c)~~ The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

~~(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).~~

~~(e) The child is charged with possession of or discharging a firearm on school property in violation of s. 790.115 or the illegal possession of a firearm.~~

~~(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.~~

~~(g) The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:~~

~~1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;~~

~~2. Has a record of law violations prior to court hearings;~~

~~3. Has already been detained or has been released and is awaiting final disposition of the case;~~

~~4. Has a record of violent conduct resulting in physical~~

~~injury to others; or~~

~~5. Is found to have been in possession of a firearm.~~

~~(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on nonsecure detention with electronic monitoring.~~

(e) ~~(i)~~ The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:

1. For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or

2. At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(f) ~~(j)~~ The child is a prolific juvenile offender. A child is a prolific juvenile offender if the child:

1. Is charged with a delinquent act that would be a felony if committed by an adult;

2. Has been adjudicated or had adjudication withheld for a

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felony offense, or delinquent act that would be a felony if committed by an adult, before the charge under subparagraph 1.; and

3. In addition to meeting the requirements of subparagraphs 1. and 2., has five or more of any of the following, at least three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:

a. An arrest event for which a disposition, as defined in s. 985.26, has not been entered;

b. An adjudication; or

c. An adjudication withheld.

As used in this subparagraph, the term "arrest event" means an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction.

(3)(a) The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. ~~Unless a child is detained under paragraph (1)(d) or paragraph (1)(c),~~ The court shall use the results of the risk assessment performed by the department and, based on the criteria in subsection (1), shall determine the need for continued detention. If the child is a prolific juvenile offender who is detained under s. 985.26(2)(c), the court shall use the results of the risk assessment performed by the department and the criteria in subsection (1) or subsection (2) only to determine whether the prolific juvenile offender should

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be held in secure detention.

Section 10. Paragraph (d) is added to subsection (2) of section 985.26, Florida Statutes, to read:

985.26 Length of detention.—

(2)

(d) A prolific juvenile offender under s. 985.255(1)(j) who is taken into custody for a violation of the conditions of his or her nonsecure detention must be held in secure detention until a detention hearing is held.

Section 11. Effective July 1, 2019, paragraphs (c) and (d) of subsection (2) and paragraph (b) of subsection (4) of section 985.26, Florida Statutes, as amended by this act, are amended to read:

985.26 Length of detention.—

(2)

(c) A prolific juvenile offender under s. 985.255(1)(f) ~~985.255(1)(j)~~ shall be placed on supervised release ~~nonsecure~~ detention care with electronic monitoring or in secure detention care under a special detention order until disposition. If secure detention care is ordered by the court, it must be authorized under this part and may not exceed:

1. Twenty-one days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to paragraph (b); or

2. Fifteen days after the entry of an order of adjudication.

As used in this paragraph, the term "disposition" means a declination to file under s. 985.15(1)(h), the entry of nolle

prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

(d) A prolific juvenile offender under s. 985.255(1)(f) ~~985.255(1)(j)~~ who is taken into custody for a violation of the conditions of his or her supervised release ~~nonsecure~~ detention must be held in secure detention until a detention hearing is held.

(4)

(b) The period for supervised release ~~nonsecure~~ detention care under this section is tolled on the date that the department or a law enforcement officer alleges that the child has violated a condition of the child's supervised release ~~nonsecure~~ detention care until the court enters a ruling on the violation. Notwithstanding the tolling of supervised release ~~nonsecure~~ detention care, the court retains jurisdiction over the child for a violation of a condition of supervised release ~~nonsecure~~ detention care during the tolling period. If the court finds that a child has violated his or her supervised release ~~nonsecure~~ detention care, the number of days that the child served in any type of detention care before commission of the violation shall be excluded from the time limits under subsections (2) and (3).

Section 12. Effective July 1, 2019, subsection (1), paragraph (b) of subsection (3), and paragraph (a) of subsection (4) of section 985.265, Florida Statutes, are amended to read:

985.265 Detention transfer and release; education; adult jails.—

(1) If a child is detained under this part, the department

may transfer the child from supervised release ~~nonsecure~~ detention care to secure detention care only if significantly changed circumstances warrant such transfer.

(3)

(b) When a juvenile is released from secure detention or transferred to supervised release ~~nonsecure~~ detention, detention staff shall immediately notify the appropriate law enforcement agency, school personnel, and victim if the juvenile is charged with committing any of the following offenses or attempting to commit any of the following offenses:

1. Murder, under s. 782.04;

2. Sexual battery, under chapter 794;

3. Stalking, under s. 784.048; or

4. Domestic violence, as defined in s. 741.28.

(4)(a) While a child who is currently enrolled in school is in supervised release ~~nonsecure~~ detention care, the child shall continue to attend school unless otherwise ordered by the court.

Section 13. Effective July 1, 2019, paragraph (b) of subsection (1) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(1)

(b) If the child is a prolific juvenile offender under s. 985.255(1)(f) ~~985.255(1)(j)~~, the adjudicatory hearing must be held within 45 days after the child is taken into custody unless a delay is requested by the child.

Section 14. Effective July 1, 2019, subsections (2) and (4) of section 985.439, Florida Statutes, are amended to read:

985.439 Violation of probation or postcommitment probation.—

(2) A child taken into custody under s. 985.101 for violating the conditions of probation shall be screened and detained or released based on his or her risk assessment instrument score ~~or postcommitment probation shall be held in a consequence unit if such a unit is available. The child shall be afforded a hearing within 24 hours after being taken into custody to determine the existence of probable cause that the child violated the conditions of probation or postcommitment probation. A consequence unit is a secure facility specifically designated by the department for children who are taken into custody under s. 985.101 for violating probation or postcommitment probation, or who have been found by the court to have violated the conditions of probation or postcommitment probation. If the violation involves a new charge of delinquency, the child may be detained under part V in a facility other than a consequence unit. If the child is not eligible for detention for the new charge of delinquency, the child may be held in the consequence unit pending a hearing and is subject to the time limitations specified in part V~~.

(4) Upon the child's admission, or if the court finds after a hearing that the child has violated the conditions of probation or postcommitment probation, the court shall enter an order revoking, modifying, or continuing probation or postcommitment probation. In each such case, the court shall enter a new disposition order and, in addition to the sanctions set forth in this section, may impose any sanction the court could have imposed at the original disposition hearing. If the

child is found to have violated the conditions of probation or postcommitment probation, the court may:

~~(a) Place the child in a consequence unit in that judicial circuit, if available, for up to 5 days for a first violation and up to 15 days for a second or subsequent violation.~~

(a) ~~(b)~~ Place the child in supervised release ~~nonsecure~~ detention with electronic monitoring. ~~However, this sanction may be used only if a residential consequence unit is not available.~~

(b) ~~(c)~~ If the violation of probation is technical in nature and not a new violation of law, place the child in an alternative consequence program designed to provide swift and appropriate consequences to any further violations of probation.

1. Alternative consequence programs shall be established, within existing resources, at the local level in coordination with law enforcement agencies, the chief judge of the circuit, the state attorney, and the public defender.

2. Alternative consequence programs may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, a county or municipality, or another entity selected by the department.

3. Upon placing a child in an alternative consequence program, the court must approve specific consequences for specific violations of the conditions of probation.

(c) ~~(d)~~ Modify or continue the child's probation program or postcommitment probation program.

(d) ~~(e)~~ Revoke probation or postcommitment probation and commit the child to the department.

Section 15. Paragraph (a) of subsection (1) of section 985.557, Florida Statutes, is amended to read:

985.557 Direct filing of an information; discretionary and mandatory criteria.—

(1) DISCRETIONARY DIRECT FILE.—

(a) With respect to any child who was ~~14 or~~ 15 or 16 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:

1. Arson;

2. Sexual battery;

3. Robbery;

4. Kidnapping;

5. Aggravated child abuse;

6. Aggravated assault;

7. Aggravated stalking;

8. Murder;

9. Manslaughter;

10. Unlawful throwing, placing, or discharging of a destructive device or bomb;

11. Armed burglary in violation of s. 810.02(2)(b) or specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), or burglary with an assault or battery in violation of s. 810.02(2)(a);

12. Aggravated battery;

13. Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;

14. Carrying, displaying, using, threatening, or attempting

to use a weapon or firearm during the commission of a felony;

15. Grand theft in violation of s. 812.014(2)(a);

16. Possessing or discharging any weapon or firearm on school property in violation of s. 790.115;

17. Home invasion robbery;

18. Carjacking; or

19. Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or grand theft of a motor vehicle valued at $20,000 or more in violation of s. 812.014(2)(b) if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

Section 16. Effective July 1, 2019, paragraph (a) of subsection (9) of section 985.601, Florida Statutes, is amended to read:

985.601 Administering the juvenile justice continuum.—

(9)(a) The department shall operate a statewide, regionally administered system of detention services for children, in accordance with a comprehensive plan for the regional administration of all detention services in the state. The plan must provide for the maintenance of adequate availability of detention services for all counties. The plan must cover all the department's operating circuits, with each operating circuit having access to a secure facility and supervised release ~~nonsecure~~ detention programs, and the plan may be altered or modified by the Department of Juvenile Justice as necessary.

Section 17. Subsections (3) and (7) of section 985.672, Florida Statutes, are amended to read:

985.672 Direct-support organization; definition; use of property; board of directors; audit.—

(3) BOARD OF DIRECTORS.—The Secretary of Juvenile Justice shall appoint a board of directors of the direct-support organization. The board members shall be appointed according to the organization's bylaws ~~Members of the organization must include representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large~~.

~~(7) REPEAL.—This section is repealed October 1, 2018, unless reviewed and saved from repeal by the Legislature.~~

Section 18. Except as otherwise expressly provided in this act, this act shall take effect July 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/SB 1552
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Bracy
SUBJECT:	Juvenile Justice
DATE:	February 23, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	**Favorable**
2.	Sadberry	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Sadberry	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1552 makes numerous changes relating to juvenile justice.

The bill makes the following changes, effective July 1, 2018:

- Removes the requirement that the proceeds from the "Invest in Children" license plate must be allocated based on each county's proportionate share of the license plate annual use fee;
- Requires a prolific juvenile offender (PJO) who violates conditions of his or her nonsecure detention to be held in secure detention until a detention hearing is held; and
- Changes the minimum age in which a juvenile qualifies for transfer to adult court by discretionary direct file to 15 or 16 years of age (currently 14 or 15) if he or she is charged with an enumerated felony.

The bill also reenacts statutory authority (s. 985.672, F.S.) for the Department of Juvenile Justice (DJJ) to establish a direct-support organization (DSO) to provide assistance, funding, and support to assist the DJJ in furthering its goals. The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted. The bill requires the secretary of DJJ to appoint members to the DSO's board of directors according to the DSO's bylaws.

The bill also makes the following changes, effective July 1, 2019:

- Revises the Detention Risk Assessment Instrument (DRAI) used to determine placement of a juvenile in detention care; and
- Replaces the term "nonsecure" with "supervised release" and makes conforming changes throughout ch. 985, F.S., to be consistent with terminology and operation of the revised DRAI.

The Criminal Justice Impact Conference has not reviewed this bill but its provisions related to juveniles transferred to the adult system will likely increase DJJ's expenditures and reduce the Department of Corrections' expenditures. See Section V. Fiscal Impact Statement.

II. Present Situation:

"Invest in Children" License Plates

Section 320.08058(11)(a), F.S., establishes that the Department of Highway Safety and Motor Vehicles (DHSMV) must develop an "Invest in Children" license plate that is approved by the DHSMV. In 2017, there were 10,260 "Invest in Children" license plates sold.[1]

The proceeds of the license plate annual use fee[2] must be deposited into the Juvenile Crime Prevention and Early Intervention Trust Fund within the DJJ. Based on recommendations of the juvenile justice councils, the DHSMV must use the proceeds of the fee to fund programs and services that are designed to prevent juvenile delinquency. The DHSMV must allocate money within each county based on each county's proportionate share of the annual use fee collected by the county.[3]

Proceeds from the annual use fee for the "Invest in Children" license plate assist in funding:
- After-school activities;
- Mentoring;
- Tutoring;
- Job internships;
- Youth summits;
- Learning to live violence-free;
- Parent-child relationship building;
- Summer camp scholarships;
- Recreational programs for girls and boys; and
- Substance abuse prevention.[4]

[1] Florida Department of Highway Safety and Motor Vehicles, *2017 Specialty License Plate Rankings*, available at http://www.flhsmv.gov/specialtytags/tagsales.pdf (last visited February 15, 2018).
[2] The annual use fee is $20. *See* Florida Department of Highway Safety and Motor Vehicles, *Invest in Children*, available at http://www.flhsmv.gov/dmv/specialtytags/miscellaneous/invest_in_children.html (last visited February 14, 2018).
[3] Section 320.08058(11)(b), F.S.
[4] Florida Department of Juvenile Justice, Invest in Children, available at http://www.djj.state.fl.us/get-involved/license-plate (last visited February 14, 2018).

Juvenile Intake and Detention

When a juvenile is taken into custody by law enforcement or the court, the intake process begins, with the purpose of assessing the juvenile's needs and risks to determine the most appropriate treatment plan and setting for the juvenile.[5] Each juvenile undergoes an individualized assessment that begins with the standardized DRAI.[6]

The DRAI must indicate whether detention care is warranted.[7] Detention care is the temporary care of a child in secure or nonsecure detention, pending a court adjudication or disposition or execution of a court order.[8]

The DRAI must take into consideration, but need not be limited to:
- Prior history of failure to appear;
- Prior offenses;
- Offenses committed pending adjudication;
- Any unlawful possession of a firearm;
- Theft of a motor vehicle or possession of a stolen motor vehicle;
- Probation status at the time the child is taken into custody;
- Aggravating and mitigating circumstances;
- Targeting a narrower population of juveniles than s. 985.255, F.S.;[9] and
- The juvenile's history of abuse and neglect.[10]

The DRAI must indicate whether the juvenile should be placed into secure or nonsecure detention care.[11] Secure detention is the temporary custody of the juvenile while the juvenile is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.[12]

Nonsecure detention is the temporary, nonsecure custody of the juvenile while the juvenile is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment while under the supervision of the DJJ staff pending adjudication, disposition, or placement.[13] Forms of nonsecure detention include, but are not limited to:
- Home detention;
- Electronic monitoring;
- Day reporting centers;
- Evening reporting centers; and
- Nonsecure shelters.[14]

[5] Section 985.14(2), F.S.
[6] Section 985.14(3)(a), F.S.
[7] Section 985.245(2)(b), F.S.
[8] Section 985.03(18), F.S.
[9] Section 985.255, F.S., provides for the continued detention for a juvenile who has committed a specific offense or is a repeat offender.
[10] Section 985.245(2)(b), F.S.
[11] *Id.*
[12] Section 985.03(18)(a), F.S.
[13] Section 985.03(18)(b), F.S.
[14] Nonsecure detention may include other requirements imposed by the court. *See* s. 985.03(18)(b), F.S.

The DJJ must ensure that a DRAI establishing the juvenile's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court.[15]

A juvenile taken into custody and placed into detention care must be given a hearing within 24 hours after being taken into custody.[16] The court may order continued detention status at the hearing if:

- The juvenile 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;
- The juvenile is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony;
- The juvenile is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety;
- The juvenile is charged with committing an offense of domestic violence;
- The juvenile is charged with possession of or discharging a firearm on school property or illegal possession of a firearm;
- The juvenile is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., or a felony of the third degree that is also a crime of violence;
- The juvenile is alleged to have violated the conditions of the child's probation or conditional release supervision;
- The juvenile is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:
  - For an adjudicatory hearing on the same case regardless of the results of the DRAI; or
  - At two or more court hearings of any nature on the same case regardless of the results of the DRAI; or
- The juvenile is 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 juvenile:
  - Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
  - 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.[17]

While the initial decision as to the juvenile's placement into detention care is made by the DJJ and is based on the DRAI, a juvenile must be placed in secure detention until the detention hearing if the juvenile:

[15] Section 985.145(1)(d), F.S.
[16] Section 985.255(1), F.S.
[17] Section 985.255(1)(a)-(i), F.S.

- Is classified as a PJO pursuant to s. 985.255(1)(j), F.S.;
- Is charged with possessing or discharging a firearm on school property in violation of s. 790.115, F.S.; or
- Has been taken into custody on three or more separate occasions within a 60-day period.[18]

A juvenile may not be placed into or held in detention care for longer than 24 hours unless the court determines there is a need for continued detention and subsequently makes a special detention order.[19]

A juvenile may not be held in detention care under a special detention order for more than 21 days unless:

- An adjudicatory hearing for the case has been commenced in good faith by the court;
- Good cause is shown that the nature of the charge requires additional time for the prosecution or defense of the case; or
- The juvenile is classified as a PJO.[20]

Prolific Juvenile Offender

The PJO designation was established to apply to youth with excessively high recidivism.[21] A juvenile is classified as a PJO if he or she:

- 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, prior to the charge for which they are currently appearing; and
- Has five or more of any of the following, three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
  - An arrest event[22] for which a disposition[23] has not been entered;
  - An adjudication; or
  - An adjudication withheld.[24]

A juvenile who has been classified as a PJO is treated differently for purposes of detention care while awaiting disposition. While awaiting disposition, a PJO must be placed on nonsecure detention care with electronic monitoring or in secure detention care under a special detention order.[25]

If the court orders secure detention care, it must not exceed:

[18] Section 985.25(1)(a)-(b), F.S.
[19] Section 985.26(1), F.S.
[20] Section 985.26(2)(a)-(c), F.S.
[21] Section 985.255(1)(j), F.S., was created in 2017 by ch. 2017-164, L.O.F.
[22] "Arrest event" is an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction. Section 985.255(1)(j), F.S.
[23] "Disposition" is a declination to file under s. 985.15(1)(h), F.S.; the entry of 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.; a dismissal of the case; or an order of final disposition by the court. Section 985.26(2)(c), F.S.
[24] Section 985.255(1)(j), F.S.
[25] Section 985.26(2)(c), F.S.

- 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to s. 985.26(2)(b), F.S.;[26] or
- 15 days after the entry of an order of adjudication.[27]

Transferring of a Juvenile to Adult Court

There are three methods of transferring a juvenile to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. To transfer a juvenile pursuant to judicial waiver, the state attorney must file a motion and the court must approve of the transfer.[28] Section 985.556, F.S., provides three types of judicial waivers: voluntary waiver, involuntary discretionary waiver, and involuntary mandatory waiver.

Indictment by a Grand Jury

Section 985.56, F.S., specifies that a juvenile of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment by a grand jury. If the grand jury returns an indictment on the charge, the juvenile's case must be transferred to adult court.[29]

Direct File

Direct file is when a state attorney files an information charging a juvenile in adult court. Direct file under s. 985.557, F.S., can be either discretionary or mandatory and is accomplished exclusively by the state attorney without requiring the court's approval.[30] Direct file is the predominant transfer method to adult court, accounting for 97.7 percent of the transfers in 2016-17.[31]

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information (direct file a juvenile) in adult court when a juvenile is:

- 14 or 15 years of age and is charged with one of the following felony offenses:
  - Arson;

[26] Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional nine days if the juvenile is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual. Section 985.26(2)(b), F.S.
[27] Section 985.26(2)(c)1. and 2., F.S.
[28] Section 985.556, F.S.
[29] Section 985.56(1), F.S.
[30] Section 985.557, F.S.
[31] Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated juvenile abuse;
- Aggravated assault;
- Aggravated stalking;
- Murder;
- Manslaughter;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary in violation of s. 810.02(2)(b), F.S.;
- Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
- Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
- Aggravated battery;
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Grand theft in violation of s. 812.014(2)(a), F.S.;
- Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Carjacking;
- Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
- Grand theft of a motor vehicle valued at $20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.[32]

Department of Juvenile Justice Direct-Support Organization

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The purpose and functions of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

Florida Juvenile Justice Foundation, Inc.

From 1994-1999, the DJJ had an ongoing partnership with the Florida Business Partners for Prevention (FBPP). At the time, the DJJ lacked statutory authority to have a DSO. In 1999, the Legislature created s. 985.672, F.S., authorizing the DJJ to establish a DSO to provide assistance, funding, and support for the DJJ in carrying out its mission.[33] In 2000, the FBPP incorporated by the name of Florida Business Partners for Juvenile Justice, Inc., to provide such assistance,

[32] Section 985.557(1)(a)1.-19., F.S.
[33] Section 985.672, F.S., was created in 1999 by ch. 1999-284, L.O.F.

funding, and support to the DJJ.[34] The name was changed to the Florida Juvenile Justice Foundation, Inc. (Foundation) in 2006.[35]

Repeal of s. 985.672, F.S., and DSO Compliance Review

Section 20.058(5), F.S., provides that laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. This subsection further provides that CSOs or DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019. Section 985.672, F.S., provides that the section is repealed October 1, 2018, unless reviewed and saved from repeal by the Legislature.

Staff of the Senate Committee on Criminal Justice reviewed relevant materials to determine if the DJJ and the Foundation comply with the requirements of s. 985.672, F.S., and with other statutory requirements for DSOs: s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements); s. 215.981, F.S. (CSO/DSO Audit Requirements); and s. 112.3251, F.S. (CSO/DSO Ethics Code Requirements). Staff finds that the DJJ and the Foundation are in compliance with most of the relevant DSO statutory requirements.

Staff Review of Compliance with s. 985.672, F.S. (DSO to Florida Department of Juvenile Justice)

Establishment of DSO

Section 985.672, F.S., authorizes the DJJ to establish a DSO whose sole purpose is to support the juvenile justice system. For purposes of s. 985.672, F.S., "direct-support organization" means an organization that is:

- A corporation not-for-profit incorporated under ch. 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by the DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the adopted goals and mission of the DJJ.[36]

Staff Finding: Compliance. The Foundation meets the definition of "direct-support organization." In 2000, the Foundation was established.[37] The Foundation is a Florida non-profit corporation under ch. 617, F.S., and is approved by the Department of State.[38] The DJJ's mission is, "to increase public safety by reducing juvenile delinquency through effective prevention,

[34] Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Approved and filed January 28, 2000) (on file with the Senate Criminal Justice Committee).
[35] Articles of Amendment to Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Filed February 8, 2006) (on file with the Senate Criminal Justice Committee).
[36] Section 985.672(1)(a)-(c), F.S.
[37] *Supra*, n. 34.
[38] The Foundation's information is available at http://search.sunbiz.org/Inquiry/CorporationSearch/ByName by searching Florida Juvenile Justice Foundation, Inc. (last visited February 15, 2018).

intervention and treatment services that strengthen families and turn around the lives of troubled youth."[39] The Foundation works toward advancing the DJJ's mission by funding programs such as the Youth Investment Award program, which provides financial assistance designed to further the education and employability of juvenile justice-involved youth. Additionally, the Foundation funds back-to-school drives, Youth Success Week, the Human Trafficking Summit, in addition to running a national grant to support the Juvenile Detention Alternatives initiative.[40]

Expenditures of the Foundation

Section 985.672(1), F.S., provides that expenditures of the DSO shall be used for the prevention and amelioration of juvenile delinquency and may not be used for the purpose of lobbying as defined in s. 11.045, F.S.

Staff findings: Compliance. The Foundation's IRS Form 990 for 2015-16 shows that the majority of expenditures were for conferences, conventions, meetings, and youth programs. Additionally, the form shows that there were no expenditures made for the purposes of lobbying.[41]

Contractual Agreement between the DJJ and the Foundation

Section 985.672(2), F.S., provides that the DSO must operate under a written contract with the DJJ and the contract must include certain provisions.

Approval of the Articles of Incorporation and Bylaws

The contract must provide for approval of the articles of incorporation and bylaws of the DSO by the DJJ.[42]

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the approval of the Foundation's articles of incorporation and bylaws by the DJJ prior to adoption by the Foundation.[43]

Submission of an Annual Budget

The contract must provide for the DSO to submit an annual budget for the approval of the DJJ.[44]

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[39] Florida Department of Juvenile Justice, *Mission*, available at http://www.djj.state.fl.us/about-us/mission (last visited February 15, 2018).
[40] Transmittal letter dated August 15, 2017, from the DJJ Secretary Christina K. Daly to Senate President Joe Negron, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF (last visited February 15, 2018).
[41] The IRS Form 990 for 2015-16 is the most recent tax form provided by the DJJ and the Foundation. According to DJJ staff, this is because the deadline for the submission of the tax form is in September, while the deadline to report information pursuant to DSO requirements found in s. 20.058, F.S. (described *infra*) is August. E-mail from DJJ staff to staff of the Senate Criminal Justice Committee, dated August 17, 2017 (on file with the Senate Criminal Justice Committee). *See also* IRS Form 990 for the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).
[42] Section 985.672(2)(a), F.S.
[43] Contract between the Florida Department of Juvenile Justice and the Florida Juvenile Justice Foundation, Inc. (executed June 4, 2009) (on file with the Senate Criminal Justice Committee).
[44] Section 985.672(2)(b), F.S.

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the review and approval of the Foundation's annual budget prior to adoption by the Foundation.[45]

Certification by the DJJ that the DSO is in Compliance

The contract must provide for certification by the DJJ that the DSO is complying with the terms of the contract and in a manner consistent with the goals and purposes of the DJJ and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the DSO.[46]

Staff findings: Not in compliance. The contract between the DJJ and the Foundation provides for such annual certification of the Foundation by the DJJ. However, the contract does not provide for the annual certification to be reported in the official minutes of a meeting of the Foundation and such certification has not been made in the minutes of a meeting as prescribed.[47]

Staff recommendation: The contract between the DJJ and the Foundation should be amended to provide for such annual certification to be reported in the official minutes of a meeting of the Foundation. Subsequently, the board of directors must report such annual certification in the official minutes of a meeting of the Foundation.

Reversion of Moneys and Property

The contract must provide for the reversion of moneys and property held in trust by the DSO for the benefit of the juvenile justice system to the state if the DJJ ceases to exist or to the DJJ if the DSO is no longer approved to operate for the DJJ, a county commission, or a circuit board or if the DSO ceases to exist.[48]

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such reversion of moneys and property.[49]

Fiscal Year of the DSO

The contract must provide for the fiscal year of the DSO to begin July 1 of each year and end June 30 of the following year.[50]

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such information.[51]

[45] *Supra*, n. 43.
[46] Section 985.672(2)(c), F.S.
[47] *Supra*, n. 43. Board meeting minutes of the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).
[48] Section 985.672(2)(d), F.S.
[49] *Supra*, n. 43.
[50] Section 985.672(2)(e), F.S.
[51] *Supra*, n. 43.

Disclosure Made to Donors

The contract must provide for the disclosure of material provisions of the contract, and the distinction between the DJJ and the DSO, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.[52]

Staff findings: Compliance. The contract provides that the Foundation must distinguish itself as "the 501(c)(3) direct-support organization for the Florida Department of Juvenile Justice" to all donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications. The contract further provides for the disclosure of material provisions of the contract to donors of gifts, contributions, or bequests.[53]

Board of Directors

Section 985.672(3), F.S., requires the Secretary of the DJJ to appoint a board of directors for the DSO. The board's membership must consist of representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large.[54]

Staff findings: Not in compliance. The board's membership is not in compliance with the statute's requirements because the juvenile justice system no longer utilizes service districts. Thus, the membership is not made up of representatives from each district.

Staff recommendation: Section 985.672(3), F.S., should be amended to reflect the current organization of the DJJ in order for the board membership to comply. Alternatively, the statute could be amended to provide the DJJ with broad discretion to appoint members to the board, without regard to specific representation as the statute currently prescribes.

Use of Property

Section 985.672(4), F.S., provides that the DJJ may permit, without charge, appropriate use by the DSO of fixed property, facilities, and personnel services of the juvenile justice system. The DJJ may prescribe any condition with which the DSO must comply in order to use such fixed property or facilities of the juvenile justice system. The DJJ may not permit the use of any fixed property or facilities of the juvenile justice system by the DSO if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. The DJJ must adopt rules prescribing the procedures by which the DSO is governed and any conditions with which a DSO must comply to use property or facilities of the DJJ.[55]

Staff findings: Compliance. The contract between the DJJ and the Foundation provides permission for the Foundation's use of the DJJ's property, facilities, and personnel services. However, the contract is silent on prohibiting the Foundation's use of the DJJ's property and facilities if the Foundation does not provide equal membership and employment opportunities to

[52] Section 985.672(2)(f), F.S.
[53] *Supra*, n. 43.
[54] Section 985.672(3), F.S.
[55] Section 985.672(4)(a)-(c), F.S.

all persons regardless of race, color, religion, sex, age, or national origin.[56] Further, the DJJ adopted rules prescribing the conditions in which the Foundation may use the DJJ's property, facilities, and personnel services.[57]

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include language that prohibits the Foundation's use of the DJJ's fixed property or facilities if the Foundation does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. This language is not required to be in the contract, but its inclusion would enable the DJJ and the Foundation to be in compliance with s. 985.672(4)(b), F.S., because it would apply broadly to the required practices of the Foundation.

Deposit of Funds

Section 985.672(5), F.S., provides that money may be held in a separate depository account in the name of the DSO and subject to the provisions of the contract with the DJJ.[58]

Staff findings: Not in compliance. The Foundation has a separate depository account in their name.[59] However, the contract between the DJJ and the Foundation does not include any provisions regarding the separate depository account.[60]

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include provisions addressing the separate depository account.

Annual Financial Audit

Section 985.672(6), F.S., requires the DSO to provide for an annual financial audit in accordance with s. 215.981, F.S.

Staff findings: Not currently applicable. Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of $100,000 to provide for an annual financial audit of its accounts and records.[61] The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. 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. 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.[62]

[56] *Supra*, n. 43.
[57] Fla. Admin. Code R. 63J-1.002 (2007).
[58] Section 985.672(5), F.S.
[59] E-mail from the DJJ staff to staff of the Senate Criminal Justice Committee, dated January 16, 2017 (on file with the Senate Criminal Justice Committee).
[60] *Supra*, n. 43.
[61] 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. Section 215.981(1), F.S. 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. Section 215.981(2), F.S.
[62] Section 11.45(3)(d), F.S.

The Foundation does not have annual expenditures in excess of $100,000.[63] Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.[64]

Staff Review of Compliance with s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements)

Section 20.058, F.S., establishes a comprehensive set of transparency and reporting requirements for CSOs and DSOs.

Reporting Requirements

Section 20.058(1), F.S., requires each CSO and DSO to annually submit, by August 1, the following information to the agency it supports:

- The CSO or DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission and results obtained by the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;
- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.[65]

Staff findings: Compliance. In 2017, the Foundation reported all of the information required by s. 20.058(1), F.S.[66]

Transparency of Reported CSO or DSO Information

Section 20.058(2), F.S., provides that each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., shall make such information available to the public through the agency's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.

Staff findings: *Compliance*. The information required in s. 20.058(1), F.S., is available to the public through the DJJ's website.[67] Additionally, the DJJ provides a link to the Foundation's website.[68]

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[63] Total expenditures for 2015-16 were $97,254. IRS Form 990 for Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

[64] While the Foundation's expenditures do not currently exceed $100,000 and thus, the Foundation is not currently subjected to an annual financial audit pursuant to s. 215.981, F.S., the contract between the DJJ and the Foundation provides that the Foundation must provide a copy of its annual financial audit to the DJJ. *Supra*, n. 43.

[65] The IRS Form 990 is the an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. s. 501. The most recent Form 990 provided by the Foundation is from 2015-16 because the deadline for the form is September, while the deadline for the submission of the required information is August.

[66] Transmittal letter dated August 1, 2017, from Foundation Executive Director Caroline Ray to the DJJ Secretary Christina K. Daly, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF (last visited February 15, 2018).

[67] Florida Juvenile Justice Foundation, *2017 Annual Report*, available at http://www.djj.state.fl.us/fjjf/resources (last visited February 15, 2018).

[68] Florida Department of Juvenile Justice, "Get Involved" available at http://www.djj.state.fl.us/fjjf/foundation (last visited February 15, 2018).

Section 20.058(3), F.S., provides that, by August 15 of each year, each agency shall report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by each CSO and DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.

Staff findings: Compliance. The DJJ submitted its report by August 15, 2017, and the DJJ Secretary Daly expressed her strong recommendation for the continued collaboration and association between the DJJ and the Foundation. The letter explained that the DJJ and the Foundation share a long history of working together to improve the lives of at-risk juveniles and their families. The Foundation promotes delinquency prevention, intervention, and educational opportunities for youth, in addition to stewarding all funds raised to enhance the activities of the DJJ. "The Foundation is an integral part of the Department of Juvenile Justice and shares a long and collaborative relationship that is rare amongst direct-support organizations."[69]

Contract Requirements

Section 20.058(4), F.S., provides that any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting information pursuant to s. 20.058(1) and (2), F.S. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head shall terminate any contract between the agency and the organization.

Staff findings: Not in compliance. The contract between the DJJ and the Foundation is not contingent upon the Foundation's submission and posting of the information pursuant to s. 20.058(1) and (2), F.S. The contract also does not provide for the orderly cessation of operations and reversion to the state of state funds held in trust by the Foundation *within 30 days* after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. The contract also does not provide for the DJJ Secretary to terminate the contract between the DJJ and the Foundation in the event that the Foundation fails to submit the required information for two consecutive years.[70]

Staff recommendation: The DJJ and the Foundation should execute a revised contract that includes the requirements prescribed by s. 20.058(4), F.S. The contract between the DJJ and the Foundation was executed in 2009, while s. 20.058, F.S., was enacted by the Legislature in 2014.[71] Additionally, the contract provides that, "The parties agree to renegotiate this agreement and any affected agreements if revisions of any applicable laws or regulations make changes in this agreement necessary."[72]

[69] *Supra*, n. 40.
[70] *Supra*, n. 43.
[71] Section 20.058, F.S., was created in 2014 by ch. 2014-96, L.O.F.
[72] *Supra*, n. 43.

Staff Review of Compliance with s. 215.981, F.S. (CSO/DSO Audit Requirements)

As previously noted, s. 215.981(1), F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of $100,000 to provide for an annual financial audit of its accounts and records. (For a full description of the statute, see discussion, *supra*, of s. 985.672(6), F.S. (annual financial audit)).

Staff findings: Not currently applicable. As previously noted, the Foundation does not have annual expenditures in excess of $100,000. Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.[73]

Staff Review of Compliance with s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement)

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.[74] A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.[75]

Staff findings: Not in compliance. The Foundation has a code of ethics which is conspicuously posted on its website.[76] However, the Foundation's code of ethics is not in compliance with s. 112.313(2), (4), (5), and (8), F.S.

Staff recommendation: The Foundation should adopt a revised code of ethics to include requirements prescribed by s. 112.3251, F.S.

III. Effect of Proposed Changes:

The following provisions in the bill go into effect July 1, 2018

"Invest in Children" License Plates (Section 1, amending s. 320.08058, F.S.)

Current law requires proceeds from the sale of the "Invest in Children" license plate to be allocated within each county based on that county's proportionate share of the license plate fee collected by the county. The bill removes this requirement, and instead, permits the DHMSV to have discretion in determining how the proceeds from the license plate sales will be allocated, without regard to contributions based on county.

Prolific Juvenile Offender Violations of Nonsecure Detention (Section 10, amending s. 985.26, F.S.)

Current law contemplates the general treatment of a PJO awaiting a disposition hearing. However, the law does not address the treatment of a PJO who violates the terms of nonsecure detention. The bill provides that a PJO who is taken into custody for a violation of the conditions

[73] *Supra*, n. 63.
[74] 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.
[75] Section 112.3251, F.S.
[76] *Supra*, n. 67.

of his or her nonsecure detention must be held in secure detention until a detention hearing is held.[77]

Discretionary Direct File (Section 15, amending s. 985.557, F.S.)

Current law provides a state attorney with discretion to direct file a juvenile who was 14 or 15 years of age at the time an enumerated offense was allegedly committed.[78] The bill changes the age in which a juvenile can be transferred to adult court by discretionary direct file for committing an enumerated offense from 14 or 15 years of age to 15 or 16 years of age.

Department of Juvenile Justice DSO (Section 17, amending s. 985.672, F.S.)

The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted.

Current law requires the DSO's board of directors to consist of representatives from businesses, each juvenile justice service district, and one representative appointed at large. The bill amends the requirements relating to the DSO's board representation to require the DJJ to appoint members to the DSO's board of directors pursuant to the DSO's bylaws.

All changes related to the revised DRAI go into effect July 1, 2019

Supervised Release (Section 2, amending s. 985.03, F.S.)

The bill replaces the term "nonsecure" with "supervised release" and retains the definition of the term, defined as temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the DJJ staff pending adjudication or disposition, through programs that include, but are not limited to:

- Electronic monitoring;
- Day reporting centers; and
- Nonsecure shelters.

The bill removes home detention and evening reporting centers from this definition.

[77] The PJO would be held in secure detention for up to 24 hours until his or her detention hearing when the judge would decide whether the PJO will be released back to nonsecure detention or rather placed in secure detention. Section 985.255, F.S. *See also* Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

[78] The enumerated felonies are arson; sexual battery; robbery; kidnapping; aggravated juvenile abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary in violation of. s. 810.02(2)(b), F.S.; burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.; burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft in violation of s. 812.014(2)(a), F.S.; possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.; home invasion robbery; carjacking; grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or grand theft of a motor vehicle valued at $20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of ss. 812.014(2)(c)6., or 812.014(2)(b), F.S. *See* s. 985.557(1)(a)1.-19., F.S.

Risk Assessment Instrument (Section 7, amending s. 985.245, F.S.)

Current law requires the DRAI used by the DJJ in assessing whether a juvenile should be placed in detention care to take certain factors into consideration in making that determination. The bill requires the DRAI to take into consideration the following factors:

- Pending felony and misdemeanor offenses;
- Offenses committed pending adjudication;
- Prior offenses;
- Unlawful possession of a firearm;
- Violations of supervision;
- Supervision status at the time the child is taken into custody; and
- All statutory mandates for detention care.

The bill removes several requirements for the DRAI to take into consideration including theft of a motor vehicle and possession of a stolen motor vehicle.

For a juvenile who is under the supervision of the DJJ and is charged with committing a new offense, the bill removes consideration of the new offense from the scoring to be used in the DRAI.

Detention Intake (Section 8, amending s. 985.25, F.S.)

Current law provides that a juvenile who has been taken into custody on three or more separate occasions within a 60-day period must be placed in secure detention until the juvenile's detention hearing. The bill removes this criteria from the statute.

Detention Criteria (Section 9, amending s. 985.255, F.S.)

Current law provides for certain circumstances in which a court may order a continued detention status for a juvenile at the initial detention hearing. The bill adds an additional circumstance, providing that continued detention may be ordered at the hearing if the result of the DRAI indicates secure or supervised release detention.

The bill removes the following circumstances in which a court was permitted to order a continued detention status for a juvenile at the detention hearing:

- If the juvenile is charged with committing an offense of domestic violence;
- If the juvenile is charged with possession of or discharging a firearm on school property;
- If the juvenile is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., 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;
- If the juvenile is alleged to have violated the conditions of the child's probation or conditional release supervision;
- If the juvenile is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:
    - For an adjudicatory hearing on the same case regardless of the results of the DRAI; or
    - At two or more court hearings of any nature on the same case regardless of the results of the DRAI; or

- If the juvenile is 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 juvenile:
  - Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
  - 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.

Violation of Probation or Postcommitment Probation (Section 14, amending s. 985.439, F.S.)

The bill provides that a juvenile taken into custody pursuant to s. 985.101, F.S.,[79] for violating conditions of probation must be screened and detained or released based on his or her DRAI score. The bill eliminates the term "consequence unit" and references therein because consequence units are no longer in operation.

Revised Detention Risk Assessment Instrument (Sections 2-9, 11-14, 16)

The bill makes several changes throughout ch. 985, F.S., including replacing the term "nonsecure" with "supervised release," to be consistent with modifications being implemented with the DJJ's forthcoming use of the revised DRAI.

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.

[79] Section 985.101, F.S., provides circumstances in which a juvenile may be taken into custody.

B. Private Sector Impact:

The removal of the provision that repeals s. 985.672, F.S., enables the DJJ's DSO to sustain a source of financial and other direct assistance for advancing the DJJ's mission to increase public safety by reducing juvenile delinquency.

C. Government Sector Impact:

Prolific Juvenile Offender Costs for Violations Secure Detention

The Criminal Justice Impact Conference has not provided an estimate of the bill's impact. The department estimates that, while the requirement for requiring PJOs who violate non-secure detention to be held in secure detention overnight could result in increased utilization of secure detention, this change is not expected to have a substantive fiscal impact.[80] Of the 256 PJOs throughout the state, 86 are in nonsecure detention.[81] In the event that every PJO in nonsecure detention violated his or her conditions of detention, the DJJ will be able to provide accommodations to such juveniles and absorb such costs with existing resources.[82]

Reduction in Juveniles Transferred to Adult Court

Additionally, the bill is likely to reduce the number of juveniles transferred to the adult system, thus increasing the DJJ's population and reducing the DOC's prison population. The DJJ estimates that there will be an additional 19 juveniles in the care of the DJJ due to the juveniles no longer being eligible for transfer to adult court pursuant to the bill. The DJJ estimates that the detention and treatment cost for these additional juveniles would cost $1,355,086.[83] Additional facility costs to care for these additional juveniles is indeterminate.[84] The impact on the DOC's prison population is indeterminate.

Funding and Support to the DJJ from the DSO

The removal of the provision that repeals s. 985.672, F.S., enables the DSO to continue to provide assistance, funding, and support for activities authorized by the DJJ.

Implementing the Revised DRAI

All costs associated with the implementation of the modified DRAI have been or will be absorbed by the DJJ and this bill will not result in a fiscal impact on the DJJ with regards to such operational changes.

[80] Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).
[81] Department of Juvenile Justice, *PJO Statewide Report*, (last updated January 22, 2018) (on file with the Senate Criminal Justice Committee).
[82] Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).
[83] *Id.*
[84] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 320.08058(11), F.S., currently authorizes the DHSMV to allocate the proceeds from the "Invest in Children" license plate annual use fee, while the DJJ allocates the proceeds in practice. Replacing the word "department" in statute with "Department of Juvenile Justice" would rectify this discrepancy.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.08058, 985.03, 985.037, 985.039, 985.101, 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.35, 985.439, 985.557, 985.601, and 985.672.

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute:

- Removes the requirement that the proceeds from the "Invest in Children" license plate must be allocated based on each county's proportionate share of the license plate annual use fee;
- Revises the DRAI used to determine placement of a juvenile in detention care;
- Replaces the term "nonsecure" with "supervised release" and makes other conforming changes throughout ch. 985, F.S., to be consistent with terminology and operation of the revised DRAI;
- Changes the minimum age in which a juvenile qualifies for transfer to adult court by discretionary direct file to 15 or 16 years of age (currently 14 or 15) if he or she is charged with an enumerated felony;
- Removes provisions related to modifying the minimum age in which a juvenile can be transferred to adult court by judicial waiver, discretionary waiver for 16 and 17 year olds, and mandatory direct file; and
- Removes the repeal date for statutory authority (s. 985.672, F.S.) for the DJJ's DSO.

B. Amendments:

None.

By Senator Bracy

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A bill to be entitled

An act relating to juvenile justice; amending s. 985.26, F.S.; requiring that a prolific juvenile offender be held in secure detention until a detention hearing is held if the juvenile violated the conditions of nonsecure detention; amending s. 985.433, F.S.; requiring a court to receive and consider a predisposition report before committing a child if the court determines that adjudication and commitment to the Department of Juvenile Justice is appropriate; conforming a cross-reference; amending s. 985.556, F.S.; increasing the age of a child at which a state attorney may, or is required to, request a court to transfer the child to adult court for criminal prosecution; amending s. 985.557, F.S.; increasing the age of a child at which a state attorney may, or is required to, file an information against the child for prosecution as an adult; making a technical change; requiring the department to begin collecting on a certain date specified information relating to children who qualify for prosecution as adults and for children who are transferred to adult court for criminal prosecution; requiring the department to work with the Office of Program Policy Analysis and Government Accountability (OPPAGA) to generate a report analyzing the data on juveniles transferred for criminal prosecution as adults during a certain period; requiring the department to provide the report to the Governor and the Legislature by a

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certain date; requiring the department to work with OPPAGA to generate an annual report that includes certain information, and to provide the report to the Governor and the Legislature by a specified date; amending s. 985.672, F.S.; requiring that a board of directors for the department's direct-support organization be appointed according to the organization's established bylaws; deleting a provision relating to membership of the organization; extending the date of a future repeal; reenacting ss. 790.22(8), 985.115(2), 985.13(2), 985.255(2) and (3)(a) and (c), and 985.35(1)(a), F.S., relating to detention of a minor for committing a crime and using or possessing a firearm, releasing and delivery of a child from custody, probable cause affidavits, detention criteria and detention hearings, and adjudicatory hearings, respectively, to incorporate the amendment made to s. 985.26, F.S., in references thereto; reenacting s. 985.15(1), F.S., relating to filing decisions, to incorporate the amendment made to s. 985.556, F.S., in a reference thereto; reenacting ss. 985.265(5) and 985.565(4), F.S., relating to children in adult jails and sentencing alternatives for juveniles prosecuted as adults, respectively, to incorporate the amendments made to ss. 985.556 and 985.557, F.S., in references thereto; reenacting s. 985.26(2)(c), F.S., relating to the length of detention, to incorporate the amendment made to s. 985.557, F.S., in a reference thereto; providing an

effective date.

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

Section 1. Subsection (2) of section 985.26, Florida Statutes, is amended, and subsections (3) and (4) of that section are republished, to read:

985.26 Length of detention.—

(2)(a) Except as provided in paragraph (b) or paragraph (c), a child may not be held in detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.

(b) Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.

(c)1. A prolific juvenile offender under s. 985.255(1)(j) shall be placed on nonsecure detention care with electronic monitoring or in secure detention care under a special detention order until disposition. If secure detention care is ordered by the court, it must be authorized under this part and may not exceed:

a.~~1.~~ Twenty-one days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to paragraph (b); or

b.~~2.~~ Fifteen days after the entry of an order of adjudication.

2. A prolific juvenile offender who is taken into custody for a violation of the conditions of his or her nonsecure detention must be held in secure detention until a detention hearing is held.

As used in this paragraph, the term "disposition" means a declination to file under s. 985.15(1)(h), the entry of nolle prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

(3) Except as provided in subsection (2), a child may not be held in detention care for more than 15 days following the entry of an order of adjudication.

(4)(a) The time limits in subsections (2) and (3) do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child or his or her counsel or of the state. Upon the issuance of an order granting a continuance for cause on a motion by either the child, the child's counsel, or the state, the court shall conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of proceedings for the child or the state.

(b) The period for nonsecure detention care under this section is tolled on the date that the department or a law enforcement officer alleges that the child has violated a condition of the child's nonsecure detention care until the

court enters a ruling on the violation. Notwithstanding the tolling of nonsecure detention care, the court retains jurisdiction over the child for a violation of a condition of nonsecure detention care during the tolling period. If the court finds that a child has violated his or her nonsecure detention care, the number of days that the child served in any type of detention care before commission of the violation shall be excluded from the time limits under subsections (2) and (3).

Section 2. Present subsections (7) through (10) of section 985.433, Florida Statutes, are redesignated as subsections (8) through (11), respectively, a new subsection (7) is added to that section, and paragraph (c) of present subsection (7) is amended, to read:

985.433 Disposition hearings in delinquency cases.—When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

(7) If the court determines that adjudication and commitment to the department are suitable, the court must receive and consider a predisposition report, including the department's recommendation, before committing the child. The predisposition report is an indispensable prerequisite to commitment which cannot be waived by any party or by agreement of the parties.

(8) ~~(7)~~ If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing. The determination shall include a specific finding of the reasons for the decision to

adjudicate and to commit the child to the department, including any determination that the child was a member of a criminal gang.

(c) The court may also require that the child be placed in a probation program following the child's discharge from commitment. Community-based sanctions under subsection (9) ~~(8)~~ may be imposed by the court at the disposition hearing or at any time before ~~prior to~~ the child's release from commitment.

Section 3. Subsections (2) and (3) of section 985.556, Florida Statutes, are amended to read:

985.556 Waiver of juvenile court jurisdiction; hearing.—

(2) INVOLUNTARY DISCRETIONARY WAIVER.—Except as provided in subsection (3), the state attorney may file a motion requesting the court to transfer the child for criminal prosecution if the child was 15 ~~14~~ years of age or older at the time the alleged delinquent act or violation of law was committed.

(3) INVOLUNTARY MANDATORY WAIVER.—

(a) If the child was 15 ~~14~~ years of age or older, and if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a second or subsequent violent crime against a person; or

(b) If the child was 15 ~~14~~ years of age or older at the time of commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or

had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person;

the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such request, or proceed under s. 985.557(1). Upon the state attorney's request, the court shall either enter an order transferring the case and certifying the case for trial as if the child were an adult or provide written reasons for not issuing such an order.

Section 4. Subsection (1) and paragraphs (a), (b), and (d) of subsection (2) of section 985.557, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

985.557 Direct filing of an information; discretionary and mandatory criteria.—

(1) DISCRETIONARY DIRECT FILE.—

(a) With respect to any child who was ~~14 or~~ 15 or 16 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:

1. Arson;

2. Sexual battery;

3. Robbery;

4. Kidnapping;

5. Aggravated child abuse;

6. Aggravated assault;

7. Aggravated stalking;

8. Murder;

9. Manslaughter;

10. Unlawful throwing, placing, or discharging of a destructive device or bomb;

11. Armed burglary in violation of s. 810.02(2)(b) or specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), or burglary with an assault or battery in violation of s. 810.02(2)(a);

12. Aggravated battery;

13. Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;

14. Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;

15. Grand theft in violation of s. 812.014(2)(a);

16. Possessing or discharging any weapon or firearm on school property in violation of s. 790.115;

17. Home invasion robbery;

18. Carjacking; or

19. Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or grand theft of a motor vehicle valued at $20,000 or more in violation of s. 812.014(2)(b) if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

(b) With respect to any child who was ~~16 or~~ 17 years of age at the time the alleged offense was committed, the state

attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed. However, the state attorney may not file an information on a child charged with a misdemeanor, unless the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which involved an offense classified as a felony under state law.

(2) MANDATORY DIRECT FILE.—

(a) With respect to any child who was ~~16 or~~ 17 years of age at the time the alleged offense was committed, the state attorney shall file an information if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault, and the child is currently charged with a second or subsequent violent crime against a person.

(b) With respect to any child ~~16 or~~ 17 years of age at the time an offense classified as a forcible felony, as defined in s. 776.08, was committed, the state attorney shall file an information if the child has previously been adjudicated delinquent or had adjudication withheld for three acts classified as felonies each of which occurred at least 45 days apart from each other. This paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

(d)1. With respect to any child who was ~~16 or~~ 17 years of age at the time the alleged offense was committed, the state attorney shall file an information if the child has been charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-p., and, during the commission of or attempt to commit the offense, the child:

a. Actually possessed a firearm or destructive device, as those terms are defined in s. 790.001.

b. Discharged a firearm or destructive device, as described in s. 775.087(2)(a)2.

c. Discharged a firearm or destructive device, as described in s. 775.087(2)(a)3., and, as a result of the discharge, death or great bodily harm was inflicted upon any person.

2. Upon transfer, any child who is:

a. Charged under sub-subparagraph 1.a. and who has been previously adjudicated or had adjudication withheld for a forcible felony offense or any offense involving a firearm, or who has been previously placed in a residential commitment program, shall be subject to sentencing under s. 775.087(2)(a), notwithstanding s. 985.565.

b. Charged under sub-subparagraph 1.b. or sub-subparagraph 1.c., shall be subject to sentencing under s. 775.087(2)(a), notwithstanding s. 985.565.

3. Upon transfer, any child who is charged under this paragraph, but who does not meet the requirements specified in subparagraph 2., shall be sentenced under s. 985.565; however, if the court imposes a juvenile sanction, the court must commit the child to a high-risk or maximum-risk juvenile facility.

4. This paragraph shall not apply if the state attorney has

good cause to believe that exceptional circumstances exist that preclude the just prosecution of the child in adult court.

5. The Department of Corrections shall make every reasonable effort to ensure that any child ~~16 or 17 years of age~~ who is convicted and sentenced under this paragraph be completely separated such that there is no physical contact with adult offenders in the facility, to the extent that it is consistent with chapter 958.

(5) DATA COLLECTION RELATING TO DIRECT FILE.—

(a) Beginning March 1, 2019, the department shall collect data relating to children who qualify to be prosecuted as adults under s. 985.556 and this section, regardless of the outcome of the case, including, but not limited to:

1. Age.

2. Race and ethnicity.

3. Gender.

4. Circuit and county of residence.

5. Circuit and county where the offense was committed.

6. Prior adjudications or adjudications withheld.

7. Prior periods of probation, including any violations of probation.

8. Previous contacts with law enforcement agencies or the court which resulted in a civil citation, arrest, or charges being filed with the state.

9. Initial charges.

10. Charges at disposition.

11. Whether child codefendants were involved who were transferred to adult court.

12. Whether the child was represented by counsel or whether

the child waived counsel.

13. Risk assessment instrument score.

14. The child's medical, mental health, substance abuse, and trauma history.

15. The child's history of mental impairment or disability-related accommodations.

16. The child's history of abuse or neglect.

17. The child's history of foster care placements, including the number of prior placements.

18. Whether the child has below-average intellectual functioning.

19. Whether the child has received mental health services or treatment.

20. Whether the child has been the subject of a child-in-need-of-services or families-in-need-of-services petition or a dependency petition.

21. Whether the child was transferred for criminal prosecution as an adult and, if transferred, the provision of this section under which the prosecution is proceeding or proceeded.

22. The case resolution in juvenile court.

23. The case resolution in adult court.

(b) Beginning March 1, 2019, for a child transferred for criminal prosecution as an adult, the department shall also collect:

1. Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion and, if sentenced to prison, the length of the prison sentence or the enhanced sentence; and

2. Whether the child was previously found incompetent to proceed in juvenile court.

(c) For every juvenile case transferred to adult court between July 1, 2017, and June 30, 2018, the department shall work with the Office of Program Policy Analysis and Government Accountability to generate a report analyzing the data in paragraphs (a) and (b). The department must provide this report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31, 2019.

(d) The department shall work with the Office of Program Policy Analysis and Government Accountability to generate a report analyzing the aggregated data collected under paragraphs (a) and (b) on an annual basis. The department must provide this report annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31 of the following calendar year.

Section 5. Subsections (3) and (7) of section 985.672, Florida Statutes, are amended to read:

985.672 Direct-support organization; definition; use of property; board of directors; audit.—

(3) BOARD OF DIRECTORS.—The Secretary of Juvenile Justice shall appoint a board of directors of the direct-support organization according to the direct-support organization's established bylaws. ~~Members of the organization must include representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large.~~

(7) REPEAL.—This section is repealed October 1, 2028 ~~2018~~, unless reviewed and saved from repeal by the Legislature.

Section 6. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (8) of section 790.22, Florida Statutes, is reenacted to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.—

(8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor is charged with an offense that involves the use or possession of a firearm, including a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 985.26(1)-(5), if the court finds that the minor meets the criteria specified in s. 985.255, or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. The Department of Juvenile Justice shall prepare a form for all minors charged under this subsection which states the period of detention and the relevant demographic information, including, but not limited to, the gender, age, and race of the minor; whether or not the minor was represented by private counsel or a public defender; the current offense; and the minor's complete prior record, including any pending cases. The form shall be provided to the judge for determining whether the minor should be continued in

secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department.

Section 7. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (2) of section 985.115, Florida Statutes, is reenacted to read:

985.115 Release or delivery from custody.—

(2) Unless otherwise ordered by the court under s. 985.255 or s. 985.26, and unless there is a need to hold the child, a person taking a child into custody shall attempt to release the child as follows:

(a) To the child's parent, guardian, or legal custodian or, if the child's parent, guardian, or legal custodian is unavailable, unwilling, or unable to provide supervision for the child, to any responsible adult. Prior to releasing the child to a responsible adult, other than the parent, guardian, or legal custodian, the person taking the child into custody may conduct a criminal history background check of the person to whom the child is to be released. If the person has a prior felony conviction, or a conviction for child abuse, drug trafficking, or prostitution, that person is not a responsible adult for the purposes of this section. The person to whom the child is released shall agree to inform the department or the person releasing the child of the child's subsequent change of address

and to produce the child in court at such time as the court may direct, and the child shall join in the agreement.

(b) Contingent upon specific appropriation, to a shelter approved by the department or to an authorized agent.

(c) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, to a law enforcement officer who shall deliver the child to a hospital for necessary evaluation and treatment.

(d) If the child is believed to be mentally ill as defined in s. 394.463(1), to a law enforcement officer who shall take the child to a designated public receiving facility as defined in s. 394.455 for examination under s. 394.463.

(e) If the child appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse, to a law enforcement officer who shall deliver the child to a hospital, addictions receiving facility, or treatment resource.

(f) If available, to a juvenile assessment center equipped and staffed to assume custody of the child for the purpose of assessing the needs of the child in custody. The center may then release or deliver the child under this section with a copy of the assessment.

Section 8. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (2) of section 985.13, Florida Statutes, is reenacted to read:

985.13 Probable cause affidavits.—

(2) A person taking a child into custody who determines, under part V, that the child should be detained or released to a

shelter designated by the department, shall make a reasonable effort to immediately notify the parent, guardian, or legal custodian of the child and shall, without unreasonable delay, deliver the child to the appropriate juvenile probation officer or, if the court has so ordered under s. 985.255 or s. 985.26, to a detention center or facility. Upon delivery of the child, the person taking the child into custody shall make a written report or probable cause affidavit to the appropriate juvenile probation officer. Such written report or probable cause affidavit must:

(a) Identify the child and, if known, the parents, guardian, or legal custodian.

(b) Establish that the child was legally taken into custody, with sufficient information to establish the jurisdiction of the court and to make a prima facie showing that the child has committed a violation of law.

Section 9. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (2) and paragraphs (a) and (c) of subsection (3) of section 985.255, Florida Statutes, are reenacted to read:

985.255 Detention criteria; detention hearing.—

(2) A child who is charged with committing an offense that is classified as an act of domestic violence as defined in s. 741.28 and whose risk assessment instrument indicates secure detention is not appropriate may be held in secure detention if the court makes specific written findings that:

(a) Respite care for the child is not available.

(b) It is necessary to place the child in secure detention

in order to protect the victim from injury.

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or s. 985.26.

(3)(a) The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1)(d) or paragraph (1)(e), the court shall use the results of the risk assessment performed by the department and, based on the criteria in subsection (1), shall determine the need for continued detention. If the child is a prolific juvenile offender who is detained under s. 985.26(2)(c), the court shall use the results of the risk assessment performed by the department and the criteria in subsection (1) or subsection (2) only to determine whether the prolific juvenile offender should be held in secure detention.

(c) Except as provided in s. 790.22(8) or s. 985.27, when a child is placed into detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct

the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be held within 3 calendar days after the child's initial detention placement.

Section 10. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 985.35, Florida Statutes, is reenacted to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(1)(a) Except as provided in paragraph (b), the adjudicatory hearing must be held as soon as practicable after the petition alleging that a child has committed a delinquent act or violation of law is filed and in accordance with the Florida Rules of Juvenile Procedure; but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted. If the child is being detained, the time limitations in s. 985.26(2) and (3) apply.

Section 11. For the purpose of incorporating the amendment made by this act to section 985.556, Florida Statutes, in a

reference thereto, subsection (1) of section 985.15, Florida Statutes, is reenacted to read:

985.15 Filing decisions.—

(1) The state attorney may in all cases take action independent of the action or lack of action of the juvenile probation officer and shall determine the action that is in the best interest of the public and the child. If the child meets the criteria requiring prosecution as an adult under s. 985.556, the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such a request. In all other cases, the state attorney may:

(a) File a petition for dependency;

(b) File a petition under chapter 984;

(c) File a petition for delinquency;

(d) File a petition for delinquency with a motion to transfer and certify the child for prosecution as an adult;

(e) File an information under s. 985.557;

(f) Refer the case to a grand jury;

(g) Refer the child to a diversionary, pretrial intervention, arbitration, or mediation program, or to some other treatment or care program if such program commitment is voluntarily accepted by the child or the child's parents or legal guardian; or

(h) Decline to file.

Section 12. For the purpose of incorporating the amendments made by this act to sections 985.556 and 985.557, Florida Statutes, in references thereto, subsection (5) of section 985.265, Florida Statutes, is reenacted to read:

985.265 Detention transfer and release; education; adult jails.—

(5) The court shall order the delivery of a child to a jail or other facility intended or used for the detention of adults:

(a) When the child has been transferred or indicted for criminal prosecution as an adult under part X, except that the court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for criminal prosecution pursuant to either s. 985.556 or s. 985.557 to be detained or held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility; or

(b) When a child taken into custody in this state is wanted by another jurisdiction for prosecution as an adult.

The child shall be housed separately from adult inmates to prohibit a child from having regular contact with incarcerated adults, including trusties. "Regular contact" means sight and sound contact. Separation of children from adults shall permit no more than haphazard or accidental contact. The receiving jail or other facility shall contain a separate section for children and shall have an adequate staff to supervise and monitor the child's activities at all times. Supervision and monitoring of children includes physical observation and documented checks by jail or receiving facility supervisory personnel at intervals not to exceed 10 minutes. This subsection does not prohibit placing two or more children in the same cell. Under no circumstances shall a child be placed in the same cell with an adult.

Section 13. For the purpose of incorporating the amendments made by this act to sections 985.556 and 985.557, Florida Statutes, in references thereto, subsection (4) of section 985.565, Florida Statutes, is reenacted to read:

985.565 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.—

(4) SENTENCING ALTERNATIVES.—

(a) *Adult sanctions.*—

1. Cases prosecuted on indictment.—If the child is found to have committed the offense punishable by death or life imprisonment, the child shall be sentenced as an adult. If the juvenile is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he or she was indicted as a part of the criminal episode, the court may sentence as follows:

a. As an adult;

b. Under chapter 958; or

c. As a juvenile under this section.

2. Other cases.—If a child who has been transferred for criminal prosecution pursuant to information or waiver of juvenile court jurisdiction is found to have committed a violation of state law or a lesser included offense for which he or she was charged as a part of the criminal episode, the court may sentence as follows:

a. As an adult;

b. Under chapter 958; or

c. As a juvenile under this section.

3. Notwithstanding any other provision to the contrary, if the state attorney is required to file a motion to transfer and

certify the juvenile for prosecution as an adult under s. 985.556(3) and that motion is granted, or if the state attorney is required to file an information under s. 985.557(2)(a) or (b), the court must impose adult sanctions.

4. Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or enumerate the criteria in this subsection as any basis for its decision to impose adult sanctions.

5. When a child has been transferred for criminal prosecution as an adult and has been found to have committed a violation of state law, the disposition of the case may include the enforcement of any restitution ordered in any juvenile proceeding.

(b) *Juvenile sanctions.*—For juveniles transferred to adult court but who do not qualify for such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b), the court may impose juvenile sanctions under this paragraph. If juvenile sentences are imposed, the court shall, under this paragraph, adjudge the child to have committed a delinquent act. Adjudication of delinquency shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or probation previously ordered in any juvenile proceeding. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of

the child to the sentencing court for further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under subsection (1), the court may:

1. Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.

2. Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

3. Order disposition under ss. 985.435, 985.437, 985.439, 985.441, 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

(c) *Adult sanctions upon failure of juvenile sanctions.*—If a child proves not to be suitable to a commitment program, juvenile probation program, or treatment program under paragraph (b), the department shall provide the sentencing court with a written report outlining the basis for its objections to the juvenile sanction and shall simultaneously provide a copy of the report to the state attorney and the defense counsel. The department shall schedule a hearing within 30 days. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any sentence which it may lawfully impose, giving credit for all time spent by the child

in the department. The court may also classify the child as a youthful offender under s. 958.04, if appropriate. For purposes of this paragraph, a child may be found not suitable to a commitment program, community control program, or treatment program under paragraph (b) if the child commits a new violation of law while under juvenile sanctions, if the child commits any other violation of the conditions of juvenile sanctions, or if the child's actions are otherwise determined by the court to demonstrate a failure of juvenile sanctions.

(d) *Further proceedings heard in adult court.*—When a child is sentenced to juvenile sanctions, further proceedings involving those sanctions shall continue to be heard in the adult court.

(e) *School attendance.*—If the child is attending or is eligible to attend public school and the court finds that the victim or a sibling of the victim in the case is attending or may attend the same school as the child, the court placement order shall include a finding pursuant to the proceeding described in s. 985.455(2), regardless of whether adjudication is withheld.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 14. For the purpose of incorporating the amendment made by this act to section 985.557, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 985.26, Florida Statutes, is reenacted to read:

985.26 Length of detention.—

(2)

(c) A prolific juvenile offender under s. 985.255(1)(j) shall be placed on nonsecure detention care with electronic monitoring or in secure detention care under a special detention order until disposition. If secure detention care is ordered by the court, it must be authorized under this part and may not exceed:

1. Twenty-one days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to paragraph (b); or

2. Fifteen days after the entry of an order of adjudication.

As used in this paragraph, the term "disposition" means a declination to file under s. 985.15(1)(h), the entry of nolle prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

Section 15. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

1552
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 S. Monroe
Street

Phone

Tall
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1552
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

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Street

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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 Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

1552
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Albert Balido

Job Title _____

Address 201 W Park Ave #100
Street
Tal. FL 32301
City *State* *Zip*

Phone 8502573440

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1552
Bill Number (if applicable)

Topic CJ Cont

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title VP Policy

Address 100 N Duval
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Tall. FL 32301
City *State* *Zip*

Phone 850-322-9941

Email SNuzzo@JamesMadison.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1562
INTRODUCER:	Senator Passidomo
SUBJECT:	Elder Abuse
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Favorable**
2.	Harkness	Hansen	AP	**Favorable**
3.			RC	

I. Summary:

SB 1562 provides a civil cause of action for an injunction prohibiting exploitation of a vulnerable adult. The bill allows courts to grant a temporary injunction if certain conditions are met, and creates standards for the court to follow when issuing an injunction.

The bill identifies individuals who may petition the court for an injunction, provides for a choice of venue specifying where the petition may be filed, and provides a procedural framework for the parties and court.

The bill provides several remedies for vulnerable adults following issuance of an injunction, including temporary and exclusive use of a shared residence and the ability to freeze the assets of both the vulnerable adult and an individual accused of exploiting the vulnerable adult. The bill also imposes criminal penalties for violating an injunction.

The bill may increase workload and expenditures for clerks of court, law enforcement agencies, and state attorney's offices statewide.

The bill takes effect July 1, 2018.

II. Present Situation:

Vulnerable Adults

Florida is home to approximately 3.3 million residents aged 65 or older,[1] and five percent of Florida residents are aged 80 or older.[2] Many of Florida's elderly residents may be classified as 'vulnerable adults,' or individuals aged 18 or older who may experience abuse, neglect, or

[1] U.S. Census Bureau, 2013 American Community Survey
[2] *Id*.

exploitation by second parties or may fail to take care of themselves adequately.[3] While abuse, neglect, and exploitation of a vulnerable adult can take various forms, the Department of Elder Affairs has described the "Financial or Material Exploitation" of a vulnerable adult to include the following activities: "Improper use of an elder's funds, property, or assets; cashing checks without permission; forging signatures; forcing or deceiving an older person into signing a document; using an ATM/debit card without permission."[4]

Vulnerable adults residing in nursing homes, assisted living facilities, and adult family care homes are particularly affected by financial exploitation due to the risk of discharge or eviction because of the inability to pay for necessary care and services.[5] Under state and federal law, a nursing home may discharge or transfer a resident with 30 days written notice if the resident has failed, after reasonable and appropriate notice, to pay, or have paid under Medicare or Medicaid, for residence at the facility.[6] Assisted living facilities and adult family care homes may relocate or terminate the residency of a vulnerable adult with 45 days' notice or 30 days' notice, respectively.[7]

Consequently, the responsibility of caring for exploited vulnerable adults at risk of discharge or eviction may fall on various state and federal programs. In 2010, a review of 80 elder financial exploitation cases in Utah found the state's Medicaid program would potentially have to pay about $900,000 to cover the cost of care for vulnerable adults who had suffered substantial losses due to financial exploitation.[8]

Adult Protective Services Act

In 1977, the Legislature enacted the "Adult Protective Services Act," (APSA) ch. 415, F.S., which provides statutory authority for the Department of Children and Families (DCF), to investigate reports of abuse, neglect or exploitation of a vulnerable adult. Upon a report of alleged abuse, neglect, or exploitation, an assessment of an individual's need for protective services is initiated.

The APSA defines a "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.[9]
In addition to DCF intervention and services, the APSA authorizes a vulnerable adult that has been abused, neglected, or exploited, to bring a civil action to recover actual and punitive

[3] S. 415.102, F.S.
[4] Florida Department of Elder Affairs, *The Power to Prevent Elder Abuse*, available at http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder%20Abuse%20Brochure%20-%20English_web.pdf (last visited January 31, 2018).
[5] Consumer Financial Protection Bureau, *We're helping long-term care facilities protect older Americans from financial exploitation*, available at, http://www.consumerfinance.gov/blog/were-helping-long-term-care-facilities-protect-older-americans-from-financial-exploitation/ (last visited January 31, 2018).
[6] S. 400.022(1)(p), F.S.; 42 U.S.C. § 1396r.
[7] SS. 429.28(1)(k) and 429.85(1)(l), F.S.
[8] *Supra* at note 5.
[9] S. 415.102(28), F.S.

damages against the perpetrator.[10] An action under s. 415.1111, F.S. may be brought within 4 years[11] of the injury in any court of competent jurisdiction by:

- The vulnerable adult;
- The vulnerable adult's guardian;
- A person or organization acting on behalf of the vulnerable adult or the vulnerable adult's guardian; or
- The personal representative of the estate of a deceased vulnerable adult.[12]

The prevailing party in an action under s. 415.1111, F.S., may be entitled to recover attorney fees and costs.[13] The action is considered an addition to and cumulative with other legal and administrative remedies available to the vulnerable adult.

Current law also provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.[14] If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult are valued at $50,000 or more, the offender commits a felony of the first degree. If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult are valued at $10,000 or more, but less than $50,000, the offender commits a felony of the second degree. If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult are valued at less than $10,000, the offender commits a felony of the third degree.[15]

III. Effect of Proposed Changes:

Section 1 amends s. 825.101, F.S., relating to abuse, neglect, and exploitation of elderly persons, to include definitions for the terms 'exploitation' and 'vulnerable adult.'

Section 2 creates s. 825.1035, F.S., to establish a cause of action for a protective injunction to be filed by a vulnerable adult in imminent danger of being exploited. A petition for injunction may be filed by the adult's guardian, a person or organization acting on the adult's behalf with the consent of their guardian, and an individual filing a petition to have the vulnerable adult deemed incapacitated. The bill allows the action to be filed in the judicial circuit where the vulnerable adult resides, where the individual accused of exploitation (the respondent) resides, where the person filing the action resides, or where the alleged exploitation occurred.

The bill prohibits the clerk of the circuit court from assessing a filing fee for petitions filed. Subject to legislative appropriation and on a quarterly basis, the clerk may submit to the Office of the State Courts Administrator a certified request for reimbursement for the processing of such petitions, at the rate of $40 per petition.

[10] S. 415.1111, F.S.
[11] S. 95.11(3)(f), F.S.
[12] S. 415.1111, F.S.
[13] *Id.*
[14] SS. 825.101-106, F.S.
[15] S. 825.103(3), F.S.

The bill provides that the court may require payment of a bond before an injunction is issued, and requires a sworn petition be filed alleging exploitation or imminent exploitation of the vulnerable adult. The bill requires the petition to contain the following information:

- The last known residence of both the vulnerable adult and the respondent;
- The respondent's last known employer, a physical description of the respondent, and any aliases they are known to have;
- The manner in which the respondent is associated with the vulnerable adult and any previous or pending legal actions between the respondent and the vulnerable adult;
- The petitioner's knowledge of any reports made to a state agency regarding exploitation, abuse, or neglect of the vulnerable adult;
- The reasons the petitioner claims to genuinely fear an imminent danger of exploitation, or any facts the petitioner believes show the respondent has already committed exploitation; and
- Remedies sought through the injunction, which may include:
    - Prohibiting any direct or indirect contact between the respondent and the vulnerable adult;
    - Immediately restraining the respondent from committing any acts of exploitation;
    - Freezing specified assets of the vulnerable adult, whether solely in the adult's name, jointly named with the respondent, or solely in the respondent's name; and
    - Providing any other conditions the court feels necessary to protect the vulnerable adult or their assets.

The bill requires the court to schedule a hearing on the petition at the earliest possible date and requires that the respondent be personally served with a copy of the petition and any other documents relevant to the proceeding.

The bill also requires the clerk of the court to assist the petitioner in filing, including providing simplified forms and filing instructions. The clerk must provide the petitioner with two copies of the petition, one of which is serviceable, and explain the process of serving and enforcing the petition. Clerks of court in each county statewide must provide informational brochures to petitioners upon filing containing information about exploitation of vulnerable adults and the effect of providing false information to the court.

The bill requires the court to consider the following factors in determining whether to grant an injunction:

- The vulnerable adult is a victim of exploitation or the court has reasonable cause to believe that the vulnerable adult is in imminent danger of becoming a victim of exploitation;
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law;
- There is a substantial likelihood of success on the merits;
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent; and
- Granting of a temporary injunction will not disserve the public interest.

The bill allows the court to issue injunctions providing any of the following remedies:

- Restraining the respondent from committing any acts of exploitation;
- Awarding to the vulnerable adult the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the vulnerable adult, if the court finds that the vulnerable adult is able to reside safely without the respondent;

- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing that assets under temporary freeze by injunction be returned to the vulnerable adult, or directing assets remain frozen until ownership can be determined; and/or
- Ordering such other relief as the court deems necessary for the protection of a vulnerable adult from exploitation, including injunctions or directives to law enforcement agencies.

The bill requires a temporary or final judgment on an injunction must indicate that the injunction is valid and enforceable in all counties of the state. The final judgment must indicate the date the respondent was served with the temporary or final order and include a statement that law enforcement officers are allowed to use their arrest powers to enforce the terms of the injunction.

The bill also requires the court to allow an advocate from a state attorney's office, law enforcement agency, or adult protective services to be present with the petitioner or the respondent during any court proceedings or hearings related to the injunction, provided the petitioner or the respondent has made such a request and the advocate is able to be present.

The bill provides that when an injunction is issued, the court may order that an officer from the appropriate law enforcement agency accompany the vulnerable adult and assist in placing them in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer must accept a copy of an injunction for protection against exploitation of a vulnerable adult, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served. Law enforcement must also serve any injunction freezing assets on the financial institution where the assets are held, unless the court waives such requirement.

All orders issued or changed subsequent to the service of original documents must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such an order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk of the circuit court must note on the original petition that service was effected. If delivery at the hearing is not possible, the clerk of the circuit court is required to mail certified copies of the order to the parties at the last known address of each party. When an order is served, the clerk of the circuit court must prepare a written certification to be placed in the court file specifying the time, date, and method of service.

The terms of the injunction remain in effect until the injunction is modified or dissolved. The petitioner, vulnerable adult, or the respondent may move the court to modify or dissolve an injunction at any time, and no specific allegations are required. The modification or dissolution of the injunction may be granted in addition to other civil or criminal penalties.

The clerk must notify the sheriff’s office within 24 hours of the injunction being terminated, and the sheriff’s office must then notify the Department of Law Enforcement of the termination within 24 hours.

Section 3 creates s. 825.1036, F.S., to require that, in cases where an injunction under s. 825.1035, F.S., has allegedly been violated, the clerk of the court must, upon request, assist the

petitioner in preparation of an affidavit attesting to the violation, or direct the petitioner to the office in that judicial circuit that serves as the central intake point for injunction violations.

The bill requires the clerk to forward completed affidavits to the state attorney's office and the appropriate court office in that circuit, and if the affidavit alleges criminal activity, to law enforcement. If criminal activity is alleged, within 20 days law enforcement must investigate the allegations and report findings to the state attorney's office, which must decide within 30 days whether or not to file criminal charges or state that the case remains under investigation.

The bill requires that if the court believes the vulnerable adult is in imminent danger should the court fail to act prior to the state attorney's decision to file charges, the court must order the state attorney's office to file an order to show cause as to why the respondent should not be held in contempt. Alternatively, the court may also notify the state attorney's office that it is proceeding to enforce the violation through a ruling of criminal contempt.

The bill provides that willful violation of an injunction constitutes a first degree misdemeanor. Violation of an injunction can occur through any of the following acts by the respondent:

- Refusing to vacate a dwelling shared with the vulnerable adult;
- Going within 500 feet of the vulnerable adult's residence;
- Exploiting the vulnerable adult;
- Violating the injunction in any other way through an intentional unlawful threat or act of violence toward the vulnerable adult;
- Contacting the vulnerable adult in any way unless otherwise allowed by the injunction; or
- Damaging the vulnerable adult's property.

The bill provides that anyone with two or more prior convictions for violation of an injunction against the same victim who violates a third time commits a third degree felony. Anyone who suffers any type of economic loss resulting from a violation can be awarded damages by the court that issued the injunction.

Section 4 amends s. 901.15, F.S., to add a violation of an injunction issued under the newly created statutes to the list of crimes that permit law enforcement to make a warrantless arrest.

Section 5 provides an effective date of July 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:

None.

C. Government Sector Impact:

The bill will create an indeterminate increase in workload and expenditures for the clerks of courts, law enforcement agencies, and state attorney's offices due to the additional responsibilities imposed in issuing, serving, and enforcing injunctions. In Fiscal Year 2016-17, the Department of Children and Families reported that it received and investigated 55,890 reports of abuse from the Florida Abuse Hotline related to vulnerable adults, as defined by s. 415.102, F.S. Of those, roughly 1,000 were found to be verified exploitation cases. The department estimates that approximately 400 of those cases would result in an injunction.

The bill creates a new third degree felony for anyone with two or more prior convictions for violation of an injunction against the same victim who violates a third time. The Criminal Justice Impact Conference estimates that this provision will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). [16]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is silent on instances where a respondent owns and operates an assisted living facility (ALF), or similar setting housing multiple patients/residents, the ALF is also the respondent's primary residence, and an injunction is issued with respect to a single patient living in the facility. Granting temporary, exclusive use of the residence to the vulnerable adult may create issues with regard to care of the other patients/residents of the facility. Similarly, a freeze on the respondent's assets in such a case, particularly if those assets are used in caregiving for other patients/residents, may also be problematic.

[16] 2018 Conference Results (through February 12, 2018), Criminal Justice Impact Conference, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls (last visited on Feb. 16, 2018).

The bill also provides a broad choice of venue, allowing an action to be brought in the circuit where the vulnerable adult lives, where the respondent lives, where the person filing the action lives, or where the alleged exploitation occurred. One purpose of venue rules is to ensure that the case takes place in a forum that is convenient for the parties.[17] A possible solution could be to eliminate the site where the alleged exploitation occurred as a venue option, as it is possible none of the parties to the case reside in that judicial circuit.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 825.101 and 901.15.

This bill creates the following sections of the Florida Statutes: 825.1035 and 825.1036.

IX. Additional Information:

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

None.

B. Amendments:

None.

[17] Mary Garvey Algero, *In Defense of Forum Shopping: A Realistic Look at Selecting a Venue*, 78 Neb. L.Rev. 79 (1999).

By Senator Passidomo

28-00542A-18 20181562__

A bill to be entitled

An act relating to elder abuse; amending s. 825.101, F.S.; defining terms; creating s. 825.1035, F.S.; creating a cause of action for an injunction for protection against the exploitation of a vulnerable adult; providing for standing to bring a cause of action for an injunction; providing that an injunction may be sought regardless of any other action that may be pending between specified parties; specifying that the right to petition for an injunction is not affected by a person temporarily or permanently vacating a residence or household to avoid exploitation; providing a list of persons who may seek an injunction; providing that parties to an injunction may not be required to be represented by an attorney; specifying that the petitioner is liable for actual damages under certain circumstances; providing for the submission of evidence to the court; providing for venue; providing that exploitation already having occurred is not required as a prerequisite for filing for or issuance of an injunction; requiring that a petition be filed in certain proceedings under ch. 744, F.S.; prohibiting the clerk of the circuit court from assessing a filing fee under certain circumstances; authorizing the clerk of the circuit court to request a reimbursement for such petitions, subject to the appropriation of funds for that purpose; requiring the clerk of the circuit court to pay from such reimbursement any fee not exceeding $20

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that a law enforcement agency requests; prohibiting the court from requiring a bond for the entry of the injunction; requiring a sworn petition to contain certain allegations and statements; requiring the court to set a hearing at a certain time; requiring the respondent to be personally served with certain documents prior to the hearing; requiring the clerk of the circuit court to assist the petitioner in filing an injunction or petition by providing certain forms and instructions; requiring the clerk of the court to ensure the petitioner's privacy; requiring the clerk of the court to provide the petitioners with certified copies of the injunction order; requiring that the clerks of the court and appropriate staff receive certain training; requiring that the clerk of the circuit court make available certain informational brochures and create and distribute a specified brochure containing specified information to the petitioner at the time of filing for an injunction; authorizing the court to grant a temporary injunction ex parte under certain circumstances; prohibiting the use of evidence other than verified pleadings or affidavits in an ex parte hearing; providing an exception; requiring the court to follow certain procedures when issuing an order denying a petition for an ex parte injunction; prohibiting an ex parte temporary injunction from having a duration longer than a specified number of days; requiring that a full hearing be set for a date no later than the date the

temporary injunction expires; authorizing the court to grant a continuance of the hearing for good cause; authorizing the court to grant specified relief under certain circumstances; providing factors that a court must consider when determining whether petitioners have reasonable cause; requiring that the court allow certain advocates to be present under certain circumstances; requiring that the terms of certain injunctions remain in effect until modified or dissolved; authorizing either party to move at any time to modify or dissolve an injunction; requiring that a temporary or final judgment on an injunction meet certain requirements; specifying that granting separate orders of protection to opposing parties is not legally sufficient for certain purposes; requiring that certain proceedings be recorded; providing requirements and options for service of process; authorizing the court to waive the service of process requirement for a financial institution; requiring that the clerk of the circuit court deliver a certified copy of certain orders meeting certain criteria to the parties under certain circumstances; providing options for noting the service was effective; requiring that the clerk of the circuit court place a written certification in the court file and notify the sheriff under certain circumstances; authorizing the clerk of the circuit court to serve certain respondents by certified mail; requiring that the clerk of the circuit court, law enforcement

officers, and sheriffs follow certain procedures within a certain timeframe after an injunction has been issued or an injunction becomes ineffective; requiring the clerk of the circuit court to provide copies of certain petitions and orders to the adult protective services program; requiring the adult protective services program to treat petitions in a certain manner; requiring the adult protective services program to submit to the court the results of any previous investigations relating to the vulnerable adult within a specified timeframe; providing options for enforcing and prosecuting a violation of an injunction; requiring that the clerk of the circuit collect any assessment or fine ordered by the court and transfer it to the Department of Revenue for deposit into the General Revenue fund on a monthly basis; requiring that a respondent held in custody after an arrest for violating an injunction be brought before the court as expeditiously as possible; providing construction; creating s. 825.1036, F.S.; requiring that a clerk of the circuit court assist the petitioner in preparing an affidavit or direct the petitioner to a certain office, under certain circumstances; requiring the clerk of the circuit court or the office assisting the petitioner to immediately forward the affidavit to certain people and places depending on certain circumstances; requiring a law enforcement agency to complete its investigation and forward the affidavit along with a

report of any information obtained through its investigation to the state attorney within a specified timeframe; requiring the state attorney to determine how it will proceed within a specified timeframe; authorizing the court to immediately issue an order of appointment of the state attorney in certain circumstances; requiring the court to immediately notify the state attorney that the court is proceeding to enforce the violation through a ruling of criminal contempt if the court does not issue an order of appointment; providing a penalty for a willful violation of an injunction; providing an exception; providing for how an injunction may be violated; providing that a person with two or more prior convictions for violation of an injunction or foreign protection order against the same victim who commits a subsequent violation against the same victim commits a third degree felony; defining conviction; authorizing the court to award economic damages to a person who suffers an injury or loss as a result of a violation of an injunction; amending s. 901.15, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (6) through (12) of section 825.101, Florida Statutes, are redesignated as subsections (7) through (13), respectively, and a new subsection (6) and

subsection (14) are added to that section, to read:

825.101 Definitions.—As used in this chapter:

(6) "Exploitation" has the same meaning as the term "exploitation of an elderly person or disabled adult" as defined in s. 825.103(1).

(14) "Vulnerable adult" has the same meaning as in s. 415.102.

Section 2. Section 825.1035, Florida Statutes, is created to read:

825.1035 Injunction for protection against exploitation of vulnerable adults.—

(1) There is created a cause of action for an injunction for protection against the exploitation of a vulnerable adult.

(a) Any person described in paragraph (d) has standing in the circuit court to file a sworn petition for an injunction for protection against the exploitation of a vulnerable adult.

(b) A sworn petition for an injunction for protection against the exploitation of a vulnerable adult may be filed regardless of whether any other cause of action is currently pending between either the petitioner and the respondent or the vulnerable adult and the respondent. However, the pendency of any such cause of action shall be noted in the petition.

(c) A person temporarily or permanently vacating a residence or household in an attempt to avoid exploitation does not affect his or her right to petition for an injunction.

(d) This cause of action for an injunction may be sought by:

1. A vulnerable adult in imminent danger of being exploited;

2. The guardian of a vulnerable adult in imminent danger of being exploited;

3. A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; or

4. A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.

(e) Parties to an injunction for protection against the exploitation of a vulnerable adult may not be required to be represented by an attorney.

(f) Notwithstanding any other law, the petitioner is liable for actual damages if it is found that the petition was without substantial fact or legal support.

(g) Any person who offers evidence relating to the exploitation of a vulnerable adult must present the evidence under oath at a hearing for which all parties have been given reasonable notice.

(h) Notwithstanding chapter 47, a petition for an injunction for protection against the exploitation of a vulnerable adult may be filed in the circuit where the petitioner currently resides, where the respondent resides, where the vulnerable adult resides, or where the exploitation occurred. There is no minimum requirement of residency to petition for an injunction for protection against the exploitation of a vulnerable adult. It is not required as a prerequisite of filing a petition for or issuance of an injunction under this section for exploitation to have already occurred. If a proceeding concerning the vulnerable adult under

chapter 744 is pending at the time of the filing, the petition must be filed in that proceeding.

(i) Notwithstanding any other provision of law, the clerk of the circuit court may not assess a filing fee for petitions filed under this section. However, subject to legislative appropriation for such purpose, the clerk of the circuit court may, on a quarterly basis, submit a certified request for reimbursement to the Office of the State Courts Administrator for the processing of such petitions, at the rate of $40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From each reimbursement received, the clerk of the circuit court shall pay any law enforcement agency serving the injunction for protection against the exploitation of a vulnerable adult the fee requested by the law enforcement agency. However, the fee may not exceed $20.

(j) The court may require a bond for the entry of an injunction for protection against the exploitation of a vulnerable adult.

(2)(a) A sworn petition filed under this section must allege the existence of exploitation, or the imminent exploitation, of the vulnerable adult and must include the specific facts and circumstances for which relief is sought.

(b) The sworn petition must be in substantially the following form:

PETITION FOR INJUNCTION

FOR Protection against the exploitation of a vulnerable adult

Before me, the undersigned authority, personally appeared Petitioner ...(Name)..., who has been sworn and says that the following statements are true:

1. The vulnerable adult resides at: ...(address)...

(The petitioner may furnish the address to the court in a separate confidential filing if, for safety reasons, the vulnerable adult requests that the location of his or her current residence be kept confidential.)

2. The respondent resides at: ...(last known address)....

3. The respondent's last known place of employment is: ...(name of business and address)....

4. Physical description of the respondent: ....

Race....

Sex....

Date of birth....

Height....

Weight....

Eye color....

Hair color....

Distinguishing marks or scars....

5. Aliases of the respondent: ....

6. The respondent is associated with the vulnerable adult as follows: ....

7. The following describes any other cause of action currently pending between the petitioner and the respondent, any proceeding under chapter 744 concerning the vulnerable adult, and any previous or pending attempts by the petitioner to obtain an injunction for protection against exploitation of the vulnerable adult in this or any other circuit; related case

numbers, if available; and the results of any such attempts:..... .....

8. The following describes the petitioner's knowledge of any reports made to a government agency, including, but not limited to, the Department of Elderly Affairs, the Department of Children and Families, and the adult protective services program relating to the abuse, neglect, or exploitation of the vulnerable adult; any investigations performed by a government agency relating to abuse, neglect, or exploitation of the vulnerable adult; and the results of any such reports or investigations:..... .....

9. The petitioner knows the vulnerable adult is either a victim of exploitation or the petitioner has reasonable cause to believe the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation because the respondent has: ....(describe in the spaces below the incidents of exploitation) .....

10. The petitioner genuinely fears imminent exploitation of the vulnerable adult by the respondent.

11. The petitioner seeks an injunction for the protection of the vulnerable adult, including: ...(mark appropriate section or sections)....

....Prohibiting the respondent from having any direct or indirect contact with the vulnerable adult.

....Immediately restraining the respondent from committing any acts of exploitation against the vulnerable adult.

....Freezing the assets of the vulnerable adult held at ...(name and address of depository or financial institution)...

even if titled jointly with the respondent, or in the respondent's name only, in the court's discretion.

....Providing any terms the court deems necessary for the protection of the vulnerable adult or his or her assets, including any injunctions or directives to law enforcement agencies.

(c) Each petition for an injunction for protection against the exploitation of a vulnerable adult must contain, directly above the signature line, a statement in all capital letters and bold type not smaller than the surrounding text, as follows:

I HAVE READ EACH STATEMENT MADE IN THIS PETITION AND EACH SUCH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

(d) Upon the filing of the petition, the court shall schedule a hearing on the petition on the earliest possible date. The respondent shall be personally served, pursuant to chapter 48, with a copy of the petition, financial affidavit, notice of hearing, and temporary injunction, if any, prior to the hearing.

(3)(a) The clerk of the circuit court shall assist the petitioner in filing an injunction for protection against the exploitation of a vulnerable adult and any petition alleging a violation thereof.

(b) The clerk of the circuit court shall provide simplified

petition forms for the injunction for protection against the exploitation of a vulnerable adult, and any modifications thereto, and for the enforcement thereof, and instructions for completion of such forms.

(c) The clerk of the circuit court shall, to the extent practicable, ensure the petitioner's privacy while completing such forms.

(d) The clerk of the circuit court shall provide the petitioner with at least two certified copies of the order of injunction, one of which is serviceable, and shall inform the petitioner of the process for service and enforcement.

(e) Clerks of the circuit court and appropriate staff in each county shall receive training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks.

(f) The clerk of the circuit court in each county shall make available informational brochures on the exploitation of vulnerable adults when such brochures are provided by local senior centers, local aging and disability resource centers, or appropriate state or federal agencies.

(g) The clerk of the circuit court in each county shall produce an informational brochure and provide it to the petitioner at the time of filing for an injunction for protection against the exploitation of a vulnerable adult. The brochure must include information about the exploitation of vulnerable adults and the effect of providing false information to the court.

(4)(a)1. The court may grant a temporary injunction ex parte, pending a full hearing, and may grant such relief as the

court deems proper if it appears to the court that:

a. An immediate and present danger of exploitation of the vulnerable adult exists;

b. There is a likelihood of irreparable harm and nonavailability of an adequate remedy at law;

c. There is a substantial likelihood of success on the merits;

d. The threatened injury to the vulnerable adult outweighs possible harm to the respondent; and

e. Granting a temporary injunction will not disserve the public interest.

2. Such relief the court deems proper may include, but is not limited to, injunctions doing any of the following:

a. Restraining the respondent from committing any acts of exploitation against the vulnerable adult.

b. Awarding to the vulnerable adult the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share, or barring the respondent from the residence of the vulnerable adult, if the court finds that the vulnerable adult is able to reside safely without the respondent.

c. Freezing any assets of the vulnerable adult in any depository or financial institution whether titled solely in the vulnerable adult's name, solely in the respondent's name, jointly with the respondent, in guardianship, in trust, or in a Totten trust.

(I) Assets held by a guardian for the vulnerable adult may be frozen only by an order entered by the court overseeing the guardianship proceeding.

(II) Assets held by a trust may be frozen only by an order of the court if all the trustees of the trust are served with process in accordance with Rule 1.070, Florida Rules of Civil Procedure, and are given reasonable notice prior to any hearing on the petition.

d. Prohibiting the respondent from having any direct or indirect contact with the vulnerable adult.

e. Providing any injunctions or directives to law enforcement agencies.

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining an ex parte temporary injunction, only verified pleadings or affidavits may be used as evidence unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction must be by written order and note the legal grounds for denial. When the only ground for denial is failure to demonstrate appearance of an immediate and present danger of exploitation of a vulnerable adult, the court must set a full hearing on the petition for injunction at the earliest possible date. Nothing in this paragraph affects a petitioner's right to promptly amend any petition consistent with the Florida Rules of Civil Procedure.

(c) An ex parte temporary injunction may be effective for a fixed period not to exceed 15 days. A full hearing, as provided by this section, must be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during the hearing for good cause shown by any party, which must include a continuance to obtain service of process.

(5)(a)1. The court may grant such relief as the court deems proper when, upon notice and hearing, it appears to the court that:

a. The vulnerable adult is the victim of exploitation or that the vulnerable adult is in imminent danger of becoming a victim of exploitation;

b. There is a likelihood of irreparable harm and nonavailability of an adequate remedy at law;

c. There is a substantial likelihood of success on the merits;

d. The threatened injury to the vulnerable adult outweighs possible harm to the respondent; and

e. Granting a temporary injunction will not disserve the public interest.

2. Such relief may include, but need not be limited to, injunctions doing any of the following:

a. Restraining the respondent from committing any acts of exploitation.

b. Awarding to the vulnerable adult the exclusive use and possession of the dwelling that the vulnerable adult and the respondent share or excluding the respondent from the residence of the vulnerable adult, if the court finds that the vulnerable adult is able to reside safely without the respondent.

c. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent.

d. Directing that assets under temporary freeze by injunction be returned to the vulnerable adult, or directing that those assets remain frozen until ownership can be

determined.

e. Ordering such other relief as the court deems necessary for the protection of a victim of exploitation, including injunctions or directives to law enforcement agencies, as provided in this section.

(b) In determining whether a petitioner has reasonable cause to believe that the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation, the court shall consider and evaluate all relevant factors, including, but not limited to, any of the following:

1. The existence of a verifiable order of protection issued previously or from another jurisdiction.

2. Any history of exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult.

3. Any history of the vulnerable adult being previously exploited or unduly influenced.

4. The capacity of the vulnerable adult to make decisions related to his or her finances and property.

5. Susceptibility of the vulnerable adult to undue influence.

6. Any criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.

(c) The court must allow an advocate from a state attorney's office, a law enforcement agency, or the adult protective services program to be present with the petitioner or the respondent during any court proceedings or hearings related to the injunction, provided the petitioner or the respondent has made such a request and the advocate is able to be present.

(d) The terms of an injunction restraining the respondent as provided in paragraph (a) remain in effect until the injunction is modified or dissolved. The petitioner, respondent, or vulnerable adult may move at any time to modify or dissolve the injunction. No specific allegations are required for modification or dissolution of the injunction, which may be granted in addition to other civil or criminal penalties.

(e) A temporary or final judgment on an injunction must, on its face, indicate:

1. That the injunction is valid and enforceable in all counties of this state.

2. That law enforcement officers may use their arrest powers pursuant to s. 901.15(6) to enforce the terms of the injunction.

3. That the court had jurisdiction over the parties and subject matter under state law and that reasonable notice and opportunity to be heard were given to the person against whom the order was sought, in a manner that was sufficient to protect that person's right to due process.

4. The date the respondent was served with the temporary or final order, if obtainable.

(f) The fact that a separate order of protection is granted to each opposing party is not legally sufficient to deny any remedy to either party or to prove that the parties are equally at fault or equally endangered.

(g) All proceedings conducted pursuant to this subsection must be recorded. Recording may be by electronic means as provided by the Rules of Judicial Administration.

(6)(a)1.a. The clerk of the circuit court shall furnish a

copy of the petition, the financial affidavit, the notice of hearing, and any temporary injunction to the sheriff or a law enforcement agency of the county in which the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. At the request of the sheriff, the clerk of the circuit court may transmit a facsimile copy of an injunction that has been certified by the clerk of the circuit court pursuant to subparagraph 4., and this facsimile copy may be served in the same manner as a certified copy. The clerk of the circuit court shall also furnish to the sheriff such information on the respondent's physical description and location as is required by the Florida Department of Law Enforcement to comply with the verification procedures set forth in sub-subparagraph b.

b. Upon receiving a facsimile copy, the sheriff must verify receipt with the clerk of the circuit court before attempting to serve it upon the respondent. If the sheriff is in possession of an injunction that has been certified by the clerk of the circuit court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy.

c. Notwithstanding any other provision of law, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency performing service pursuant to this section shall use service and verification procedures consistent with those of the sheriff.

2.a. The clerk of the circuit court shall furnish a copy of the petition, the financial affidavit, the notice of hearing, and any temporary injunction to the sheriff or a law enforcement agency of the county in which the vulnerable adult resides or can be found, who shall serve it upon the vulnerable adult as soon thereafter as possible on any day of the week and at any time of the day or night. At the request of the sheriff, the clerk of the circuit court may transmit a facsimile copy of an injunction that has been certified by the clerk of the circuit court pursuant to subparagraph 4., and this facsimile copy may be served in the same manner as a certified copy. The clerk of the circuit court shall also furnish to the sheriff such information on the vulnerable adult's physical description and location as is required by the Florida Department of Law Enforcement to comply with the verification procedures set forth in sub-subparagraph b.

b. Upon receiving a facsimile copy, the sheriff must verify receipt with the clerk of the circuit court before attempting to serve it upon the vulnerable adult. If the sheriff is in possession of an injunction that has been certified by the clerk of the circuit court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer, who shall serve it in the same manner as a certified copy.

c. Notwithstanding any other provision of law, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction of the circuit to effect service. A law enforcement agency performing service pursuant to this section shall use service and verification procedures consistent with those of the

sheriff.

3. When an injunction for protection against the exploitation of a vulnerable adult is issued, if the petitioner requests that a law enforcement agency assist the vulnerable adult, the court may order that an officer from the appropriate law enforcement agency accompany the vulnerable adult and assist in the service or execution of the injunction, including returning possession of a dwelling or residence to the vulnerable adult. A law enforcement officer shall accept a copy of an injunction, certified by the clerk of the circuit court pursuant to subparagraph 4., from the petitioner and immediately serve it upon a respondent who has been located but not yet served. The law enforcement agency must also serve any injunction freezing assets on the financial institution where assets subject to dissipation are held; the court may waive such service.

4. The clerk of the circuit court shall certify a copy of all orders issued, changed, continued, extended, or vacated subsequent to the original service of the original petition, notice of hearing, or temporary injunction and deliver the certified copy to the parties at the time of the entry of the order. The parties may acknowledge receipt of a certified order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk of the circuit court must note on the original petition that service was effected. If delivery at the hearing during which an order is issued is not possible, the clerk of the circuit court shall mail certified copies of the order to the parties at their respective last known mailing addresses.

Service by mail is complete upon mailing. When an order is served pursuant to this subparagraph the clerk of the circuit court shall notify the sheriff of the service and prepare a written certification to be placed in the court file specifying the time, date, and method of service.

5. If the respondent has been previously served with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for an injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b)1. Within 24 hours after the court issues an injunction for protection against the exploitation of a vulnerable adult or changes, continues, extends, or vacates such an injunction, the clerk of the circuit court must forward a certified copy of the order to the sheriff with jurisdiction over the residence of the petitioner for service in accordance with this subsection.

2. Within 24 hours after service of an injunction for protection against the exploitation of a vulnerable adult upon a respondent, the law enforcement officer who served the injunction must forward the written proof of service to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against the exploitation of a vulnerable adult, the sheriff must make information related to the injunction available to this state's law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement.

4. Within 24 hours after the sheriff or other law

enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement.

5. Within 24 hours after an injunction for protection against the exploitation of a vulnerable adult is terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the circuit court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 1. The sheriff's agency shall, within 24 hours after receiving such notification from the clerk of the circuit court, notify the Florida Department of Law Enforcement of such action of the court.

(c) The clerk of the court shall provide a copy of all petitions filed pursuant to this section and all orders entered on such petitions to the adult protective services program, which shall treat such petitions in the same manner as a report of abuse, neglect, or exploitation of a vulnerable adult. Within 24 hours after receipt of such orders or petitions, the adult protective services program shall submit to the court overseeing proceedings on the petition the results of any previous investigations relating to the vulnerable adult.

(7)(a) The court may enforce a violation of an injunction for protection against the exploitation of a vulnerable adult through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under s. 825.1036. Any assessment or fine ordered by the court enforcing such injunction shall be collected by the clerk of the circuit

court and transferred on a monthly basis to the Department of Revenue for deposit in the Domestic Violence Trust Fund.

(b) If the respondent is arrested by a law enforcement officer under s. 901.15(6) or for a violation of s. 825.1036, the respondent must be held in custody until he or she is brought before the court, which must occur as expeditiously as possible, for the purpose of enforcing the injunction for protection against the exploitation of a vulnerable adult and for admittance to bail in accordance with chapter 903 and the applicable rules of criminal procedure, pending a hearing.

(8) Nothing in this section may affect the title to any real estate.

Section 3. Section 825.1036, Florida Statutes, is created to read:

825.1036 Violation of an injunction for protection against the exploitation of a vulnerable adult.—

(1) In the event of a violation of an injunction for protection against the exploitation of a vulnerable adult when the person who violated such injunction has not been arrested, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred. The clerk of the circuit court shall assist the petitioner in the preparation of an affidavit in support of the violation or direct the petitioner to the office operated by the court within the circuit which has been designated by the chief judge of that circuit as the central intake point for injunction violations and where the petitioner can receive assistance in the preparation of the affidavit in support of the violation.

(2) The affidavit shall be immediately forwarded by the

clerk of the circuit court or the office assisting the petitioner to the state attorney of that circuit and to such court or judge as the chief judge of that circuit determines to be the recipient of affidavits of violation. If the affidavit alleges that a crime has been committed, the clerk of the circuit court or the office assisting the petitioner shall also forward a copy of the petitioner's affidavit to the appropriate law enforcement agency for investigation. Within 20 days after receipt of the affidavit, the local law enforcement agency shall complete its investigation and forward the affidavit and a report containing the agency's findings to the state attorney. The state attorney shall determine within 30 working days whether its office will proceed to file criminal charges, prepare a motion for an order to show cause as to why the respondent should not be held in criminal contempt, prepare both as alternative findings, or file notice that the case remains under investigation or is pending subject to another action.

(3) If, based on its familiarity with the case, the court has knowledge that the vulnerable adult is in immediate danger if the court fails to act prior to the decision of the state attorney to prosecute, it should immediately issue an order of appointment of the state attorney to file a motion for an order to show cause as to why the respondent should not be held in contempt. If the court does not issue an order of appointment of the state attorney, it shall immediately notify the state attorney that the court is proceeding to enforce the violation through a ruling of criminal contempt.

(4)(a) Except as provided in paragraph (b), a person who willfully violates an injunction for protection against the

exploitation of a vulnerable adult commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person may violate such injunction by:

1. Refusing to vacate the dwelling shared with the vulnerable adult;

2. Going to, or being within 500 feet of, the vulnerable adult's residence;

3. Exploiting or unduly influencing the vulnerable adult;

4. Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the vulnerable adult;

5. Telephoning, contacting, or otherwise communicating with the vulnerable adult directly or indirectly, unless the injunction specifically allows indirect contact through a third party;

6. Knowingly and intentionally coming within 100 feet of the vulnerable adult's motor vehicle, regardless of whether that vehicle is occupied; or

7. Defacing or destroying the vulnerable adult's personal property.

(b) A person who has two or more prior convictions for violation of an injunction or foreign protection order against the same victim, and who subsequently commits a violation of any injunction or foreign protection order against the same victim, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term "conviction" means a determination of guilt which is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is

entered.

(5) Any person who suffers an injury or loss as a result of a violation of an injunction for protection against the exploitation of a vulnerable adult may be awarded economic damages for that injury or loss by the court issuing the injunction. Damages include costs and attorney fees for enforcement of such injunction.

Section 4. Subsection (6) of section 901.15, Florida Statutes, is amended to read:

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

(6) There is probable cause to believe that the person has committed a criminal act according to s. 790.233 or according to s. 741.31, ~~or~~ s. 784.047, or s. 825.1036 which violates an injunction for protection entered pursuant to s. 741.30, ~~or~~ s. 784.046, or s. 825.1035 or a foreign protection order accorded full faith and credit pursuant to s. 741.315, over the objection of the petitioner, if necessary.

Section 5. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 9, 2018

I respectfully request that **Senate Bill #1562**, relating to Elder Abuse, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/19
Meeting Date

SB 1562
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Elder Abuse

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave.
Street

Tally FL 32301
City *State* *Zip*

Phone 850 228-4243

Email zsmith@aarp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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)

February 22, 2018
Meeting Date

1562
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Elder Abuse

Name Brian Jogerst

Job Title

Address PO Box 11094
Street

Phone 850.222.0191

Tallahassee FL 32302
City *State* *Zip*

Email brian@bhandassociates.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Academy of Florida Elder Law Attorneys and Elder Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.18
Meeting Date

1562
Bill Number (if applicable)

Topic Elder Abuse

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 S. Monroe
Street

Phone

Tall
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1562
Bill Number (if applicable)

Topic Vulnerable Adults / Elder Abuse

Amendment Barcode (if applicable)

Name Melody Arnold

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Health Care Assoc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1594
INTRODUCER:	Health Policy Committee and Senator Brandes
SUBJECT:	Nursing
DATE:	February 21, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Fav/CS**
2.	Loe	Hansen	AP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1594 changes the title of "advanced registered nurse practitioner" (ARNP) to "advanced practice registered nurse" (APRN) throughout the Florida Statutes. Instead of being certified to practice in this state as currently required for ARNPs, the bill requires APRNs to be licensed.

The bill repeals the clinical nurse specialist (CNS) license and incorporates the CNS specialty certification into APRN licensure. All authorizations granted to, and requirements of, APRNs will be applicable to a CNS, including but not limited to, the authority to prescribe controlled substances under certain parameters and to maintain medical malpractice insurance.

The bill will increase workload in the Department of Health (DOH); however, the costs associated with this increased workload will be absorbed within DOH's existing resources.

The effective date of the bill is October 1, 2018.

II. Present Situation:

Part I of ch. 464, F.S., the Nurse Practice Act, governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH)[1] and regulated by the Board of Nursing (BON).[2]

A person desiring to practice nursing in Florida must obtain a Florida license by examination,[3] endorsement,[4] or holding an active multistate license pursuant to s. 464.0095, F.S., the Nurse Licensure Compact.[5]

Advanced Registered Nurse Practitioner (ARNP)

An ARNP is a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, and includes certified registered nurse anesthetists (CRNAs), psychiatric nurses, certified nurse midwives (CNM), and nurse practitioners.[6]

Advanced or specialized nursing practice means, in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the BON, which, by virtue of post-basic specialized education, training, and experience, are appropriately performed by an ARNP. Within the context of advanced or specialized nursing practice, the ARNP may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The ARNP may also perform acts of medical diagnosis and treatment, prescription, and operation as authorized within the framework of an established supervisory protocol.[7] In addition, within a supervisory protocol, an ARNP may:

- Prescribe, dispense, administer, or order any drug; however, an ARNP must have graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills to prescribe controlled substances;
- Order diagnostic tests and physical and occupational therapy;
- Order any medication for administration in a hospital, ambulatory surgical center, or nursing home; and

---

[1] Section 464.008, F.S.

[2] The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve four-year terms. All members must be residents of the state. Seven members must be registered nurses who are representative of the diverse areas of practice within the nursing profession. Three members must be licensed practical nurses and three members must be laypersons. At least one member of the BON must be 60 years of age or older. *See* Section 464.004, F.S.

[3] An individual must pass the National Council Licensure Examination (NCLEX), have graduated from an approved nursing education program, and pass applicable background screening. *See* s. 464.008, F.S.

[4] Licensed in another state or territory, actively practiced nursing for two of the previous three years prior to application without discipline, and meet the equivalent educational and examination qualifications.

[5] In 2016, the Legislature created s. 464.0095, F.S., which adopts the revised Nurse Licensure Compact (NLC) in its entirety into state law. This legislation allows licensed practical and professional nurses to practice in all member states by maintaining a single license in the nurse's primary state of residence. The effective date of s. 464.0095, F.S., was December 31, 2018, or upon enactment of the revised NLC into law by 26 states, whichever occurs first. At least 26 states have enacted the revised NLC into law and the Enhanced Nurse Licensure Compact Interstate Commission set the implementation date as January 19, 2018. The DOH and the Florida BON have implemented the NLC. *See* http://floridasnursing.gov/latest-news/the-enlc-was-implemented-on-january-19-2018/ (last visited Jan. 25, 2018).

[6] *See* ss. 464.003(3) and 464.012(1)(a), F.S.

[7] Section 464.003(2), F.S.

- Perform additional acts within his or her specialty.[8]

An ARNP must maintain medical malpractice insurance or provide proof of financial responsibility, unless exempt.[9]

Any nurse desiring to obtain Florida certification as an ARNP must submit to the DOH, among other information, proof that he or she holds a current Florida professional nursing license as an RN or holds an active multistate license to practice professional nursing, and meets at least one of the following additional requirements:

- Certification by an appropriate specialty board such as a registered nurse anesthetist, psychiatric nurse, or nurse midwife; or
- Graduation from a nursing program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. An applicant graduating on or after October 1, 1998, must meet this requirement for initial certification as a nurse practitioner. An applicant graduating on or after October 1, 2001, must meet this requirement for initial certification as a CRNA[10]

As of June 30, 2017, there were 27,705 certified ARNPs and 32 ARNP/CNSs certified in Florida.[11]

Clinical Nurse Specialists

Clinical nurse specialist practice (CNP) means the delivery and management of advanced practice nursing care to individuals or groups, including the ability to:

- Assess the health status of individuals and families using methods appropriate to the population and area of practice.
- Diagnose human responses to actual or potential health problems.
- Plan for health promotion, disease prevention, and therapeutic intervention in collaboration with the patient or client.
- Implement therapeutic interventions based on the nurse specialist's area of expertise and within the scope of advanced nursing practice, including, but not limited to, direct nursing care, counseling, teaching, and collaboration with other licensed health care providers.
- Coordinate health care as necessary and appropriate and evaluate with the patient or client the effectiveness of care.[12]

A nurse seeking certification as a clinical nurse specialist must submit to the DOH proof that he or she holds a current Florida professional nursing license as an RN, a master's degree in a clinical nursing specialty, and either:

- Current certification in a specialty area as a clinical nurse specialist from a nationally recognized certifying body; or

[8] Section 464.012(3) and (4), F.S.
[9] Section 456.048, F.S.
[10] Section 464.012(1), F.S., as amended by Ch. 2017-134, Laws of Fla.
[11] Department of Health, Division of Medical Quality Assurance *Annual Report & Long-Range Plan Fiscal Year 2016-2017* available at http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1617.pdf, p. 12 (last visited Jan. 25, 2018)
[12] Section 464.003(7), F.S.

- 1000 hours of clinical experience in the clinical specialty in which he or she is academically prepared, with at least 500 hours of clinical practice after graduation, if the master's degree is in a specialty area for which there is no certification within the clinical nurse specialist role and specialty.

As of June 30, 2017, there were 182 CNSs certified in Florida.[13]

APRN Title Nationally

Currently 36 states use the APRN title.[14] The National Council of State Boards of Nursing's Consensus Model for APRN Regulation recommends, among other things, using the title of APRN and state recognition of four categories of APRN: CNS, CNP, CRNA, and CNM.[15]

III. Effect of Proposed Changes:

Section 1 amends s. 464.003, F.S., to define the term "advanced practice registered nurse" to mean any person licensed in this state to practice professional nursing and who is licensed in an advanced nursing practice, including certified nurse midwives (CNMs), certified nurse practitioners, certified registered nurse anesthetists (CRNAs), clinical nurse specialists (CNSs), and psychiatric nurses.

The definitions of "clinical nurse specialist" and "clinical nurse specialist practice" are deleted.

Section 2 repeals s. 464.0115, F.S., relating to the certification of clinical nurse specialists.

Section 3 amends s. 464.012, F.S., to create a licensure structure instead of a certification process for the renamed advanced practice registered nurse (APRN).

Clinical nurse specialists are added to the provisions applicable to licensure as an APRN. This will require the APRN/CNS to maintain medical malpractice insurance, or provide proof of financial responsibility, which is not currently required for a CNS.[16] The APRN/CNS will be authorized to prescribe controlled substances if qualified, and in accordance with the limitations applicable to other categories of APRN.[17]

One of the requirements for licensure and licensure renewal is certification by an appropriate specialty board. The bill identifies the acceptable categories of certifications to include certified nurse midwife, certified nurse practitioner, certified registered nurse anesthetist, clinical nurse

[13] *Id.* at p. 13.
[14] National Council of State Boards of Nursing, *APRN Title Map*, (last updated 9/27/2017), *available at* https://ncsbn.org/5398.htm (last visited Jan. 25, 2018).
[15] National Council of State Boards of Nursing, *ARNP Campaign for Consensus: Moving Toward Uniformity in State Laws*, available at https://ncsbn.org/campaign-for-consensus.htm (last visited Jan. 25, 2018).
[16] Section 456.048, F.S.
[17] Prescribing privileges: are limited to a seven-day supply for controlled substances listed in Schedule II; do not include the prescribing of psychotropic medications for children under 18 years of age, unless prescribed by a psychiatric nurse; and do not extend to prescribing in a pain management clinic. The APRN/CNS will also be subject to the disciplinary actions applicable to an ARNP (APRN under this bill). *See* ss. 456.44, 458.3265(2)(b), 459.0137(2)(b), 464.012(3)(a) and (6), and 464.018, F.S.

specialist, or psychiatric nurse. The bill authorizes the BON, by rule, to provide for provisional state licensure of all five categories of specialization to allow for passing the national certification examination.

The bill adds a new requirement for the initial licensure of a CNM or CNS as an APRN. Proof of graduation from a master's degree program is required if the applicant graduated on or after October 1, 1998, and is seeking licensure as a CNM or if the applicant graduated on or after July 1, 2007, and is seeking licensure as a CNS.

Practice parameters for each category of APRN and conforming references to the categories and the APRN title are provided in this section.

The bill requires the DOH and the BON to establish a transition plan for converting a certificate holder in good standing to a licensee. The bill authorizes an ARNP or a CNS holding a certificate to practice that is in good standing on September 30, 2018, to continue practicing with all rights, authorizations, and responsibilities under the bill for licensure as an APRN and to use the new title after the effective date of this act while the transition is completed. Applicable departmental or board disciplinary authority or enforcement responsibilities for ensuring safe nursing practice are preserved. This subsection of law expires on October 1, 2020.

Section 4 amends s. 960.28, F.S., relating to payment for victims' initial forensic physical examinations, to conform a cross-reference.

Sections 5 through 92 amend the following sections of statute to conform the term "advanced registered nurse practitioner" to "advanced practice registered nurse" and to change the reference from certification to licensure, where appropriate:

Bill Section	Statute Section	Title
5	39.303	Child protection teams and sexual abuse treatment programs; services; eligible cases.
6	39.304	Photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected child.
7	90.503	Psychotherapist-patient privilege.
8	110.12315	Prescription drug program.
9	121.0515	Special Risk Class.
10	252.515	Postdisaster Relief Assistance Act; immunity from civil liability.
11	310.071	Deputy pilot certification.
12	310.073	State pilot licensing.
13	310.081	Department to examine and license state pilots and certificate deputy pilots; vacancies.
14	320.0848	Persons who have disabilities; issuance of disabled parking permits; temporary permits; permits for certain providers of transportation services to persons who have disabilities.

Bill Section	Statute Section	Title
15	381.00315	Public health advisories; public health emergencies; isolation and quarantines.
16	381.00593	Public school volunteer health care practitioner program.
17	383.14	Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.
18	383.141	Prenatally diagnosed conditions; patient to be provided information; definitions; information clearinghouse; advisory council.
19	384.27	Physical examination and treatment.
20	390.0111	Termination of pregnancies.
21	390.012	Powers of agency; rules; disposal of fetal remains.
22	394.455	Definitions.
23	395.0191	Staff membership and clinical privileges.
24	397.311	Definitions.
25	397.4012	Exemptions from licensure.
26	397.427	Medication-assisted treatment service providers; rehabilitation program; needs assessment and provision of services; persons authorized to issue takeout medication; unlawful operation; penalty.
27	397.679	Emergency admission; circumstances justifying.
28	397.6793	Professional's certificate for emergency admission.
29	400.021	Definitions.
30	400.462	Definitions.
31	400.487	Home health service agreements; physician's, physician assistant's, and advanced registered nurse practitioner's treatment orders; patient assessment; establishment and review of plan of care; provision of services; orders not to resuscitate.
32	400.506	Licensure of nurse registries; requirements; penalties.
33	400.9973	Client admission, transfer, and discharge.
34	400.9974	Client comprehensive treatment plans; client services.
35	400.9976	Administration of medication.
36	400.9979	Restraint and seclusion; client safety.
37	401.445	Emergency examination and treatment of incapacitated persons.
38	409.905	Mandatory Medicaid services.
39	409.908	Reimbursement of Medicaid providers.
40,41	409.973	Benefits.
42	429.918	Licensure designation as a specialized Alzheimer's services adult day care center.
43	456.0391	Advanced registered nurse practitioners; information required for certification.
44	456.0392	Prescription labeling.
45	456.041	Practitioner profile; creation.
46	456.048	Financial responsibility requirements for certain health care practitioners.

Bill Section	Statute Section	Title
47	456.072	Grounds for discipline; penalties; enforcement.
48	456.44	Controlled substance prescribing.
49	458.3265	Pain-management clinics.
50	458.331	Grounds for disciplinary action; action by the board and department.
51	458.348	Formal supervisory relationships, standing orders, and established protocols; notice; standards.
52	459.0137	Pain-management clinics.
53	459.015	Grounds for disciplinary action; action by the board and department.
54	459.025	Formal supervisory relationships, standing orders, and established protocols; notice; standards.
55	464.003	Definitions.
56	464.004	Board of Nursing; membership; appointment; terms.
57	464.013	Renewal of license or certificate.
58, 59	464.015	Titles and abbreviations; restrictions; penalty.
60	464.016	Violations and penalties.
61	464.018	Disciplinary actions.
62	464.0205	Retired volunteer nurse certificate.
63	467.003	Definitions.
64	480.0475	Massage establishments; prohibited practices.
65	483.041	Definitions.
66	483.801	Exemptions.
67	486.021	Definitions.
68	490.012	Violations; penalties; injunction.
69	491.0057	Dual licensure as a marriage and family therapist.
70	491.012	Violations; penalty; injunction.
71	493.6108	Investigation of applicants by Department of Agriculture and Consumer Services.
72	627.357	Medical malpractice self-insurance.
73	627.6471	Contracts for reduced rates of payment; limitations; coinsurance and deductibles.
74	627.6472	Exclusive provider organizations.
75	627.736	Required personal injury protection benefits; exclusions; priority; claims.
76	633.412	Firefighters; qualifications for certification.
77	641.3923	Discrimination against providers prohibited.
78	766.103	Florida Medical Consent Law.
79	766.1115	Health care providers; creation of agency relationship with governmental contractors.
80	766.1116	Health care practitioner; waiver of license renewal fees and continuing education requirements.
81	766.118	Determination of noneconomic damages
82	794.08	Female genital mutilation.

Bill Section	Statute Section	Title
83	893.02	Definitions.
84	893.05	Practitioners and persons administering controlled substances in their absence.
85	943.13	Officers' minimum qualifications for employment or appointment.
86	948.03	Terms and conditions of probation.
87	1002.20	K-12 student and parent rights.
88	1002.42	Private schools.
89	1006.062	Administration of medication and provision of medical services by district school board personnel.
90	1009.65	Medical Education Reimbursement and Loan Repayment Program.
91	1009.66	Nursing Student Loan Forgiveness Program.
92	1009.67	Nursing scholarship program.

Section 93 provides for an effective date of October 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:

Currently certified CNSs (168 are in an active status) who wish to become licensed as an APRN will incur a $100 APRN licensure fee. However, the renewal fee as an APRN will be slightly less on a recurring basis because the current ARNP renewal fee is $25 less than the CNS renewal fee. The APRN/CNS will incur a cost to meet the financial responsibility requirements of the bill.

C. Government Sector Impact:

The bill will increase workload in the DOH; however, the DOH indicates that the costs associated with this increased workload may be absorbed within its existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 105-111 authorize the BON to provide for provisional state licensure of CRNAs, CNSs, CNPs, psychiatric nurses and CNMs for a period of time to allow for preparing for and passing the national certification examination. This language is unclear. Under the bill, licensure is as an APRN, not in the individual categories of specialized practice for which certification is required.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 464.003, 464.012, 960.28, 39.303, 39.304, 90.503, 110.12315, 121.0515, 252.515, 310.071, 310.073, 310.081, 320.0848, 381.00315, 381.00593, 383.14, 383.141, 384.27, 390.0111, 390.012, 394.455, 395.0191, 397.311, 397.4012, 397.427, 397.679, 397.6793, 400.021, 400.462, 400.487, 400.506, 400.9973, 400.9974, 400.9976, 400.9979, 401.445, 409.905, 409.908, 409.973, 429.918, 456.0391, 456.0392, 456.041, 456.048, 456.072, 456.44, 458.3265, 458.331, 458.348, 459.0137, 459.015, 459.025, 464.003, 464.004, 464.013, 464.015, 464.016, 464.018, 464.0205, 467.003, 480.0475, 483.041, 483.801, 486.021, 490.012, 491.0057, 491.012, 493.6108, 627.357, 627.6471, 627.6472, 627.736, 633.412, 641.3923, 766.103, 766.1115, 766.1116, 766.118, 794.08, 893.02, 893.05, 943.13, 948.03, 1002.20, 1002.42, 1006.062, 1009.65, 1009.66, and 1009.67.

This bill repeals section 464.0115 of the Florida Statutes.

This bill substantially amends Chapter 2016-109, Laws of Florida.

IX. Additional Information:

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

CS by Health Policy on January 30, 2018
The CS:

- Removed a pathway for licensure added in the bill, which had been repealed last year as obsolete;
- Added practice parameters for CNSs which were listed in the repealed certification of CNSs section of law that was inadvertently omitted when the licensure of CNSs was merged into APRN licensure;
- Removed sections in the bill that had become unnecessary since the Nurse Licensure Compact found in s. 464.0095, F.S., is now effective;

- Required a transition plan from certification to licensure and authorized practitioners to continue practicing after the effective date of the bill, under specified conditions;
- Reorganized certain provisions for uniformity and corrected grammatical and technical errors; and
- Changed the effective date of the bill from July 1, 2018, to October 1, 2018.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Brandes

588-02623-18 20181594c1

A bill to be entitled

An act relating to nursing; amending s. 464.003, F.S.; defining the term "advanced practice registered nurse"; deleting the terms "advanced registered nurse practitioner", "clinical nurse specialist" and "clinical nurse specialist practice," to conform to changes made by the act; repealing s. 464.0115, F.S., relating to the certification of clinical nurse specialists; amending s. 464.012, F.S.; requiring any nurse desiring to be licensed as an advanced practice registered nurse to apply to the Department of Health, submit proof that he or she holds a current license to practice professional nursing, and meet one or more specified requirements as determined by the Board of Nursing; authorizing the board to adopt rules to provide for provisional state licensure of certified nurse midwives, certified nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists, and psychiatric nurses for a specified period of time; requiring the department and the board to establish a transition process for converting certain certified practitioners to licensed practitioners; authorizing certain certified practitioners to continue practicing advanced nursing during a specified period of time; providing construction; providing an expiration date for provisions relating to the transition from certification to licensure; conforming provisions to changes made by the act; amending s. 960.28, F.S.;

588-02623-18 20181594c1

conforming a cross-reference; amending ss. 39.303, 39.304, 90.503, 110.12315, 121.0515, 252.515, 310.071, 310.073, 310.081, 320.0848, 381.00315, 381.00593, 383.14, 383.141, 384.27, 390.0111, 390.012, 394.455, 395.0191, 397.311, 397.4012, 397.427, 397.679, 397.6793, 400.021, 400.462, 400.487, 400.506, 400.9973, 400.9974, 400.9976, 400.9979, 401.445, 409.905, 409.908, 409.973, 429.918, 456.0391, 456.0392, 456.041, 456.048, 456.072, 456.44, 458.3265, 458.331, 458.348, 459.0137, 459.015, 459.025, 464.003, 464.004, 464.013, 464.015, 464.016, 464.018, 464.0205, 467.003, 480.0475, 483.041, 483.801, 486.021, 490.012, 491.0057, 491.012, 493.6108, 627.357, 627.6471, 627.6472, 627.736, 633.412, 641.3923, 766.103, 766.1115, 766.1116, 766.118, 794.08, 893.02, 893.05, 943.13, 948.03, 1002.20, 1002.42, 1006.062, 1009.65, 1009.66, and 1009.67, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (3), (6), and (7) of section 464.003, Florida Statutes, are amended, and subsections (8) through (23) are redesignated as subsections (6) through (21), respectively, to read:

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

(3) "Advanced practice registered nurse" ~~"Advanced registered nurse practitioner"~~ means any person licensed in this state to practice professional nursing and who is licensed

~~certified~~ in an advanced ~~or specialized~~ nursing practice, including certified nurse midwives, certified nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists ~~certified nurse midwives~~, and psychiatric nurses ~~nurse practitioners~~.

~~(6) "Clinical nurse specialist" means any person licensed in this state to practice professional nursing and certified in clinical nurse specialist practice.~~

~~(7) "Clinical nurse specialist practice" means the delivery and management of advanced practice nursing care to individuals or groups, including the ability to:~~

~~(a) Assess the health status of individuals and families using methods appropriate to the population and area of practice.~~

~~(b) Diagnose human responses to actual or potential health problems.~~

~~(c) Plan for health promotion, disease prevention, and therapeutic intervention in collaboration with the patient or client.~~

~~(d) Implement therapeutic interventions based on the nurse specialist's area of expertise and within the scope of advanced nursing practice, including, but not limited to, direct nursing care, counseling, teaching, and collaboration with other licensed health care providers.~~

~~(e) Coordinate health care as necessary and appropriate and evaluate with the patient or client the effectiveness of care.~~

Section 2. Section 464.0115, Florida Statutes, is repealed.

Section 3. Section 464.012, Florida Statutes, as amended by section 3 of chapter 2017-134, Laws of Florida, is amended to

read:

464.012 Licensure ~~Certification~~ of advanced practice registered nurses ~~advanced registered nurse practitioners~~; fees; controlled substance prescribing.—

(1) Any nurse desiring to be licensed ~~certified~~ as an advanced practice registered nurse must ~~advanced registered nurse practitioner shall~~ apply to the department and submit proof that he or she holds a current license to practice professional nursing or holds an active multistate license to practice professional nursing pursuant to s. 464.0095 and that he or she meets one or more of the following requirements as determined by the board:

(a) Certification by an appropriate specialty board. Such certification is ~~shall be~~ required for initial state licensure ~~certification~~ and any licensure renewal ~~recertification~~ as a certified nurse midwife, certified nurse practitioner, certified registered nurse anesthetist, clinical nurse specialist, or psychiatric nurse~~, or nurse midwife~~. The board may by rule provide for provisional state licensure ~~certification~~ of ~~graduate~~ certified registered nurse anesthetists, clinical nurse specialists, certified nurse practitioners, psychiatric nurses, and certified nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(b) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program is ~~shall be~~ required for initial licensure ~~certification~~ as a

certified nurse practitioner under paragraph (4)(a) ~~(4)(c)~~.

1. For applicants graduating on or after October 1, 2001, graduation from a master's degree program is ~~shall be~~ required for initial licensure ~~certification~~ as a certified registered nurse anesthetist who may perform the acts listed in ~~under~~ paragraph (4)(b) ~~(4)(a)~~.

2. For applicants graduating on or after October 1, 1998, graduation from a master's degree program is required for the initial licensure as a certified nurse midwife who may perform the acts listed in (4)(c).

3. For applicants graduating on or after July 1, 2007, graduation from a master's degree program is required for the initial licensure as a clinical nurse specialist who may perform the acts listed in (4)(d).

(2)(a) The board shall provide by rule the appropriate requirements for advanced practice registered nurses for ~~advanced registered nurse practitioners in~~ the advanced nursing practices ~~categories~~ of certified nurse midwives, certified nurse practitioners, certified registered nurse anesthetists ~~anesthetist~~, clinical ~~certified~~ nurse specialists ~~midwife~~, and psychiatric nurses ~~nurse practitioner~~.

(3) An advanced practice registered nurse ~~advanced registered nurse practitioner~~ shall perform those functions authorized in this section within the framework of an established protocol that ~~which~~ must be maintained on site at the location or locations at which an advanced practice registered nurse ~~advanced registered nurse practitioner~~ practices. In the case of multiple supervising physicians in the same group, an advanced practice registered nurse ~~advanced~~

~~registered nurse practitioner~~ must enter into a supervisory protocol with at least one physician within the physician group practice. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may:

(a) Prescribe, dispense, administer, or order any drug; however, an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may prescribe or dispense a controlled substance as defined in s. 893.03 only if the advanced practice registered nurse ~~advanced registered nurse practitioner~~ has graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills.

(b) Initiate appropriate therapies for certain conditions.

(c) Perform additional functions as may be determined by rule in accordance with s. 464.003(2).

(d) Order diagnostic tests and physical and occupational therapy.

(e) Order any medication for administration to a patient in a facility licensed under chapter 395 or part II of chapter 400, notwithstanding any provisions in chapter 465 or chapter 893.

(4) In addition to the general functions specified in subsection (3), an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may perform the following acts within his or her specialty:

(a) The certified nurse practitioner may perform any or all of the following acts within the framework of established

protocol:

1. Manage selected medical problems.

2. Order physical and occupational therapy.

3. Initiate, monitor, or alter therapies for certain uncomplicated acute illnesses.

4. Monitor and manage patients with stable chronic diseases.

5. Establish behavioral problems and diagnosis and make treatment recommendations.

(b) ~~(a)~~ The certified registered nurse anesthetist may, to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is performed, perform any or all of the following:

1. Determine the health status of the patient as it relates to the risk factors and to the anesthetic management of the patient through the performance of the general functions.

2. Based on history, physical assessment, and supplemental laboratory results, determine, with the consent of the responsible physician, the appropriate type of anesthesia within the framework of the protocol.

3. Order under the protocol preanesthetic medication.

4. Perform under the protocol procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, therapeutic, or diagnostic clinical procedures. These procedures include ordering and administering regional, spinal, and general anesthesia; inhalation agents and techniques; intravenous agents and techniques; and techniques of hypnosis.

5. Order or perform monitoring procedures indicated as

pertinent to the anesthetic health care management of the patient.

6. Support life functions during anesthesia health care, including induction and intubation procedures, the use of appropriate mechanical supportive devices, and the management of fluid, electrolyte, and blood component balances.

7. Recognize and take appropriate corrective action for abnormal patient responses to anesthesia, adjunctive medication, or other forms of therapy.

8. Recognize and treat a cardiac arrhythmia while the patient is under anesthetic care.

9. Participate in management of the patient while in the postanesthesia recovery area, including ordering the administration of fluids and drugs.

10. Place special peripheral and central venous and arterial lines for blood sampling and monitoring as appropriate.

(c) ~~(b)~~ The certified nurse midwife may, to the extent authorized by an established protocol which has been approved by the medical staff of the health care facility in which the midwifery services are performed, or approved by the nurse midwife's physician backup when the delivery is performed in a patient's home, perform any or all of the following:

1. Perform superficial minor surgical procedures.

2. Manage the patient during labor and delivery to include amniotomy, episiotomy, and repair.

3. Order, initiate, and perform appropriate anesthetic procedures.

4. Perform postpartum examination.

5. Order appropriate medications.

6. Provide family-planning services and well-woman care.

7. Manage the medical care of the normal obstetrical patient and the initial care of a newborn patient.

~~(c) The nurse practitioner may perform any or all of the following acts within the framework of established protocol:~~

~~1. Manage selected medical problems.~~

~~2. Order physical and occupational therapy.~~

~~3. Initiate, monitor, or alter therapies for certain uncomplicated acute illnesses.~~

~~4. Monitor and manage patients with stable chronic diseases.~~

~~5. Establish behavioral problems and diagnosis and make treatment recommendations.~~

(d) The clinical nurse specialist may perform any or all of the following acts within the framework of established protocol:

1. Assess the health status of individuals and families using methods appropriate to the population and area of practice.

2. Diagnose human responses to actual or potential health problems.

3. Plan for health promotion, disease prevention, and therapeutic intervention in collaboration with the patient or client.

4. Implement therapeutic interventions based on the nurse specialist's area of expertise and within the scope of advanced nursing practice, including, but not limited to, direct nursing care, counseling, teaching, and collaboration with other licensed health care providers.

5. Coordinate health care as necessary and appropriate and

evaluate with the patient or client the effectiveness of care.

(e) ~~(5)~~ A psychiatric nurse, who meets the requirements in s. 394.555(35) ~~as defined in s. 394.455~~, within the framework of an established protocol with a psychiatrist, may prescribe psychotropic controlled substances for the treatment of mental disorders.

(5) ~~(6)~~ The board shall approve for licensure ~~certify~~, and the department shall issue a license ~~certificate~~ to, any nurse meeting the qualifications in this section. The board shall establish an application fee not to exceed $100 and a biennial renewal fee not to exceed $50. The board is authorized to adopt such other rules as are necessary to implement the provisions of this section.

(6) ~~(7)~~ (a) The board shall establish a committee to recommend a formulary of controlled substances that an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may not prescribe or may prescribe only for specific uses or in limited quantities. The committee must consist of three advanced practice registered nurses ~~advanced registered nurse practitioners~~ licensed under this section, recommended by the board; three physicians licensed under chapter 458 or chapter 459 who have work experience with advanced practice registered nurses ~~advanced registered nurse practitioners~~, recommended by the Board of Medicine; and a pharmacist licensed under chapter 465 who is a doctor of pharmacy, recommended by the Board of Pharmacy. The committee may recommend an evidence-based formulary applicable to all advanced practice registered nurses ~~advanced registered nurse practitioners~~ which is limited by specialty certification, is limited to approved uses of

controlled substances, or is subject to other similar restrictions the committee finds are necessary to protect the health, safety, and welfare of the public. The formulary must restrict the prescribing of psychiatric mental health controlled substances for children younger than 18 years of age to advanced practice registered nurses ~~advanced registered nurse practitioners~~ who also are psychiatric nurses as defined in s. 394.455. The formulary must also limit the prescribing of Schedule II controlled substances as listed in s. 893.03 to a 7-day supply, except that such restriction does not apply to controlled substances that are psychiatric medications prescribed by psychiatric nurses as defined in s. 394.455.

(b) The board shall adopt by rule the recommended formulary and any revision to the formulary which it finds is supported by evidence-based clinical findings presented by the Board of Medicine, the Board of Osteopathic Medicine, or the Board of Dentistry.

(c) The formulary required under this subsection does not apply to a controlled substance that is dispensed for administration pursuant to an order, including an order for medication authorized by subparagraph (4)(b)3., subparagraph (4)(b)4., or subparagraph (4)(b)9 ~~subparagraph (4)(a)3., subparagraph (4)(a)4., or subparagraph (4)(a)9~~.

(d) The board shall adopt the committee's initial recommendation no later than October 31, 2016.

(7) ~~(8)~~ This section shall be known as "The Barbara Lumpkin Prescribing Act."

(8) The department and board shall establish a transition timeline and process for practitioners certified as of September

30, 2018, as advanced registered nurse practitioners or clinical nurse specialists, to convert a certificate in good standing to a license that becomes effective on October 1, 2018, to practice as an advanced practice registered nurse. An advanced registered nurse practitioner or a clinical nurse specialist holding a certificate to practice in good standing on September 30, 2018, may continue to practice with all rights, authorizations, and responsibilities authorized under this section for licensure as an advanced practice registered nurse and may use the applicable title under s. 464.015 after the effective date of this act while the department and board complete the transition from certification to licensure, as established under this act. This subsection may not be construed to limit or restrict the department's or board's disciplinary authority or enforcement responsibilities for safe nursing practice. This subsection expires on October 1, 2020.

Section 4. Subsection (2) of section 960.28, Florida Statutes, is amended to read:

960.28 Payment for victims' initial forensic physical examinations.—

(2) The Crime Victims' Services Office of the department shall pay for medical expenses connected with an initial forensic physical examination of a victim of sexual battery as defined in chapter 794 or a lewd or lascivious offense as defined in chapter 800. Such payment shall be made regardless of whether the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement. The payment shall be made only out of moneys allocated to the Crime Victims' Services

Office for the purposes of this section, and the payment may not exceed $500 with respect to any violation. The department shall develop and maintain separate protocols for the initial forensic physical examination of adults and children. Payment under this section is limited to medical expenses connected with the initial forensic physical examination, and payment may be made to a medical provider using an examiner qualified under part I of chapter 464, excluding s. 464.003(14) ~~s. 464.003(16)~~; chapter 458; or chapter 459. Payment made to the medical provider by the department shall be considered by the provider as payment in full for the initial forensic physical examination associated with the collection of evidence. The victim may not be required to pay, directly or indirectly, the cost of an initial forensic physical examination performed in accordance with this section.

Section 5. Paragraph (c) of subsection (5) and paragraph (a) of subsection (6) of section 39.303, Florida Statutes, are amended to read:

39.303 Child protection teams and sexual abuse treatment programs; services; eligible cases.—

(5) All abuse and neglect cases transmitted for investigation to a circuit by the hotline must be simultaneously transmitted to the child protection team for review. For the purpose of determining whether a face-to-face medical evaluation by a child protection team is necessary, all cases transmitted to the child protection team which meet the criteria in subsection (4) must be timely reviewed by:

(c) An advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464 who has a specialty in pediatrics or family medicine and is a member of

a child protection team;

(6) A face-to-face medical evaluation by a child protection team is not necessary when:

(a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the child protection team, and a consultation between the child protection team medical director or a child protection team board-certified pediatrician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, physician assistant working under the supervision of a child protection team medical director or a child protection team board-certified pediatrician, or registered nurse working under the direct supervision of a child protection team medical director or a child protection team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;

Notwithstanding paragraphs (a), (b), and (c), a child protection team medical director or a child protection team pediatrician, as authorized in subsection (5), may determine that a face-to-face medical evaluation is necessary.

Section 6. Paragraph (b) of subsection (1) of section 39.304, Florida Statutes, is amended to read:

39.304 Photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected child.—

(1)

(b) If the areas of trauma visible on a child indicate a need for a medical examination, or if the child verbally complains or otherwise exhibits distress as a result of injury through suspected child abuse, abandonment, or neglect, or is

alleged to have been sexually abused, the person required to investigate may cause the child to be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents or legal custodian. Such examination may be performed by any licensed physician or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed pursuant to part I of chapter 464. Any licensed physician~~,~~ or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed pursuant to part I of chapter 464~~,~~ who has reasonable cause to suspect that an injury was the result of child abuse, abandonment, or neglect may authorize a radiological examination to be performed on the child without the consent of the child's parent or legal custodian.

Section 7. Paragraph (a) of subsection (1) of section 90.503, Florida Statutes, is amended to read:

90.503 Psychotherapist-patient privilege.—

(1) For purposes of this section:

(a) A "psychotherapist" is:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health

counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Families pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or

5. An advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012, whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse, and limited only to actions performed in accordance with part I of chapter 464.

Section 8. Paragraph (d) of subsection (2) of section 110.12315, Florida Statutes, is amended to read:

110.12315 Prescription drug program.—The state employees' prescription drug program is established. This program shall be administered by the Department of Management Services, according to the terms and conditions of the plan as established by the relevant provisions of the annual General Appropriations Act and implementing legislation, subject to the following conditions:

(2) In providing for reimbursement of pharmacies for prescription drugs and supplies dispensed to members of the state group health insurance plan and their dependents under the state employees' prescription drug program:

(d) The department shall establish the reimbursement schedule for prescription drugs and supplies dispensed under the program. Reimbursement rates for a prescription drug or supply must be based on the cost of the generic equivalent drug or supply if a generic equivalent exists, unless the physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant prescribing the drug or supply clearly states on the prescription that the brand name drug or supply is medically necessary or that the drug or supply is included on the formulary of drugs and supplies that may not be interchanged as provided in chapter 465, in which case reimbursement must be based on the cost of the brand name drug or supply as specified in the reimbursement schedule adopted by the department.

Section 9. Paragraph (f) of subsection (3) of section 121.0515, Florida Statutes, is amended to read:

121.0515 Special Risk Class.—

(3) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(f) Effective January 1, 2001, the member must be employed in one of the following classes and must spend at least 75 percent of his or her time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution:

1. Dietitian (class codes 5203 and 5204);
2. Public health nutrition consultant (class code 5224);
3. Psychological specialist (class codes 5230 and 5231);
4. Psychologist (class code 5234);
5. Senior psychologist (class codes 5237 and 5238);

6. Regional mental health consultant (class code 5240);
7. Psychological Services Director—DCF (class code 5242);
8. Pharmacist (class codes 5245 and 5246);
9. Senior pharmacist (class codes 5248 and 5249);
10. Dentist (class code 5266);
11. Senior dentist (class code 5269);
12. Registered nurse (class codes 5290 and 5291);
13. Senior registered nurse (class codes 5292 and 5293);
14. Registered nurse specialist (class codes 5294 and 5295);
15. Clinical associate (class codes 5298 and 5299);
16. Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ (class codes 5297 and 5300);
17. Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ specialist (class codes 5304 and 5305);
18. Registered nurse supervisor (class codes 5306 and 5307);
19. Senior registered nurse supervisor (class codes 5308 and 5309);
20. Registered nursing consultant (class codes 5312 and 5313);
21. Quality management program supervisor (class code 5314);
22. Executive nursing director (class codes 5320 and 5321);
23. Speech and hearing therapist (class code 5406); or
24. Pharmacy manager (class code 5251);

Section 10. Paragraph (a) of subsection (3) of section 252.515, Florida Statutes, is amended to read:

252.515 Postdisaster Relief Assistance Act; immunity from

civil liability.—

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

(a) "Emergency first responder" means:

1. A physician licensed under chapter 458.

2. An osteopathic physician licensed under chapter 459.

3. A chiropractic physician licensed under chapter 460.

4. A podiatric physician licensed under chapter 461.

5. A dentist licensed under chapter 466.

6. An advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012.

7. A physician assistant licensed under s. 458.347 or s. 459.022.

8. A worker employed by a public or private hospital in the state.

9. A paramedic as defined in s. 401.23(17).

10. An emergency medical technician as defined in s. 401.23(11).

11. A firefighter as defined in s. 633.102.

12. A law enforcement officer as defined in s. 943.10.

13. A member of the Florida National Guard.

14. Any other personnel designated as emergency personnel by the Governor pursuant to a declared emergency.

Section 11. Paragraph (c) of subsection (1) of section 310.071, Florida Statutes, is amended to read:

310.071 Deputy pilot certification.—

(1) In addition to meeting other requirements specified in this chapter, each applicant for certification as a deputy pilot must:

(c) Be in good physical and mental health, as evidenced by

documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a physician assistant and that controlled substance was prescribed by that physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant. To maintain eligibility as a certificated deputy pilot, each certificated deputy pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder satisfactorily meets the standards. The standards for certificateholders shall include a drug test.

Section 12. Subsection (3) of section 310.073, Florida Statutes, is amended to read:

310.073 State pilot licensing.—In addition to meeting other requirements specified in this chapter, each applicant for license as a state pilot must:

(3) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within

the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a physician assistant and that controlled substance was prescribed by that physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant. To maintain eligibility as a licensed state pilot, each licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the licensee satisfactorily meets the standards. The standards for licensees shall include a drug test.

Section 13. Paragraph (b) of subsection (3) of section 310.081, Florida Statutes, is amended to read:

310.081 Department to examine and license state pilots and certificate deputy pilots; vacancies.—

(3) Pilots shall hold their licenses or certificates pursuant to the requirements of this chapter so long as they:

(b) Are in good physical and mental health as evidenced by documentary proof of having satisfactorily passed a physical examination administered by a licensed physician or physician assistant within each calendar year. The board shall adopt rules to establish requirements for passing the physical examination,

which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot or a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a physician assistant and that controlled substance was prescribed by that physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant. To maintain eligibility as a certificated deputy pilot or licensed state pilot, each certificated deputy pilot or licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder or licensee satisfactorily meets the standards. The standards for certificateholders and for licensees shall include a drug test.

Upon resignation or in the case of disability permanently affecting a pilot’s ability to serve, the state license or certificate issued under this chapter shall be revoked by the department.

Section 14. Paragraph (b) of subsection (1) of section 320.0848, Florida Statutes, is amended to read:

320.0848 Persons who have disabilities; issuance of disabled parking permits; temporary permits; permits for certain providers of transportation services to persons who have disabilities.—

(1)

(b)1. The person must be currently certified as being legally blind or as having any of the following disabilities that render him or her unable to walk 200 feet without stopping to rest:

a. Inability to walk without the use of or assistance from a brace, cane, crutch, prosthetic device, or other assistive device, or without the assistance of another person. If the assistive device significantly restores the person's ability to walk to the extent that the person can walk without severe limitation, the person is not eligible for the exemption parking permit.

b. The need to permanently use a wheelchair.

c. Restriction by lung disease to the extent that the person's forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or the person's arterial oxygen is less than 60 mm/hg on room air at rest.

d. Use of portable oxygen.

e. Restriction by cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association.

f. Severe limitation in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.

2. The certification of disability which is required under subparagraph 1. must be provided by a physician licensed under chapter 458, chapter 459, or chapter 460, by a podiatric physician licensed under chapter 461, by an optometrist licensed

under chapter 463, by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464 under the protocol of a licensed physician as stated in this subparagraph, by a physician assistant licensed under chapter 458 or chapter 459, or by a similarly licensed physician from another state if the application is accompanied by documentation of the physician's licensure in the other state and a form signed by the out-of-state physician verifying his or her knowledge of this state's eligibility guidelines.

Section 15. Paragraph (c) of subsection (1) of section 381.00315, Florida Statutes, is amended to read:

381.00315 Public health advisories; public health emergencies; isolation and quarantines.—The State Health Officer is responsible for declaring public health emergencies, issuing public health advisories, and ordering isolation or quarantines.

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

(c) "Public health emergency" means any occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters. Before declaring a public health emergency, the State Health Officer shall, to the extent possible, consult with the Governor and shall notify the Chief of Domestic Security. The declaration of a public health emergency shall continue until the State Health Officer finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and he or she terminates the declaration. However, a declaration of a public health emergency may not continue for

longer than 60 days unless the Governor concurs in the renewal of the declaration. The State Health Officer, upon declaration of a public health emergency, may take actions that are necessary to protect the public health. Such actions include, but are not limited to:

1. Directing manufacturers of prescription drugs or over-the-counter drugs who are permitted under chapter 499 and wholesalers of prescription drugs located in this state who are permitted under chapter 499 to give priority to the shipping of specified drugs to pharmacies and health care providers within geographic areas that have been identified by the State Health Officer. The State Health Officer must identify the drugs to be shipped. Manufacturers and wholesalers located in the state must respond to the State Health Officer's priority shipping directive before shipping the specified drugs.

2. Notwithstanding chapters 465 and 499 and rules adopted thereunder, directing pharmacists employed by the department to compound bulk prescription drugs and provide these bulk prescription drugs to physicians and nurses of county health departments or any qualified person authorized by the State Health Officer for administration to persons as part of a prophylactic or treatment regimen.

3. Notwithstanding s. 456.036, temporarily reactivating the inactive license of the following health care practitioners, when such practitioners are needed to respond to the public health emergency: physicians licensed under chapter 458 or chapter 459; physician assistants licensed under chapter 458 or chapter 459; licensed practical nurses, registered nurses, and advanced practice registered nurses ~~advanced registered nurse~~

~~practitioners~~ licensed under part I of chapter 464; respiratory therapists licensed under part V of chapter 468; and emergency medical technicians and paramedics certified under part III of chapter 401. Only those health care practitioners specified in this paragraph who possess an unencumbered inactive license and who request that such license be reactivated are eligible for reactivation. An inactive license that is reactivated under this paragraph shall return to inactive status when the public health emergency ends or before the end of the public health emergency if the State Health Officer determines that the health care practitioner is no longer needed to provide services during the public health emergency. Such licenses may only be reactivated for a period not to exceed 90 days without meeting the requirements of s. 456.036 or chapter 401, as applicable.

4. Ordering an individual to be examined, tested, vaccinated, treated, isolated, or quarantined for communicable diseases that have significant morbidity or mortality and present a severe danger to public health. Individuals who are unable or unwilling to be examined, tested, vaccinated, or treated for reasons of health, religion, or conscience may be subjected to isolation or quarantine.

a. Examination, testing, vaccination, or treatment may be performed by any qualified person authorized by the State Health Officer.

b. If the individual poses a danger to the public health, the State Health Officer may subject the individual to isolation or quarantine. If there is no practical method to isolate or quarantine the individual, the State Health Officer may use any means necessary to vaccinate or treat the individual.

Any order of the State Health Officer given to effectuate this paragraph shall be immediately enforceable by a law enforcement officer under s. 381.0012.

Section 16. Subsection (3) of section 381.00593, Florida Statutes, is amended to read:

381.00593 Public school volunteer health care practitioner program.—

(3) For purposes of this section, the term "health care practitioner" means a physician licensed under chapter 458; an osteopathic physician licensed under chapter 459; a chiropractic physician licensed under chapter 460; a podiatric physician licensed under chapter 461; an optometrist licensed under chapter 463; an advanced practice registered nurse ~~advanced registered nurse practitioner~~, registered nurse, or licensed practical nurse licensed under part I of chapter 464; a pharmacist licensed under chapter 465; a dentist or dental hygienist licensed under chapter 466; a midwife licensed under chapter 467; a speech-language pathologist or audiologist licensed under part I of chapter 468; a dietitian/nutritionist licensed under part X of chapter 468; or a physical therapist licensed under chapter 486.

Section 17. Paragraph (c) of subsection (1) of section 383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(1) SCREENING REQUIREMENTS.—To help ensure access to the maternal and child health care system, the Department of Health shall promote the screening of all newborns born in Florida for

metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, as screening programs accepted by current medical practice become available and practical in the judgment of the department. The department shall also promote the identification and screening of all newborns in this state and their families for environmental risk factors such as low income, poor education, maternal and family stress, emotional instability, substance abuse, and other high-risk conditions associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services, including, but not limited to, parent support and training programs, home visitation, and case management. Identification, perinatal screening, and intervention efforts shall begin prior to and immediately following the birth of the child by the attending health care provider. Such efforts shall be conducted in hospitals, perinatal centers, county health departments, school health programs that provide prenatal care, and birthing centers, and reported to the Office of Vital Statistics.

(c) *Release of screening results.*—Notwithstanding any law to the contrary, the State Public Health Laboratory may release, directly or through the Children's Medical Services program, the results of a newborn's hearing and metabolic tests or screenings to the newborn's health care practitioner, the newborn's parent or legal guardian, the newborn's personal representative, or a person designated by the newborn's parent or legal guardian. As used in this paragraph, the term "health care practitioner" means a physician or physician assistant licensed under chapter 458; an osteopathic physician or physician assistant licensed

under chapter 459; an advanced practice registered nurse ~~advanced registered nurse practitioner~~, registered nurse, or licensed practical nurse licensed under part I of chapter 464; a midwife licensed under chapter 467; a speech-language pathologist or audiologist licensed under part I of chapter 468; or a dietician or nutritionist licensed under part X of chapter 468.

Section 18. Paragraph (c) of subsection (1) of section 383.141, Florida Statutes, is amended to read:

383.141 Prenatally diagnosed conditions; patient to be provided information; definitions; information clearinghouse; advisory council.—

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

(c) "Health care provider" means a practitioner licensed or registered under chapter 458 or chapter 459 or an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under chapter 464.

Section 19. Paragraph (a) of subsection (7) of section 384.27, Florida Statutes, is amended to read:

384.27 Physical examination and treatment.—

(7)(a) A health care practitioner licensed under chapter 458, ~~or~~ chapter 459, or ~~certified under~~ s. 464.012 may provide expedited partner therapy if the following requirements are met:

1. The patient has a laboratory-confirmed or suspected clinical diagnosis of a sexually transmissible disease.

2. The patient indicates that he or she has a partner with whom he or she engaged in sexual activity before the diagnosis of the sexually transmissible disease.

3. The patient indicates that his or her partner is unable

or unlikely to seek clinical services in a timely manner.

Section 20. Paragraph (a) of subsection (3) of section 390.0111, Florida Statutes, is amended to read:

390.0111 Termination of pregnancies.—

(3) CONSENTS REQUIRED.—A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian.

(a) Except in the case of a medical emergency, consent to a termination of pregnancy is voluntary and informed only if:

1. The physician who is to perform the procedure, or the referring physician, has, at a minimum, orally, while physically present in the same room, and at least 24 hours before the procedure, informed the woman of:

a. The nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and willful decision of whether to terminate a pregnancy.

b. The probable gestational age of the fetus, verified by an ultrasound, at the time the termination of pregnancy is to be performed.

(I) The ultrasound must be performed by the physician who is to perform the abortion or by a person having documented evidence that he or she has completed a course in the operation of ultrasound equipment as prescribed by rule and who is working in conjunction with the physician.

(II) The person performing the ultrasound must offer the woman the opportunity to view the live ultrasound images and

hear an explanation of them. If the woman accepts the opportunity to view the images and hear the explanation, a physician or a registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant working in conjunction with the physician must contemporaneously review and explain the images to the woman before the woman gives informed consent to having an abortion procedure performed.

(III) The woman has a right to decline to view and hear the explanation of the live ultrasound images after she is informed of her right and offered an opportunity to view the images and hear the explanation. If the woman declines, the woman shall complete a form acknowledging that she was offered an opportunity to view and hear the explanation of the images but that she declined that opportunity. The form must also indicate that the woman's decision was not based on any undue influence from any person to discourage her from viewing the images or hearing the explanation and that she declined of her own free will.

(IV) Unless requested by the woman, the person performing the ultrasound may not offer the opportunity to view the images and hear the explanation and the explanation may not be given if, at the time the woman schedules or arrives for her appointment to obtain an abortion, a copy of a restraining order, police report, medical record, or other court order or documentation is presented which provides evidence that the woman is obtaining the abortion because the woman is a victim of rape, incest, domestic violence, or human trafficking or that the woman has been diagnosed as having a condition that, on the

basis of a physician's good faith clinical judgment, would create a serious risk of substantial and irreversible impairment of a major bodily function if the woman delayed terminating her pregnancy.

c. The medical risks to the woman and fetus of carrying the pregnancy to term.

The physician may provide the information required in this subparagraph within 24 hours before the procedure if requested by the woman at the time she schedules or arrives for her appointment to obtain an abortion and if she presents to the physician a copy of a restraining order, police report, medical record, or other court order or documentation evidencing that she is obtaining the abortion because she is a victim of rape, incest, domestic violence, or human trafficking.

2. Printed materials prepared and provided by the department have been provided to the pregnant woman, if she chooses to view these materials, including:

a. A description of the fetus, including a description of the various stages of development.

b. A list of entities that offer alternatives to terminating the pregnancy.

c. Detailed information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care.

3. The woman acknowledges in writing, before the termination of pregnancy, that the information required to be provided under this subsection has been provided.

Nothing in this paragraph is intended to prohibit a physician from providing any additional information which the physician deems material to the woman's informed decision to terminate her pregnancy.

Section 21. Paragraphs (c), (e), and (f) of subsection (3) of section 390.012, Florida Statutes, are amended to read:

390.012 Powers of agency; rules; disposal of fetal remains.—

(3) For clinics that perform or claim to perform abortions after the first trimester of pregnancy, the agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter, including the following:

(c) Rules relating to abortion clinic personnel. At a minimum, these rules shall require that:

1. The abortion clinic designate a medical director who is licensed to practice medicine in this state, and all physicians who perform abortions in the clinic have admitting privileges at a hospital within reasonable proximity to the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.

2. If a physician is not present after an abortion is performed, a registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant be present and remain at the clinic to provide postoperative monitoring and care until the patient is discharged.

3. Surgical assistants receive training in counseling,

patient advocacy, and the specific responsibilities associated with the services the surgical assistants provide.

4. Volunteers receive training in the specific responsibilities associated with the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

(e) Rules relating to the abortion procedure. At a minimum, these rules shall require:

1. That a physician, registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant is available to all patients throughout the abortion procedure.

2. Standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.

3. Appropriate use of general and local anesthesia, analgesia, and sedation if ordered by the physician.

4. Appropriate precautions, such as the establishment of intravenous access at least for patients undergoing post-first trimester abortions.

5. Appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.

(f) Rules that prescribe minimum recovery room standards. At a minimum, these rules must require that:

1. Postprocedure recovery rooms be supervised and staffed

to meet the patients' needs.

2. Immediate postprocedure care consist of observation in a supervised recovery room for as long as the patient's condition warrants.

3. A registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remain on the premises of the abortion clinic until all patients are discharged.

4. A physician sign the discharge order and be readily accessible and available until the last patient is discharged to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary.

5. A physician discuss Rho(D) immune globulin with each patient for whom it is indicated and ensure that it is offered to the patient in the immediate postoperative period or will be available to her within 72 hours after completion of the abortion procedure. If the patient refuses the Rho(D) immune globulin, she and a witness must sign a refusal form approved by the agency which must be included in the medical record.

6. Written instructions with regard to postabortion coitus, signs of possible problems, and general aftercare which are specific to the patient be given to each patient. The instructions must include information regarding access to medical care for complications, including a telephone number for use in the event of a medical emergency.

7. A minimum length of time be specified, by type of

abortion procedure and duration of gestation, during which a patient must remain in the recovery room.

8. The physician ensure that, with the patient's consent, a registered nurse, licensed practical nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant from the abortion clinic makes a good faith effort to contact the patient by telephone within 24 hours after surgery to assess the patient's recovery.

9. Equipment and services be readily accessible to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.

Section 22. Subsections (35) and (44) of section 394.455, Florida Statutes, are amended to read:

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

(35) "Psychiatric nurse" means an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012 who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician.

(44) "Service provider" means a receiving facility, a facility licensed under chapter 397, a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced practice registered nurse

~~advanced registered nurse practitioner~~, a psychiatric nurse, or a qualified professional as defined in s. 39.01.

Section 23. Paragraphs (a) and (b) of subsection (2) and subsection (4) of section 395.0191, Florida Statutes, are amended to read:

395.0191 Staff membership and clinical privileges.—

(2)(a) Each licensed facility shall establish rules and procedures for consideration of an application for clinical privileges submitted by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed ~~and certified~~ under part I of chapter 464, in accordance with the provisions of this section. No licensed facility shall deny such application solely because the applicant is licensed under part I of chapter 464 or because the applicant is not a participant in the Florida Birth-Related Neurological Injury Compensation Plan.

(b) An advanced practice registered nurse ~~advanced registered nurse practitioner~~ who is certified as a registered nurse anesthetist licensed under part I of chapter 464 shall administer anesthesia under the onsite medical direction of a professional licensed under chapter 458, chapter 459, or chapter 466, and in accordance with an established protocol approved by the medical staff. The medical direction shall specifically address the needs of the individual patient.

(4) Nothing herein shall restrict in any way the authority of the medical staff of a licensed facility to review for approval or disapproval all applications for appointment and reappointment to all categories of staff and to make recommendations on each applicant to the governing board,

including the delineation of privileges to be granted in each case. In making such recommendations and in the delineation of privileges, each applicant shall be considered individually pursuant to criteria for a doctor licensed under chapter 458, chapter 459, chapter 461, or chapter 466, or for an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed ~~and certified~~ under part I of chapter 464, or for a psychologist licensed under chapter 490, as applicable. The applicant's eligibility for staff membership or clinical privileges shall be determined by the applicant's background, experience, health, training, and demonstrated competency; the applicant's adherence to applicable professional ethics; the applicant's reputation; and the applicant's ability to work with others and by such other elements as determined by the governing board, consistent with this part.

Section 24. Subsection (34) of section 397.311, Florida Statutes, is amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(34) "Qualified professional" means a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment

with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

Section 25. Section 397.4012, Florida Statutes, is amended to read:

397.4012 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(1) A hospital or hospital-based component licensed under chapter 395.

(2) A nursing home facility as defined in s. 400.021.

(3) A substance abuse education program established pursuant to s. 1003.42.

(4) A facility or institution operated by the Federal Government.

(5) A physician or physician assistant licensed under chapter 458 or chapter 459.

(6) A psychologist licensed under chapter 490.

(7) A social worker, marriage and family therapist, or mental health counselor licensed under chapter 491.

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. 397.311(26) is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious,

spiritual, or ecclesiastical in nature.

(9) Facilities licensed under chapter 393 which, in addition to providing services to persons with developmental disabilities, also provide services to persons developmentally at risk as a consequence of exposure to alcohol or other legal or illegal drugs while in utero.

(10) DUI education and screening services provided pursuant to ss. 316.192, 316.193, 322.095, 322.271, and 322.291. Persons or entities providing treatment services must be licensed under this chapter unless exempted from licensing as provided in this section.

(11) A facility licensed under s. 394.875 as a crisis stabilization unit.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.4014. Furthermore, this chapter may not be construed to limit the practice of a physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ does not represent to the public that he or she is a licensed service provider and does not

provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 26. Subsections (4), (7), and (8) of section 397.427, Florida Statutes, are amended to read:

397.427 Medication-assisted treatment service providers; rehabilitation program; needs assessment and provision of services; persons authorized to issue takeout medication; unlawful operation; penalty.—

(4) Notwithstanding s. 465.019(2), a physician assistant, a registered nurse, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a licensed practical nurse working for a licensed service provider may deliver takeout medication for opiate treatment to persons enrolled in a maintenance treatment program for medication-assisted treatment for opiate addiction if:

(a) The medication-assisted treatment program for opiate addiction has an appropriate valid permit issued pursuant to rules adopted by the Board of Pharmacy;

(b) The medication for treatment of opiate addiction has been delivered pursuant to a valid prescription written by the program's physician licensed pursuant to chapter 458 or chapter 459;

(c) The medication for treatment of opiate addiction which is ordered appears on a formulary and is prepackaged and prelabeled with dosage instructions and distributed from a source authorized under chapter 499;

(d) Each licensed provider adopts written protocols which provide for supervision of the physician assistant, registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or licensed practical nurse by a physician licensed pursuant to chapter 458 or chapter 459 and for the procedures by which patients' medications may be delivered by the physician assistant, registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or licensed practical nurse. Such protocols shall be signed by the supervising physician and either the administering registered nurse, the advanced practice registered nurse ~~advanced registered nurse practitioner~~, or the licensed practical nurse.

(e) Each licensed service provider maintains and has available for inspection by representatives of the Board of Pharmacy all medical records and patient care protocols, including records of medications delivered to patients, in accordance with the board.

(7) A physician assistant, a registered nurse, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a licensed practical nurse working for a licensed service provider may deliver medication as prescribed by rule if:

(a) The service provider is authorized to provide medication-assisted treatment;

(b) The medication has been administered pursuant to a valid prescription written by the program's physician who is licensed under chapter 458 or chapter 459; and

(c) The medication ordered appears on a formulary or meets federal requirements for medication-assisted treatment.

(8) Each licensed service provider that provides medication-assisted treatment must adopt written protocols as specified by the department and in accordance with federally required rules, regulations, or procedures. The protocol shall provide for the supervision of the physician assistant, registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or licensed practical nurse working under the supervision of a physician who is licensed under chapter 458 or chapter 459. The protocol must specify how the medication will be used in conjunction with counseling or psychosocial treatment and that the services provided will be included on the treatment plan. The protocol must specify the procedures by which medication-assisted treatment may be administered by the physician assistant, registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or licensed practical nurse. These protocols shall be signed by the supervising physician and the administering physician assistant, registered nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or licensed practical nurse.

Section 27. Section 397.679, Florida Statutes, is amended to read:

397.679 Emergency admission; circumstances justifying.—A person who meets the criteria for involuntary admission in s. 397.675 may be admitted to a hospital or to a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only, upon receipt by the facility of a certificate by a physician, an

advanced practice registered nurse ~~advanced registered nurse practitioner~~, a psychiatric nurse, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's-level-certified addictions professional for substance abuse services, if the certificate is specific to substance abuse impairment, and the completion of an application for emergency admission.

Section 28. Subsection (1) of section 397.6793, Florida Statutes, is amended to read:

397.6793 Professional's certificate for emergency admission.—

(1) A physician, a clinical psychologist, a physician assistant working under the scope of practice of the supervising physician, a psychiatric nurse, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, a mental health counselor, a marriage and family therapist, a master's-level-certified addictions professional for substance abuse services, or a clinical social worker may execute a professional's certificate for emergency admission. The professional's certificate must include the name of the person to be admitted, the relationship between the person and the professional executing the certificate, the relationship between the applicant and the professional, any relationship between the professional and the licensed service provider, a statement that the person has been examined and assessed within the preceding 5 days after the application date, and factual allegations with respect to the need for emergency admission, including:

(a) The reason for the belief that the person is substance abuse impaired;

(b) The reason for the belief that because of such impairment the person has lost the power of self-control with respect to substance abuse; and

(c)1. The reason for the belief that, without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted or, unless admitted, is likely to inflict, physical harm on himself, herself, or another; or

2. The reason for the belief that the person's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the person is incapable of appreciating his or her need for care and of making a rational decision regarding his or her need for care.

Section 29. Subsection (8) of section 400.021, Florida Statutes, is amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(8) "Geriatric outpatient clinic" means a site for providing outpatient health care to persons 60 years of age or older, which is staffed by a registered nurse, a physician assistant, or a licensed practical nurse under the direct supervision of a registered nurse, advanced practice registered

nurse ~~advanced registered nurse practitioner~~, physician assistant, or physician.

Section 30. Subsection (3) of section 400.462, Florida Statutes, is amended to read:

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

(3) "Advanced practice registered nurse" ~~"Advanced registered nurse practitioner"~~ means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

Section 31. Section 400.487, Florida Statutes, is amended to read:

400.487 Home health service agreements; physician's, physician assistant's, and advanced practice registered nurse's ~~advanced registered nurse practitioner's~~ treatment orders; patient assessment; establishment and review of plan of care; provision of services; orders not to resuscitate.—

(1) Services provided by a home health agency must be covered by an agreement between the home health agency and the patient or the patient's legal representative specifying the home health services to be provided, the rates or charges for services paid with private funds, and the sources of payment, which may include Medicare, Medicaid, private insurance, personal funds, or a combination thereof. A home health agency providing skilled care must make an assessment of the patient's needs within 48 hours after the start of services.

(2) When required by the provisions of chapter 464; part I, part III, or part V of chapter 468; or chapter 486, the attending physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~, acting

within his or her respective scope of practice, shall establish treatment orders for a patient who is to receive skilled care. The treatment orders must be signed by the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ before a claim for payment for the skilled services is submitted by the home health agency. If the claim is submitted to a managed care organization, the treatment orders must be signed within the time allowed under the provider agreement. The treatment orders shall be reviewed, as frequently as the patient's illness requires, by the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ in consultation with the home health agency.

(3) A home health agency shall arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services in accordance with the patient's direction, approval, and agreement to pay the charge for the visits.

(4) Each patient has the right to be informed of and to participate in the planning of his or her care. Each patient must be provided, upon request, a copy of the plan of care established and maintained for that patient by the home health agency.

(5) When nursing services are ordered, the home health agency to which a patient has been admitted for care must provide the initial admission visit, all service evaluation visits, and the discharge visit by a direct employee. Services provided by others under contractual arrangements to a home health agency must be monitored and managed by the admitting

home health agency. The admitting home health agency is fully responsible for ensuring that all care provided through its employees or contract staff is delivered in accordance with this part and applicable rules.

(6) The skilled care services provided by a home health agency, directly or under contract, must be supervised and coordinated in accordance with the plan of care.

(7) Home health agency personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The agency shall adopt rules providing for the implementation of such orders. Home health personnel and agencies shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by the agency.

Section 32. Paragraph (a) of subsection (13) of section 400.506, Florida Statutes, is amended to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(13) All persons referred for contract in private residences by a nurse registry must comply with the following requirements for a plan of treatment:

(a) When, in accordance with the privileges and restrictions imposed upon a nurse under part I of chapter 464, the delivery of care to a patient is under the direction or supervision of a physician or when a physician is responsible for the medical care of the patient, a medical plan of treatment must be established for each patient receiving care or treatment

provided by a licensed nurse in the home. The original medical plan of treatment must be timely signed by the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~, acting within his or her respective scope of practice, and reviewed in consultation with the licensed nurse at least every 2 months. Any additional order or change in orders must be obtained from the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and reduced to writing and timely signed by the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~. The delivery of care under a medical plan of treatment must be substantiated by the appropriate nursing notes or documentation made by the nurse in compliance with nursing practices established under part I of chapter 464.

Section 33. Subsections (5) and (7) of section 400.9973, Florida Statutes, are amended to read:

400.9973 Client admission, transfer, and discharge.—

(5) A client admitted to a transitional living facility must be admitted upon prescription by a licensed physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and must remain under the care of a licensed physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ for the duration of the client's stay in the facility.

(7) A person may not be admitted to a transitional living facility if the person:

(a) Presents significant risk of infection to other clients or personnel. A health care practitioner must provide

documentation that the person is free of apparent signs and symptoms of communicable disease;

(b) Is a danger to himself or herself or others as determined by a physician, physician assistant, advanced practice registered nurse, ~~or advanced registered nurse practitioner~~ or a mental health practitioner licensed under chapter 490 or chapter 491, unless the facility provides adequate staffing and support to ensure patient safety;

(c) Is bedridden; or

(d) Requires 24-hour nursing supervision.

Section 34. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 400.9974, Florida Statutes, are amended to read:

400.9974 Client comprehensive treatment plans; client services.—

(1) A transitional living facility shall develop a comprehensive treatment plan for each client as soon as practicable but no later than 30 days after the initial comprehensive treatment plan is developed. The comprehensive treatment plan must be developed by an interdisciplinary team consisting of the case manager, the program director, the advanced practice registered nurse ~~advanced registered nurse practitioner~~, and appropriate therapists. The client or, if appropriate, the client's representative must be included in developing the comprehensive treatment plan. The comprehensive treatment plan must be reviewed and updated if the client fails to meet projected improvements outlined in the plan or if a significant change in the client's condition occurs. The comprehensive treatment plan must be reviewed and updated at

least once monthly.

(2) The comprehensive treatment plan must include:

(a) Orders obtained from the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and the client's diagnosis, medical history, physical examination, and rehabilitative or restorative needs.

(b) A preliminary nursing evaluation, including orders for immediate care provided by the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~, which shall be completed when the client is admitted.

Section 35. Section 400.9976, Florida Statutes, is amended to read:

400.9976 Administration of medication.—

(1) An individual medication administration record must be maintained for each client. A dose of medication, including a self-administered dose, shall be properly recorded in the client's record. A client who self-administers medication shall be given a pill organizer. Medication must be placed in the pill organizer by a nurse. A nurse shall document the date and time that medication is placed into each client's pill organizer. All medications must be administered in compliance with orders of a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~.

(2) If an interdisciplinary team determines that self-administration of medication is an appropriate objective, and if the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ does not

specify otherwise, the client must be instructed by the physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ to self-administer his or her medication without the assistance of a staff person. All forms of self-administration of medication, including administration orally, by injection, and by suppository, shall be included in the training. The client's physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ must be informed of the interdisciplinary team's decision that self-administration of medication is an objective for the client. A client may not self-administer medication until he or she demonstrates the competency to take the correct medication in the correct dosage at the correct time, to respond to missed doses, and to contact the appropriate person with questions.

(3) Medication administration discrepancies and adverse drug reactions must be recorded and reported immediately to a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~.

Section 36. Subsections (2) through (5) of section 400.9979, Florida Statutes, are amended to read:

400.9979 Restraint and seclusion; client safety.—

(2) The use of physical restraints must be ordered and documented by a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and must be consistent with the policies and procedures adopted by the facility. The client or, if applicable, the client's representative shall be informed of the facility's physical restraint policies and procedures when the client is admitted.

(3) The use of chemical restraints shall be limited to prescribed dosages of medications as ordered by a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ and must be consistent with the client's diagnosis and the policies and procedures adopted by the facility. The client and, if applicable, the client's representative shall be informed of the facility's chemical restraint policies and procedures when the client is admitted.

(4) Based on the assessment by a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~, if a client exhibits symptoms that present an immediate risk of injury or death to himself or herself or others, a physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ may issue an emergency treatment order to immediately administer rapid-response psychotropic medications or other chemical restraints. Each emergency treatment order must be documented and maintained in the client's record.

(a) An emergency treatment order is not effective for more than 24 hours.

(b) Whenever a client is medicated under this subsection, the client's representative or a responsible party and the client's physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ shall be notified as soon as practicable.

(5) A client who is prescribed and receives a medication that can serve as a chemical restraint for a purpose other than an emergency treatment order must be evaluated by his or her

physician, physician assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ at least monthly to assess:

(a) The continued need for the medication.

(b) The level of the medication in the client's blood.

(c) The need for adjustments to the prescription.

Section 37. Subsections (1) and (2) of section 401.445, Florida Statutes, are amended to read:

401.445 Emergency examination and treatment of incapacitated persons.—

(1) No recovery shall be allowed in any court in this state against any emergency medical technician, paramedic, or physician as defined in this chapter, any advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012, or any physician assistant licensed under s. 458.347 or s. 459.022, or any person acting under the direct medical supervision of a physician, in an action brought for examining or treating a patient without his or her informed consent if:

(a) The patient at the time of examination or treatment is intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent as provided in s. 766.103;

(b) The patient at the time of examination or treatment is experiencing an emergency medical condition; and

(c) The patient would reasonably, under all the surrounding circumstances, undergo such examination, treatment, or procedure if he or she were advised by the emergency medical technician, paramedic, physician, advanced practice registered nurse

~~advanced registered nurse practitioner~~, or physician assistant in accordance with s. 766.103(3).

Examination and treatment provided under this subsection shall be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient.

(2) In examining and treating a person who is apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, physician, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used.

Section 38. Subsection (1) of section 409.905, Florida Statutes, is amended to read:

409.905 Mandatory Medicaid services.—The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically

necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

(1) ADVANCED PRACTICE REGISTERED NURSE ~~ADVANCED REGISTERED NURSE PRACTITIONER~~ SERVICES.—The agency shall pay for services provided to a recipient by a licensed advanced practice registered nurse ~~advanced registered nurse practitioner~~ who has a valid collaboration agreement with a licensed physician on file with the Department of Health or who provides anesthesia services in accordance with established protocol required by state law and approved by the medical staff of the facility in which the anesthetic service is performed. Reimbursement for such services must be provided in an amount that equals not less than 80 percent of the reimbursement to a physician who provides the same services, unless otherwise provided for in the General Appropriations Act.

Section 39. Paragraph (a) of subsection (3) and subsection (7) of section 409.908, Florida Statutes, are amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein.

These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(3) Subject to any limitations or directions provided for in the General Appropriations Act, the following Medicaid services and goods may be reimbursed on a fee-for-service basis. For each allowable service or goods furnished in accordance with Medicaid rules, policy manuals, handbooks, and state and federal law, the payment shall be the amount billed by the provider, the

provider's usual and customary charge, or the maximum allowable fee established by the agency, whichever amount is less, with the exception of those services or goods for which the agency makes payment using a methodology based on capitation rates, average costs, or negotiated fees.

(a) Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ services.

(7) A provider of family planning services shall be reimbursed the lesser of the amount billed by the provider or an all-inclusive amount per type of visit for physicians and advanced practice registered nurses ~~advanced registered nurse practitioners~~, as established by the agency in a fee schedule.

Section 40. Paragraph (a) of subsection (1) of section 409.973, Florida Statutes, is amended to read:

409.973 Benefits.—

(1) MINIMUM BENEFITS.—Managed care plans shall cover, at a minimum, the following services:

(a) Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ services.

Section 41. Section 1 of chapter 2016-109, Laws of Florida, is amended to read:

Section 1. Effective March 1, 2019, subsection (1) of section 409.973, Florida Statutes, is amended to read:

409.973 Benefits.—

(1) MINIMUM BENEFITS.—Managed care plans shall cover, at a minimum, the following services:

(a) Advanced practice registered nurse ~~Advanced registered nurse practitioner~~ services.

(b) Ambulatory surgical treatment center services.

(c) Birthing center services.

(d) Chiropractic services.

(e) Early periodic screening diagnosis and treatment services for recipients under age 21.

(f) Emergency services.

(g) Family planning services and supplies. Pursuant to 42 C.F.R. s. 438.102, plans may elect to not provide these services due to an objection on moral or religious grounds, and must notify the agency of that election when submitting a reply to an invitation to negotiate.

(h) Healthy start services, except as provided in s. 409.975(4).

(i) Hearing services.

(j) Home health agency services.

(k) Hospice services.

(l) Hospital inpatient services.

(m) Hospital outpatient services.

(n) Laboratory and imaging services.

(o) Medical supplies, equipment, prostheses, and orthoses.

(p) Mental health services.

(q) Nursing care.

(r) Optical services and supplies.

(s) Optometrist services.

(t) Physical, occupational, respiratory, and speech therapy services.

(u) Physician services, including physician assistant services.

(v) Podiatric services.

(w) Prescription drugs.

(x) Renal dialysis services.

(y) Respiratory equipment and supplies.

(z) Rural health clinic services.

(aa) Substance abuse treatment services.

(bb) Transportation to access covered services.

Section 42. Paragraph (a) of subsection (2) and paragraph (a) of subsection (7) of section 429.918, Florida Statutes, are amended to read:

429.918 Licensure designation as a specialized Alzheimer's services adult day care center.—

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

(a) "ADRD participant" means a participant who has a documented diagnosis of Alzheimer's disease or a dementia-related disorder (ADRD) from a licensed physician, licensed physician assistant, or a licensed advanced practice registered nurse ~~advanced registered nurse practitioner~~.

(7)(a) An ADRD participant admitted to an adult day care center having a license designated under this section, or the caregiver when applicable, must:

1. Require ongoing supervision to maintain the highest level of medical or custodial functioning and have a demonstrated need for a responsible party to oversee his or her care.

2. Not actively demonstrate aggressive behavior that places himself, herself, or others at risk of harm.

3. Provide the following medical documentation signed by a licensed physician, licensed physician assistant, or a licensed advanced practice registered nurse ~~advanced registered nurse practitioner~~:

a. Any physical, health, or emotional conditions that require medical care.

b. A listing of the ADRD participant's current prescribed and over-the-counter medications and dosages, diet restrictions, mobility restrictions, and other physical limitations.

4. Provide documentation signed by a health care provider licensed in this state which indicates that the ADRD participant is free of the communicable form of tuberculosis and free of signs and symptoms of other communicable diseases.

Section 43. Section 456.0391, Florida Statutes, is amended to read:

456.0391 Advanced practice registered nurses ~~Advanced registered nurse practitioners~~; information required for licensure ~~certification~~.—

(1)(a) Each person who applies for initial licensure ~~certification~~ under s. 464.012 must, at the time of application, and each person licensed ~~certified~~ under s. 464.012 who applies for licensure ~~certification~~ renewal must, in conjunction with the renewal of such licensure ~~certification~~ and under procedures adopted by the Department of Health, and in addition to any other information that may be required from the applicant, furnish the following information to the Department of Health:

1. The name of each school or training program that the applicant has attended, with the months and years of attendance and the month and year of graduation, and a description of all graduate professional education completed by the applicant, excluding any coursework taken to satisfy continuing education requirements.

2. The name of each location at which the applicant

practices.

3. The address at which the applicant will primarily conduct his or her practice.

4. Any certification or designation that the applicant has received from a specialty or certification board that is recognized or approved by the regulatory board or department to which the applicant is applying.

5. The year that the applicant received initial certification or licensure and began practicing the profession in any jurisdiction and the year that the applicant received initial certification or licensure in this state.

6. Any appointment which the applicant currently holds to the faculty of a school related to the profession and an indication as to whether the applicant has had the responsibility for graduate education within the most recent 10 years.

7. A description of any criminal offense of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant has pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony or misdemeanor if committed in this state must be reported. If the applicant indicates that a criminal offense is under appeal and submits a copy of the notice for appeal of that criminal offense, the department must state that the criminal offense is under appeal if the criminal offense is reported in the applicant's profile. If the applicant indicates to the department that a criminal offense is under appeal, the applicant must, within 15 days after the disposition of the

appeal, submit to the department a copy of the final written order of disposition.

8. A description of any final disciplinary action taken within the previous 10 years against the applicant by a licensing or regulatory body in any jurisdiction, by a specialty board that is recognized by the board or department, or by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home. Disciplinary action includes resignation from or nonrenewal of staff membership or the restriction of privileges at a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home taken in lieu of or in settlement of a pending disciplinary case related to competence or character. If the applicant indicates that the disciplinary action is under appeal and submits a copy of the document initiating an appeal of the disciplinary action, the department must state that the disciplinary action is under appeal if the disciplinary action is reported in the applicant's profile.

(b) In addition to the information required under paragraph (a), each applicant for initial licensure ~~certification~~ or licensure ~~certification~~ renewal must provide the information required of licensees pursuant to s. 456.049.

(2) The Department of Health shall send a notice to each person licensed ~~certified~~ under s. 464.012 at the licensee's ~~certificateholder's~~ last known address of record regarding the requirements for information to be submitted by advanced practice registered nurses ~~advanced registered nurse practitioners~~ pursuant to this section in conjunction with the

renewal of such license ~~certificate~~.

(3) Each person licensed ~~certified~~ under s. 464.012 who has submitted information pursuant to subsection (1) must update that information in writing by notifying the Department of Health within 45 days after the occurrence of an event or the attainment of a status that is required to be reported by subsection (1). Failure to comply with the requirements of this subsection to update and submit information constitutes a ground for disciplinary action under chapter 464 and s. 456.072(1)(k). For failure to comply with the requirements of this subsection to update and submit information, the department or board, as appropriate, may:

(a) Refuse to issue a license ~~certificate~~ to any person applying for initial licensure ~~certification~~ who fails to submit and update the required information.

(b) Issue a citation to any certificateholder or licensee who fails to submit and update the required information and may fine the certificateholder or licensee up to $50 for each day that the certificateholder or licensee is not in compliance with this subsection. The citation must clearly state that the certificateholder or licensee may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the certificateholder or licensee disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the certificateholder or licensee does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery,

to the subject at the certificateholder's or licensee's last known address.

(4)(a) An applicant for initial licensure ~~certification~~ under s. 464.012 must submit a set of fingerprints to the Department of Health on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check of the applicant.

(b) An applicant for renewed licensure ~~certification~~ who has not previously submitted a set of fingerprints to the Department of Health for purposes of certification must submit a set of fingerprints to the department as a condition of the initial renewal of his or her certificate after the effective date of this section. The applicant must submit the fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check. For subsequent renewals, the applicant for renewed licensure ~~certification~~ must only submit information necessary to conduct a statewide criminal history check, along with payment in an amount equal to the costs incurred by the Department of Health for a statewide criminal history check.

(c)1. The Department of Health shall submit the fingerprints provided by an applicant for initial licensure ~~certification~~ to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant.

2. The department shall submit the fingerprints provided by an applicant for the initial renewal of licensure ~~certification~~ to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant's certificate after the effective date of this section.

3. For any subsequent renewal of the applicant's certificate, the department shall submit the required information for a statewide criminal history check of the applicant to the Florida Department of Law Enforcement.

(d) Any applicant for initial licensure ~~certification~~ or renewal of licensure ~~certification~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who submits to the Department of Health a set of fingerprints and information required for the criminal history check required under this section shall not be required to provide a subsequent set of fingerprints or other duplicate information required for a criminal history check to the Agency for Health Care Administration, the Department of Juvenile Justice, or the Department of Children and Families for employment or licensure with such agency or department, if the applicant has undergone a criminal history check as a condition of initial licensure ~~certification~~ or renewal of licensure ~~certification~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ with the Department of Health, notwithstanding any other provision of law to the contrary. In lieu of such duplicate submission, the Agency for Health Care Administration,

the Department of Juvenile Justice, and the Department of Children and Families shall obtain criminal history information for employment or licensure of persons licensed ~~certified~~ under s. 464.012 by such agency or department from the Department of Health's health care practitioner credentialing system.

(5) Each person who is required to submit information pursuant to this section may submit additional information to the Department of Health. Such information may include, but is not limited to:

(a) Information regarding publications in peer-reviewed professional literature within the previous 10 years.

(b) Information regarding professional or community service activities or awards.

(c) Languages, other than English, used by the applicant to communicate with patients or clients and identification of any translating service that may be available at the place where the applicant primarily conducts his or her practice.

(d) An indication of whether the person participates in the Medicaid program.

Section 44. Subsection (2) of section 456.0392, Florida Statutes, is amended to read:

456.0392 Prescription labeling.—

(2) A prescription for a drug that is not listed as a controlled substance in chapter 893 which is written by an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012 is presumed, subject to rebuttal, to be valid and within the parameters of the prescriptive authority delegated by a practitioner licensed under chapter 458, chapter 459, or chapter 466.

Section 45. Paragraph (a) of subsection (1) and subsection (6) of section 456.041, Florida Statutes, are amended to read:

456.041 Practitioner profile; creation.—

(1)(a) The Department of Health shall compile the information submitted pursuant to s. 456.039 into a practitioner profile of the applicant submitting the information, except that the Department of Health shall develop a format to compile uniformly any information submitted under s. 456.039(4)(b). Beginning July 1, 2001, the Department of Health may compile the information submitted pursuant to s. 456.0391 into a practitioner profile of the applicant submitting the information. The protocol submitted pursuant to s. 464.012(3) must be included in the practitioner profile of the advanced practice registered nurse ~~advanced registered nurse practitioner~~.

(6) The Department of Health shall provide in each practitioner profile for every physician or advanced practice registered nurse ~~advanced registered nurse practitioner~~ terminated for cause from participating in the Medicaid program, pursuant to s. 409.913, or sanctioned by the Medicaid program a statement that the practitioner has been terminated from participating in the Florida Medicaid program or sanctioned by the Medicaid program.

Section 46. Subsection (1) of section 456.048, Florida Statutes, is amended to read:

456.048 Financial responsibility requirements for certain health care practitioners.—

(1) As a prerequisite for licensure or license renewal, the Board of Acupuncture, the Board of Chiropractic Medicine, the

Board of Podiatric Medicine, and the Board of Dentistry shall, by rule, require that all health care practitioners licensed under the respective board, and the Board of Medicine and the Board of Osteopathic Medicine shall, by rule, require that all anesthesiologist assistants licensed pursuant to s. 458.3475 or s. 459.023, and the Board of Nursing shall, by rule, require that advanced practice registered nurses licensed ~~advanced registered nurse practitioners certified~~ under s. 464.012, and the department shall, by rule, require that midwives maintain medical malpractice insurance or provide proof of financial responsibility in an amount and in a manner determined by the board or department to be sufficient to cover claims arising out of the rendering of or failure to render professional care and services in this state.

Section 47. Subsection (7) of section 456.072, Florida Statutes, is amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(7) Notwithstanding subsection (2), upon a finding that a physician has prescribed or dispensed a controlled substance, or caused a controlled substance to be prescribed or dispensed, in a manner that violates the standard of practice set forth in s. 458.331(1)(q) or (t), s. 459.015(1)(t) or (x), s. 461.013(1)(o) or (s), or s. 466.028(1)(p) or (x), or that an advanced practice registered nurse ~~advanced registered nurse practitioner~~ has prescribed or dispensed a controlled substance, or caused a controlled substance to be prescribed or dispensed, in a manner that violates the standard of practice set forth in s. 464.018(1)(n) or (p)6., the physician or advanced practice registered nurse ~~advanced registered nurse practitioner~~ shall be

suspended for a period of not less than 6 months and pay a fine of not less than $10,000 per count. Repeated violations shall result in increased penalties.

Section 48. Paragraph (g) of subsection (1) and subsection (2) of section 456.44, Florida Statutes, are amended to read:

456.44 Controlled substance prescribing.—

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

(g) "Registrant" means a physician, a physician assistant, or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who meets the requirements of subsection (2).

(2) REGISTRATION.—A physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under part I of chapter 464 who prescribes any controlled substance, listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, for the treatment of chronic nonmalignant pain, must:

(a) Designate himself or herself as a controlled substance prescribing practitioner on his or her practitioner profile.

(b) Comply with the requirements of this section and applicable board rules.

Section 49. Paragraph (c) of subsection (2) of section 458.3265, Florida Statutes, is amended to read:

458.3265 Pain-management clinics.—

(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities apply to any physician who provides professional services in a pain-management clinic that is required to be registered in subsection (1).

(c) A physician, a physician assistant, or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ must perform a physical examination of a patient on the same day that the physician prescribes a controlled substance to a patient at a pain-management clinic. If the physician prescribes more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the physician must document in the patient's record the reason for prescribing that quantity.

Section 50. Paragraph (dd) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

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

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

(dd) Failing to supervise adequately the activities of those physician assistants, paramedics, emergency medical technicians, advanced practice registered nurses ~~advanced registered nurse practitioners~~, or anesthesiologist assistants acting under the supervision of the physician.

Section 51. Paragraph (a) of subsection (1) and subsection (3) of section 458.348, Florida Statutes, are amended to read:

458.348 Formal supervisory relationships, standing orders, and established protocols; notice; standards.—

(1) NOTICE.—

(a) When a physician enters into a formal supervisory relationship or standing orders with an emergency medical technician or paramedic licensed pursuant to s. 401.27, which relationship or orders contemplate the performance of medical

acts, or when a physician enters into an established protocol with an advanced practice registered nurse ~~advanced registered nurse practitioner~~, which protocol contemplates the performance of medical acts set forth in s. 464.012(3) and (4), the physician shall submit notice to the board. The notice shall contain a statement in substantially the following form:

I, ...(name and professional license number of physician)..., of ...(address of physician)... have hereby entered into a formal supervisory relationship, standing orders, or an established protocol with ...(number of persons)... emergency medical technician(s), ...(number of persons)... paramedic(s), or ...(number of persons)... advanced practice registered nurse(s) ~~advanced registered nurse practitioner(s)~~.

(3) SUPERVISORY RELATIONSHIPS IN MEDICAL OFFICE SETTINGS.—A physician who supervises an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant at a medical office other than the physician's primary practice location, where the advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant is not under the onsite supervision of a supervising physician, must comply with the standards set forth in this subsection. For the purpose of this subsection, a physician's "primary practice location" means the address reflected on the physician's profile published pursuant to s. 456.041.

(a) A physician who is engaged in providing primary health care services may not supervise more than four offices in addition to the physician's primary practice location. For the

purpose of this subsection, "primary health care" means health care services that are commonly provided to patients without referral from another practitioner, including obstetrical and gynecological services, and excludes practices providing primarily dermatologic and skin care services, which include aesthetic skin care services.

(b) A physician who is engaged in providing specialty health care services may not supervise more than two offices in addition to the physician's primary practice location. For the purpose of this subsection, "specialty health care" means health care services that are commonly provided to patients with a referral from another practitioner and excludes practices providing primarily dermatologic and skin care services, which include aesthetic skin care services.

(c) A physician who supervises an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant at a medical office other than the physician's primary practice location, where the advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant is not under the onsite supervision of a supervising physician and the services offered at the office are primarily dermatologic or skin care services, which include aesthetic skin care services other than plastic surgery, must comply with the standards listed in subparagraphs 1.-4. Notwithstanding s. 458.347(4)(e)6., a physician supervising a physician assistant pursuant to this paragraph may not be required to review and cosign charts or medical records prepared by such physician assistant.

1. The physician shall submit to the board the addresses of

all offices where he or she is supervising an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or a physician's assistant which are not the physician's primary practice location.

2. The physician must be board certified or board eligible in dermatology or plastic surgery as recognized by the board pursuant to s. 458.3312.

3. All such offices that are not the physician's primary place of practice must be within 25 miles of the physician's primary place of practice or in a county that is contiguous to the county of the physician's primary place of practice. However, the distance between any of the offices may not exceed 75 miles.

4. The physician may supervise only one office other than the physician's primary place of practice except that until July 1, 2011, the physician may supervise up to two medical offices other than the physician's primary place of practice if the addresses of the offices are submitted to the board before July 1, 2006. Effective July 1, 2011, the physician may supervise only one office other than the physician's primary place of practice, regardless of when the addresses of the offices were submitted to the board.

(d) A physician who supervises an office in addition to the physician's primary practice location must conspicuously post in each of the physician's offices a current schedule of the regular hours when the physician is present in that office and the hours when the office is open while the physician is not present.

(e) This subsection does not apply to health care services

provided in facilities licensed under chapter 395 or in conjunction with a college of medicine, a college of nursing, an accredited graduate medical program, or a nursing education program; not-for-profit, family-planning clinics that are not licensed pursuant to chapter 390; rural and federally qualified health centers; health care services provided in a nursing home licensed under part II of chapter 400, an assisted living facility licensed under part I of chapter 429, a continuing care facility licensed under chapter 651, or a retirement community consisting of independent living units and a licensed nursing home or assisted living facility; anesthesia services provided in accordance with law; health care services provided in a designated rural health clinic; health care services provided to persons enrolled in a program designed to maintain elderly persons and persons with disabilities in a home or community-based setting; university primary care student health centers; school health clinics; or health care services provided in federal, state, or local government facilities. Subsection (2) and this subsection do not apply to offices at which the exclusive service being performed is laser hair removal by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant.

Section 52. Paragraph (c) of subsection (2) of section 459.0137, Florida Statutes, is amended to read:

459.0137 Pain-management clinics.—

(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities apply to any osteopathic physician who provides professional services in a pain-management clinic that is required to be registered in subsection (1).

(c) An osteopathic physician, a physician assistant, or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ must perform a physical examination of a patient on the same day that the physician prescribes a controlled substance to a patient at a pain-management clinic. If the osteopathic physician prescribes more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the osteopathic physician must document in the patient's record the reason for prescribing that quantity.

Section 53. Paragraph (hh) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

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

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

(hh) Failing to supervise adequately the activities of those physician assistants, paramedics, emergency medical technicians, advanced practice registered nurses ~~advanced registered nurse practitioners~~, anesthesiologist assistants, or other persons acting under the supervision of the osteopathic physician.

Section 54. Paragraph (a) of subsection (1) and subsection (3) of section 459.025, Florida Statutes, are amended to read:

459.025 Formal supervisory relationships, standing orders, and established protocols; notice; standards.—

(1) NOTICE.—

(a) When an osteopathic physician enters into a formal supervisory relationship or standing orders with an emergency medical technician or paramedic licensed pursuant to s. 401.27,

which relationship or orders contemplate the performance of medical acts, or when an osteopathic physician enters into an established protocol with an advanced practice registered nurse ~~advanced registered nurse practitioner~~, which protocol contemplates the performance of medical acts or acts set forth in s. 464.012(3) and (4), the osteopathic physician shall submit notice to the board. The notice must contain a statement in substantially the following form:

I, ...(name and professional license number of osteopathic physician)..., of ...(address of osteopathic physician)... have hereby entered into a formal supervisory relationship, standing orders, or an established protocol with ...(number of persons)... emergency medical technician(s), ...(number of persons)... paramedic(s), or ...(number of persons)... advanced practice registered nurse(s) ~~advanced registered nurse practitioner(s)~~.

(3) SUPERVISORY RELATIONSHIPS IN MEDICAL OFFICE SETTINGS.—An osteopathic physician who supervises an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant at a medical office other than the osteopathic physician's primary practice location, where the advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant is not under the onsite supervision of a supervising osteopathic physician, must comply with the standards set forth in this subsection. For the purpose of this subsection, an osteopathic physician's "primary practice location" means the address reflected on the physician's profile published pursuant to s. 456.041.

(a) An osteopathic physician who is engaged in providing primary health care services may not supervise more than four offices in addition to the osteopathic physician's primary practice location. For the purpose of this subsection, "primary health care" means health care services that are commonly provided to patients without referral from another practitioner, including obstetrical and gynecological services, and excludes practices providing primarily dermatologic and skin care services, which include aesthetic skin care services.

(b) An osteopathic physician who is engaged in providing specialty health care services may not supervise more than two offices in addition to the osteopathic physician's primary practice location. For the purpose of this subsection, "specialty health care" means health care services that are commonly provided to patients with a referral from another practitioner and excludes practices providing primarily dermatologic and skin care services, which include aesthetic skin care services.

(c) An osteopathic physician who supervises an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant at a medical office other than the osteopathic physician's primary practice location, where the advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant is not under the onsite supervision of a supervising osteopathic physician and the services offered at the office are primarily dermatologic or skin care services, which include aesthetic skin care services other than plastic surgery, must comply with the standards listed in subparagraphs 1.-4. Notwithstanding s.

459.022(4)(e)6., an osteopathic physician supervising a physician assistant pursuant to this paragraph may not be required to review and cosign charts or medical records prepared by such physician assistant.

1. The osteopathic physician shall submit to the Board of Osteopathic Medicine the addresses of all offices where he or she is supervising or has a protocol with an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or a physician ~~physician's~~ assistant which are not the osteopathic physician's primary practice location.

2. The osteopathic physician must be board certified or board eligible in dermatology or plastic surgery as recognized by the Board of Osteopathic Medicine pursuant to s. 459.0152.

3. All such offices that are not the osteopathic physician's primary place of practice must be within 25 miles of the osteopathic physician's primary place of practice or in a county that is contiguous to the county of the osteopathic physician's primary place of practice. However, the distance between any of the offices may not exceed 75 miles.

4. The osteopathic physician may supervise only one office other than the osteopathic physician's primary place of practice except that until July 1, 2011, the osteopathic physician may supervise up to two medical offices other than the osteopathic physician's primary place of practice if the addresses of the offices are submitted to the Board of Osteopathic Medicine before July 1, 2006. Effective July 1, 2011, the osteopathic physician may supervise only one office other than the osteopathic physician's primary place of practice, regardless of when the addresses of the offices were submitted to the Board of

Osteopathic Medicine.

(d) An osteopathic physician who supervises an office in addition to the osteopathic physician's primary practice location must conspicuously post in each of the osteopathic physician's offices a current schedule of the regular hours when the osteopathic physician is present in that office and the hours when the office is open while the osteopathic physician is not present.

(e) This subsection does not apply to health care services provided in facilities licensed under chapter 395 or in conjunction with a college of medicine or college of nursing or an accredited graduate medical or nursing education program; offices where the only service being performed is hair removal by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ or physician assistant; not-for-profit, family-planning clinics that are not licensed pursuant to chapter 390; rural and federally qualified health centers; health care services provided in a nursing home licensed under part II of chapter 400, an assisted living facility licensed under part I of chapter 429, a continuing care facility licensed under chapter 651, or a retirement community consisting of independent living units and either a licensed nursing home or assisted living facility; anesthesia services provided in accordance with law; health care services provided in a designated rural health clinic; health care services provided to persons enrolled in a program designed to maintain elderly persons and persons with disabilities in a home or community-based setting; university primary care student health centers; school health clinics; or health care services provided in

federal, state, or local government facilities.

Section 55. Subsection (2) of section 464.003, Florida Statutes, is amended to read:

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

(2) "Advanced or specialized nursing practice" means, in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the board which, by virtue of postbasic specialized education, training, and experience, are appropriately performed by an advanced practice registered nurse ~~advanced registered nurse practitioner~~. Within the context of advanced or specialized nursing practice, the advanced practice registered nurse ~~advanced registered nurse practitioner~~ may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The advanced practice registered nurse ~~advanced registered nurse practitioner~~ may also perform acts of medical diagnosis and treatment, prescription, and operation as authorized within the framework of an established supervisory protocol. The department may, by rule, require that a copy of the protocol be filed with the department along with the notice required by s. 458.348.

Section 56. Subsection (2) of section 464.004, Florida Statutes, is amended to read:

464.004 Board of Nursing; membership; appointment; terms.—

(2) Seven members of the board must be registered nurses who are residents of this state and who have been engaged in the practice of professional nursing for at least 4 years, including at least one advanced practice registered nurse ~~advanced registered nurse practitioner~~, one nurse educator member of an

approved program, and one nurse executive. These seven board members should be representative of the diverse areas of practice within the nursing profession. In addition, three members of the board must be licensed practical nurses who are residents of this state and who have been actively engaged in the practice of practical nursing for at least 4 years prior to their appointment. The remaining three members must be residents of the state who have never been licensed as nurses and who are in no way connected with the practice of nursing. No person may be appointed as a lay member who is in any way connected with, or has any financial interest in, any health care facility, agency, or insurer. At least one member of the board must be 60 years of age or older.

Section 57. Paragraph (b) of subsection (3) of section 464.013, Florida Statutes, is amended to read:

464.013 Renewal of license or certificate.—

(3) The board shall by rule prescribe up to 30 hours of continuing education biennially as a condition for renewal of a license or certificate.

(b) Notwithstanding the exemption in paragraph (a), as part of the maximum 30 hours of continuing education hours required under this subsection, advanced practice registered nurses licensed ~~advanced registered nurse practitioners certified~~ under s. 464.012 must complete at least 3 hours of continuing education on the safe and effective prescription of controlled substances. Such continuing education courses must be offered by a statewide professional association of physicians in this state accredited to provide educational activities designated for the American Medical Association Physician's Recognition Award

Category 1 credit, the American Nurses Credentialing Center, the American Association of Nurse Anesthetists, or the American Association of Nurse Practitioners and may be offered in a distance learning format.

Section 58. Subsections (5) and (8), of section 464.015, Florida Statutes, are amended to read:

464.015 Titles and abbreviations; restrictions; penalty.—

(5) Only persons who hold valid licenses ~~certificates~~ to practice as clinical nurse specialists in this state may use the title "Clinical Nurse Specialist" and the abbreviation "C.N.S."

(8) Only persons who hold valid licenses ~~certificates~~ to practice as advanced practice registered nurses ~~advanced registered nurse practitioners~~ in this state may use the title "Advanced Practice Registered Nurse" ~~"Advanced Registered Nurse Practitioner"~~ and the abbreviation "A.P.R.N." ~~"A.R.N.P."~~

Section 59. Subsection (9) of section 464.015, Florida Statutes, as amended by section 9 of chapter 2016-139, Laws of Florida, is amended to read:

464.015 Titles and abbreviations; restrictions; penalty.—

(9) A person may not practice or advertise as, or assume the title of, registered nurse, licensed practical nurse, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, certified nurse practitioner, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ or use the abbreviation "R.N.," "L.P.N.," "C.N.S.," "C.R.N.A.," "C.N.M.," "C.N.P.," or "A.P.R.N." ~~"A.R.N.P."~~ or take any other action that would lead the public to believe that person was authorized by law to practice as such or is performing nursing services pursuant to

the exception set forth in s. 464.022(8) unless that person is licensed, certified, or authorized pursuant to s. 464.0095 to practice as such.

Section 60. Paragraph (a) of subsection (2) of section 464.016, Florida Statutes, is amended to read:

464.016 Violations and penalties.—

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Using the name or title "Nurse," "Registered Nurse," "Licensed Practical Nurse," "Clinical Nurse Specialist," "Certified Registered Nurse Anesthetist," "Certified Nurse Practitioner," "Certified Nurse Midwife," "Advanced Practice Registered Nurse," ~~"Advanced Registered Nurse Practitioner,"~~ or any other name or title which implies that a person was licensed or certified as same, unless such person is duly licensed or certified.

Section 61. Paragraphs (p) and (q) of subsection (1) of section 464.018, Florida Statutes, are amended to read:

464.018 Disciplinary actions.—

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

(p) For an advanced practice registered nurse ~~advanced registered nurse practitioner~~:

1. Presigning blank prescription forms.

2. Prescribing for office use any medicinal drug appearing on Schedule II in chapter 893.

3. Prescribing, ordering, dispensing, administering, supplying, selling, or giving a drug that is an amphetamine, a

sympathomimetic amine drug, or a compound designated in s. 893.03(2) as a Schedule II controlled substance, to or for any person except for:

a. The treatment of narcolepsy; hyperkinesis; behavioral syndrome in children characterized by the developmentally inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional lability, and impulsivity; or drug-induced brain dysfunction.

b. The differential diagnostic psychiatric evaluation of depression or the treatment of depression shown to be refractory to other therapeutic modalities.

c. The clinical investigation of the effects of such drugs or compounds when an investigative protocol is submitted to, reviewed by, and approved by the department before such investigation is begun.

4. Prescribing, ordering, dispensing, administering, supplying, selling, or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance. As used in this subparagraph, the term "muscle building" does not include the treatment of injured muscle. A prescription written for the drug products identified in this subparagraph may be dispensed by a pharmacist with the presumption that the prescription is for legitimate medical use.

5. Promoting or advertising on any prescription form a community pharmacy unless the form also states: "This prescription may be filled at any pharmacy of your choice."

6. Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including a controlled

substance, other than in the course of his or her professional practice. For the purposes of this subparagraph, it is legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the advanced practice registered nurse's ~~advanced registered nurse practitioner's~~ professional practice, without regard to his or her intent.

7. Prescribing, dispensing, or administering a medicinal drug appearing on any schedule set forth in chapter 893 to himself or herself, except a drug prescribed, dispensed, or administered to the advanced practice registered nurse ~~advanced registered nurse practitioner~~ by another practitioner authorized to prescribe, dispense, or administer medicinal drugs.

8. Prescribing, ordering, dispensing, administering, supplying, selling, or giving amygdalin (laetrile) to any person.

9. Dispensing a substance designated in s. 893.03(2) or (3) as a substance controlled in Schedule II or Schedule III, respectively, in violation of s. 465.0276.

10. Promoting or advertising through any communication medium the use, sale, or dispensing of a substance designated in s. 893.03 as a controlled substance.

(q) For a psychiatric nurse:

1. Presigning blank prescription forms.

2. Prescribing for office use any medicinal drug appearing in Schedule II of s. 893.03.

3. Prescribing, ordering, dispensing, administering,

supplying, selling, or giving a drug that is an amphetamine, a sympathomimetic amine drug, or a compound designated in s. 893.03(2) as a Schedule II controlled substance, to or for any person except for:

a. The treatment of narcolepsy; hyperkinesis; behavioral syndrome in children characterized by the developmentally inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional lability, and impulsivity; or drug-induced brain dysfunction.

b. The differential diagnostic psychiatric evaluation of depression or the treatment of depression shown to be refractory to other therapeutic modalities.

c. The clinical investigation of the effects of such drugs or compounds when an investigative protocol is submitted to, reviewed by, and approved by the department before such investigation is begun.

4. Prescribing, ordering, dispensing, administering, supplying, selling, or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance. As used in this subparagraph, the term "muscle building" does not include the treatment of injured muscle. A prescription written for the drug products identified in this subparagraph may be dispensed by a pharmacist with the presumption that the prescription is for legitimate medical use.

5. Promoting or advertising on any prescription form a community pharmacy unless the form also states: "This prescription may be filled at any pharmacy of your choice."

6. Prescribing, dispensing, administering, mixing, or

otherwise preparing a legend drug, including a controlled substance, other than in the course of his or her professional practice. For the purposes of this subparagraph, it is legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the advanced practice registered nurse's ~~advanced registered nurse practitioner's~~ professional practice, without regard to his or her intent.

7. Prescribing, dispensing, or administering a medicinal drug appearing on any schedule set forth in chapter 893 to himself or herself, except a drug prescribed, dispensed, or administered to the psychiatric nurse by another practitioner authorized to prescribe, dispense, or administer medicinal drugs.

8. Prescribing, ordering, dispensing, administering, supplying, selling, or giving amygdalin (laetrile) to any person.

9. Dispensing a substance designated in s. 893.03(2) or (3) as a substance controlled in Schedule II or Schedule III, respectively, in violation of s. 465.0276.

10. Promoting or advertising through any communication medium the use, sale, or dispensing of a substance designated in s. 893.03 as a controlled substance.

Section 62. Paragraph (a) of subsection (4) of section 464.0205, Florida Statutes, is amended to read:

464.0205 Retired volunteer nurse certificate.—

(4) A retired volunteer nurse receiving certification from

the board shall:

(a) Work under the direct supervision of the director of a county health department, a physician working under a limited license issued pursuant to s. 458.317 or s. 459.0075, a physician licensed under chapter 458 or chapter 459, an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012, or a registered nurse licensed under s. 464.008 or s. 464.009.

Section 63. Subsection (2) of section 467.003, Florida Statutes, is amended to read:

467.003 Definitions.—As used in this chapter, unless the context otherwise requires:

(2) "Certified nurse midwife" means a person who is licensed as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ under part I of chapter 464 and who is certified to practice midwifery by the American College of Nurse Midwives.

Section 64. Subsection (1) of section 480.0475, Florida Statutes, is amended to read:

480.0475 Massage establishments; prohibited practices.—

(1) A person may not operate a massage establishment between the hours of midnight and 5 a.m. This subsection does not apply to a massage establishment:

(a) Located on the premises of a health care facility as defined in s. 408.07; a health care clinic as defined in s. 400.9905(4); a hotel, motel, or bed and breakfast inn, as those terms are defined in s. 509.242; a timeshare property as defined in s. 721.05; a public airport as defined in s. 330.27; or a pari-mutuel facility as defined in s. 550.002;

(b) In which every massage performed between the hours of midnight and 5 a.m. is performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under part I of chapter 464, or a dentist licensed under chapter 466; or

(c) Operating during a special event if the county or municipality in which the establishment operates has approved such operation during the special event.

Section 65. Subsection (7) of section 483.041, Florida Statutes, is amended to read:

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

(7) "Licensed practitioner" means a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461; a certified optometrist licensed under chapter 463; a dentist licensed under chapter 466; a person licensed under chapter 462; a consultant pharmacist or doctor of pharmacy licensed under chapter 465; or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under part I of chapter 464; or a duly licensed practitioner from another state licensed under similar statutes who orders examinations on materials or specimens for nonresidents of the State of Florida, but who reside in the same state as the requesting licensed practitioner.

Section 66. Subsection (5) of section 483.801, Florida Statutes, is amended to read:

483.801 Exemptions.—This part applies to all clinical laboratories and clinical laboratory personnel within this state, except:

(5) Advanced practice registered nurses ~~advanced registered nurse practitioners~~ licensed under part I of chapter 464 who perform provider-performed microscopy procedures (PPMP) in an exclusive-use laboratory setting.

Section 67. Paragraph (a) of subsection (11) of section 486.021, Florida Statutes, is amended to read:

486.021 Definitions.—In this chapter, unless the context otherwise requires, the term:

(11) "Practice of physical therapy" means the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto by the use of the physical, chemical, and other properties of air; electricity; exercise; massage; the performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of the foregoing or related thereto; the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.

(a) A physical therapist may implement a plan of treatment

developed by the physical therapist for a patient or provided for a patient by a practitioner of record or by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under s. 464.012. The physical therapist shall refer the patient to or consult with a practitioner of record if the patient's condition is found to be outside the scope of physical therapy. If physical therapy treatment for a patient is required beyond 30 days for a condition not previously assessed by a practitioner of record, the physical therapist shall have a practitioner of record review and sign the plan. The requirement that a physical therapist have a practitioner of record review and sign a plan of treatment does not apply when a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the physical therapist is treating the condition. For purposes of this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.

Section 68. Paragraph (d) of subsection (1) of section 490.012, Florida Statutes, is amended to read:

490.012 Violations; penalties; injunction.—

(1)

(d) A person may not ~~No person shall~~ hold herself or himself out by any title or description incorporating the word, or a permutation of the word, "psychotherapy" unless such person holds a valid, active license under chapter 458, chapter 459, chapter 490, or chapter 491, or such person is licensed

~~certified~~ as an advanced practice registered nurse under ~~advanced registered nurse practitioner, pursuant to~~ s. 464.012, who has been determined by the Board of Nursing as a specialist in psychiatric mental health.

Section 69. Subsection (1) of section 491.0057, Florida Statutes, is amended to read:

491.0057 Dual licensure as a marriage and family therapist.—The department shall license as a marriage and family therapist any person who demonstrates to the board that he or she:

(1) Holds a valid, active license as a psychologist under chapter 490 or as a clinical social worker or mental health counselor under this chapter, or is licensed ~~certified~~ under s. 464.012 as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who has been determined by the Board of Nursing as a specialist in psychiatric mental health.

Section 70. Paragraph (d) of subsection (1) and subsection (2) of section 491.012, Florida Statutes, are amended to read:

491.012 Violations; penalty; injunction.—

(1) It is unlawful and a violation of this chapter for any person to:

(d) Use the terms psychotherapist, sex therapist, or juvenile sexual offender therapist unless such person is licensed pursuant to this chapter or chapter 490, or is licensed ~~certified~~ under s. 464.012 as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who has been determined by the Board of Nursing as a specialist in psychiatric mental health and the use of such terms is within the scope of her or his practice based on education, training,

and licensure.

(2) It is unlawful and a violation of this chapter for any person to describe her or his services using the following terms or any derivative thereof, unless such person holds a valid, active license under this chapter or chapter 490, or is licensed ~~certified~~ under s. 464.012 as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ who has been determined by the Board of Nursing as a specialist in psychiatric mental health and the use of such terms is within the scope of her or his practice based on education, training, and licensure:

(a) "Psychotherapy."

(b) "Sex therapy."

(c) "Sex counseling."

(d) "Clinical social work."

(e) "Psychiatric social work."

(f) "Marriage and family therapy."

(g) "Marriage and family counseling."

(h) "Marriage counseling."

(i) "Family counseling."

(j) "Mental health counseling."

Section 71. Subsection (2) of section 493.6108, Florida Statutes, is amended to read:

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

(2) In addition to subsection (1), the department shall make an investigation of the general physical fitness of the Class "G" applicant to bear a weapon or firearm. Determination of physical fitness shall be certified by a physician or

physician assistant currently licensed pursuant to chapter 458, chapter 459, or any similar law of another state or authorized to act as a licensed physician by a federal agency or department or by an advanced practice registered nurse ~~advanced registered nurse practitioner~~ currently licensed pursuant to chapter 464. Such certification shall be submitted on a form provided by the department.

Section 72. Paragraph (b) of subsection (1) of section 627.357, Florida Statutes, is amended to read:

627.357 Medical malpractice self-insurance.—

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

(b) "Health care provider" means any:

1. Hospital licensed under chapter 395.

2. Physician licensed, or physician assistant licensed, under chapter 458.

3. Osteopathic physician or physician assistant licensed under chapter 459.

4. Podiatric physician licensed under chapter 461.

5. Health maintenance organization certificated under part I of chapter 641.

6. Ambulatory surgical center licensed under chapter 395.

7. Chiropractic physician licensed under chapter 460.

8. Psychologist licensed under chapter 490.

9. Optometrist licensed under chapter 463.

10. Dentist licensed under chapter 466.

11. Pharmacist licensed under chapter 465.

12. Registered nurse, licensed practical nurse, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed or registered under part I of chapter 464.

13. Other medical facility.

14. Professional association, partnership, corporation, joint venture, or other association established by the individuals set forth in subparagraphs 2., 3., 4., 7., 8., 9., 10., 11., and 12. for professional activity.

Section 73. Subsection (6) of section 627.6471, Florida Statutes, is amended to read:

627.6471 Contracts for reduced rates of payment; limitations; coinsurance and deductibles.—

(6) If psychotherapeutic services are covered by a policy issued by the insurer, the insurer shall provide eligibility criteria for each group of health care providers licensed under chapter 458, chapter 459, chapter 490, or chapter 491, which include psychotherapy within the scope of their practice as provided by law, or for any person who is licensed ~~certified~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ in psychiatric mental health under s. 464.012. When psychotherapeutic services are covered, eligibility criteria shall be established by the insurer to be included in the insurer's criteria for selection of network providers. The insurer may not discriminate against a health care provider by excluding such practitioner from its provider network solely on the basis of the practitioner's license.

Section 74. Subsections (15) and (17) of section 627.6472, Florida Statutes, are amended to read:

627.6472 Exclusive provider organizations.—

(15) If psychotherapeutic services are covered by a policy issued by the insurer, the insurer shall provide eligibility criteria for all groups of health care providers licensed under

chapter 458, chapter 459, chapter 490, or chapter 491, which include psychotherapy within the scope of their practice as provided by law, or for any person who is licensed ~~certified~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ in psychiatric mental health under s. 464.012. When psychotherapeutic services are covered, eligibility criteria shall be established by the insurer to be included in the insurer's criteria for selection of network providers. The insurer may not discriminate against a health care provider by excluding such practitioner from its provider network solely on the basis of the practitioner's license.

(17) An exclusive provider organization shall not discriminate with respect to participation as to any advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed ~~and certified~~ pursuant to s. 464.012, who is acting within the scope of such license ~~and certification~~, solely on the basis of such license ~~or certification~~. This subsection shall not be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan.

Section 75. Paragraph (a) of subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) REQUIRED BENEFITS.—An insurance policy complying with the security requirements of s. 627.733 must provide 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 of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) *Medical benefits.*—Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident. The medical benefits provide reimbursement only for:

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, or a chiropractic physician licensed under chapter 460 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may also be provided by a person or entity licensed under part III of chapter 401 which provides emergency transportation and treatment.

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a

physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

a. A hospital or ambulatory surgical center licensed under chapter 395.

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

c. An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.

d. A physical therapist licensed under chapter 486, based upon a referral by a provider described in this subparagraph.

e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States

Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464 has determined that the injured person had an emergency medical condition.

4. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. is limited to $2,500 if a provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.

5. Medical benefits do not include massage as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage or

acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

6. The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.e. to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and such insurer may not require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such benefits. Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. An insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 76. Subsection (5) of section 633.412, Florida

Statutes, is amended to read:

633.412 Firefighters; qualifications for certification.—A person applying for certification as a firefighter must:

(5) Be in good physical condition as determined by a medical examination given by a physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 458; an osteopathic physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 459; or an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed to practice in the state pursuant to chapter 464. Such examination may include, but need not be limited to, the National Fire Protection Association Standard 1582. A medical examination evidencing good physical condition shall be submitted to the division, on a form as provided by rule, before an individual is eligible for admission into a course under s. 633.408.

Section 77. Section 641.3923, Florida Statutes, is amended to read:

641.3923 Discrimination against providers prohibited.—A health maintenance organization may ~~shall~~ not discriminate with respect to participation as to any advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed ~~and certified~~ pursuant to s. 464.012, who is acting within the scope of such license ~~and certification~~, solely on the basis of such license ~~or certification~~. This section may ~~shall~~ not be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the

plan.

Section 78. Subsection (3) of section 766.103, Florida Statutes, is amended to read:

766.103 Florida Medical Consent Law.—

(3) No recovery shall be allowed in any court in this state against any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, podiatric physician licensed under chapter 461, dentist licensed under chapter 466, advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under s. 464.012, or physician assistant licensed under s. 458.347 or s. 459.022 in an action brought for treating, examining, or operating on a patient without his or her informed consent when:

(a)1. The action of the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant in obtaining the consent of the patient or another person authorized to give consent for the patient was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community as that of the person treating, examining, or operating on the patient for whom the consent is obtained; and

2. A reasonable individual, from the information provided by the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant, under the circumstances, would have a general understanding of

the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, or dentists in the same or similar community who perform similar treatments or procedures; or

(b) The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse ~~advanced registered nurse practitioner~~, or physician assistant in accordance with the provisions of paragraph (a).

Section 79. Paragraph (d) of subsection (3) of section 766.1115, Florida Statutes, is amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

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

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

2. An ambulatory surgical center licensed under chapter 395.

3. A hospital licensed under chapter 395.

4. A physician or physician assistant licensed under chapter 458.

5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatric physician licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association and its employees or a corporate medical group and its employees.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. A dentist or dental hygienist licensed under chapter 466.

14. A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

15. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal

Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

Section 80. Subsection (1) of section 766.1116, Florida Statutes, is amended to read:

766.1116 Health care practitioner; waiver of license renewal fees and continuing education requirements.—

(1) As used in this section, the term "health care practitioner" means a physician or physician assistant licensed under chapter 458; an osteopathic physician or physician assistant licensed under chapter 459; a chiropractic physician licensed under chapter 460; a podiatric physician licensed under chapter 461; an advanced practice registered nurse ~~advanced registered nurse practitioner~~, registered nurse, or licensed practical nurse licensed under part I of chapter 464; a dentist or dental hygienist licensed under chapter 466; or a midwife licensed under chapter 467, who participates as a health care provider under s. 766.1115.

Section 81. Paragraph (c) of subsection (1) of section 766.118, Florida Statutes, is amended to read:

766.118 Determination of noneconomic damages.—

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

(c) "Practitioner" means any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, ~~or~~ chapter 486 or ~~certified under~~ s. 464.012. "Practitioner" also means any association,

corporation, firm, partnership, or other business entity under which such practitioner practices or any employee of such practitioner or entity acting in the scope of his or her employment. For the purpose of determining the limitations on noneconomic damages set forth in this section, the term "practitioner" includes any person or entity for whom a practitioner is vicariously liable and any person or entity whose liability is based solely on such person or entity being vicariously liable for the actions of a practitioner.

Section 82. Subsection (5) of section 794.08, Florida Statutes, is amended to read:

794.08 Female genital mutilation.—

(5) This section does not apply to procedures performed by or under the direction of a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a registered nurse licensed under part I of chapter 464, a practical nurse licensed under part I of chapter 464, an advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under part I of chapter 464, a midwife licensed under chapter 467, or a physician assistant licensed under chapter 458 or chapter 459 when necessary to preserve the physical health of a female person. This section also does not apply to any autopsy or limited dissection conducted pursuant to chapter 406.

Section 83. Subsection (23) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(23) "Practitioner" means a physician licensed under chapter 458, a dentist licensed under chapter 466, a veterinarian licensed under chapter 474, an osteopathic physician licensed under chapter 459, an advanced practice registered nurse licensed ~~advanced registered nurse practitioner certified~~ under chapter 464, a naturopath licensed under chapter 462, a certified optometrist licensed under chapter 463, a psychiatric nurse as defined in s. 394.455, a podiatric physician licensed under chapter 461, or a physician assistant licensed under chapter 458 or chapter 459, provided such practitioner holds a valid federal controlled substance registry number.

Section 84. Paragraph (b) of subsection (1) of section 893.05, Florida Statutes, is amended to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1)

(b) Pursuant to s. 458.347(4)(g), s. 459.022(4)(f), or s. 464.012(3), as applicable, a practitioner who supervises a licensed physician assistant or advanced practice registered nurse ~~advanced registered nurse practitioner~~ may authorize the licensed physician assistant or advanced practice registered nurse ~~advanced registered nurse practitioner~~ to order controlled substances for administration to a patient in a facility licensed under chapter 395 or part II of chapter 400.

Section 85. Subsection (6) of section 943.13, Florida Statutes, is amended to read:

943.13 Officers' minimum qualifications for employment or appointment.—On or after October 1, 1984, any person employed or

appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services shall:

(6) Have passed a physical examination by a licensed physician, physician assistant, or licensed advanced practice registered nurse ~~certified advanced registered nurse practitioner~~, based on specifications established by the commission. In order to be eligible for the presumption set forth in s. 112.18 while employed with an employing agency, a law enforcement officer, correctional officer, or correctional probation officer must have successfully passed the physical examination required by this subsection upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer with the employing agency, which examination must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension. A law enforcement officer, correctional officer, or correctional probation officer may not use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18 against the current employing agency.

Section 86. Paragraph (n) of subsection (1) of section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of

probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

(n) Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a physician, an advanced practice registered nurse ~~advanced registered nurse practitioner~~, or a physician assistant. The probationer or community controllee may not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

Section 87. Paragraph (i) of subsection (3) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child’s academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(i) *Epinephrine use and supply.*—

1. A student who has experienced or is at risk for life-threatening allergic reactions may carry an epinephrine auto-injector and self-administer epinephrine by auto-injector while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities if the school has been provided with parental and physician authorization. The State Board of Education, in cooperation with

the Department of Health, shall adopt rules for such use of epinephrine auto-injectors that shall include provisions to protect the safety of all students from the misuse or abuse of auto-injectors. A school district, county health department, public-private partner, and their employees and volunteers shall be indemnified by the parent of a student authorized to carry an epinephrine auto-injector for any and all liability with respect to the student's use of an epinephrine auto-injector pursuant to this paragraph.

2. A public school may purchase a supply of epinephrine auto-injectors from a wholesale distributor as defined in s. 499.003 or may enter into an arrangement with a wholesale distributor or manufacturer as defined in s. 499.003 for the epinephrine auto-injectors at fair-market, free, or reduced prices for use in the event a student has an anaphylactic reaction. The epinephrine auto-injectors must be maintained in a secure location on the public school's premises. The participating school district shall adopt a protocol developed by a licensed physician for the administration by school personnel who are trained to recognize an anaphylactic reaction and to administer an epinephrine auto-injection. The supply of epinephrine auto-injectors may be provided to and used by a student authorized to self-administer epinephrine by auto-injector under subparagraph 1. or trained school personnel.

3. The school district and its employees, agents, and the physician who provides the standing protocol for school epinephrine auto-injectors are not liable for any injury arising from the use of an epinephrine auto-injector administered by trained school personnel who follow the adopted protocol and

whose professional opinion is that the student is having an anaphylactic reaction:

a. Unless the trained school personnel's action is willful and wanton;

b. Notwithstanding that the parents or guardians of the student to whom the epinephrine is administered have not been provided notice or have not signed a statement acknowledging that the school district is not liable; and

c. Regardless of whether authorization has been given by the student's parents or guardians or by the student's physician, physician's assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~.

Section 88. Paragraph (b) of subsection (17) of section 1002.42, Florida Statutes, is amended to read:

1002.42 Private schools.—

(17) EPINEPHRINE SUPPLY.—

(b) The private school and its employees, agents, and the physician who provides the standing protocol for school epinephrine auto-injectors are not liable for any injury arising from the use of an epinephrine auto-injector administered by trained school personnel who follow the adopted protocol and whose professional opinion is that the student is having an anaphylactic reaction:

1. Unless the trained school personnel's action is willful and wanton;

2. Notwithstanding that the parents or guardians of the student to whom the epinephrine is administered have not been provided notice or have not signed a statement acknowledging that the school district is not liable; and

3. Regardless of whether authorization has been given by the student's parents or guardians or by the student's physician, physician's assistant, or advanced practice registered nurse ~~advanced registered nurse practitioner~~.

Section 89. Subsections (4) and (5) of section 1006.062, Florida Statutes, are amended to read:

1006.062 Administration of medication and provision of medical services by district school board personnel.—

(4) Nonmedical assistive personnel shall be allowed to perform health-related services upon successful completion of child-specific training by a registered nurse or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464, a physician licensed pursuant to chapter 458 or chapter 459, or a physician assistant licensed pursuant to chapter 458 or chapter 459. All procedures shall be monitored periodically by a nurse, advanced practice registered nurse ~~advanced registered nurse practitioner~~, physician assistant, or physician, including, but not limited to:

(a) Intermittent clean catheterization.

(b) Gastrostomy tube feeding.

(c) Monitoring blood glucose.

(d) Administering emergency injectable medication.

(5) For all other invasive medical services not listed in this subsection, a registered nurse or advanced practice registered nurse ~~advanced registered nurse practitioner~~ licensed under chapter 464, a physician licensed pursuant to chapter 458 or chapter 459, or a physician assistant licensed pursuant to chapter 458 or chapter 459 shall determine if nonmedical district school board personnel shall be allowed to perform such

service.

Section 90. Subsection (1) and paragraph (a) of subsection (2) of section 1009.65, Florida Statutes, are amended to read:

1009.65 Medical Education Reimbursement and Loan Repayment Program.—

(1) To encourage qualified medical professionals to practice in underserved locations where there are shortages of such personnel, there is established the Medical Education Reimbursement and Loan Repayment Program. The function of the program is to make payments that offset loans and educational expenses incurred by students for studies leading to a medical or nursing degree, medical or nursing licensure, or advanced practice registered nurse licensure ~~advanced registered nurse practitioner certification~~ or physician assistant licensure. The following licensed or certified health care professionals are eligible to participate in this program: medical doctors with primary care specialties, doctors of osteopathic medicine with primary care specialties, physician's assistants, licensed practical nurses and registered nurses, and advanced practice registered nurses ~~advanced registered nurse practitioners~~ with primary care specialties such as certified nurse midwives. Primary care medical specialties for physicians include obstetrics, gynecology, general and family practice, internal medicine, pediatrics, and other specialties which may be identified by the Department of Health.

(2) From the funds available, the Department of Health shall make payments to selected medical professionals as follows:

(a) Up to $4,000 per year for licensed practical nurses and

registered nurses, up to $10,000 per year for advanced practice registered nurses ~~advanced registered nurse practitioners~~ and physician's assistants, and up to $20,000 per year for physicians. Penalties for noncompliance shall be the same as those in the National Health Services Corps Loan Repayment Program. Educational expenses include costs for tuition, matriculation, registration, books, laboratory and other fees, other educational costs, and reasonable living expenses as determined by the Department of Health.

Section 91. Subsection (2) of section 1009.66, Florida Statutes, is amended to read:

1009.66 Nursing Student Loan Forgiveness Program.—

(2) To be eligible, a candidate must have graduated from an accredited or approved nursing program and have received a Florida license as a licensed practical nurse or a registered nurse or a Florida license ~~certificate~~ as an advanced practice registered nurse ~~advanced registered nurse practitioner~~.

Section 92. Subsection (3) of section 1009.67, Florida Statutes, is amended to read:

1009.67 Nursing scholarship program.—

(3) A scholarship may be awarded for no more than 2 years, in an amount not to exceed $8,000 per year. However, registered nurses pursuing a graduate degree for a faculty position or to practice as an advanced practice registered nurse ~~advanced registered nurse practitioner~~ may receive up to $12,000 per year. These amounts shall be adjusted by the amount of increase or decrease in the Consumer Price Index for All Urban Consumers published by the United States Department of Commerce.

Section 93. This act shall take effect October 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1594
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Nursing

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Assoc. of Nurse Practitioners

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 1594
Bill Number (if applicable)

Topic NURSING

Amendment Barcode (if applicable)

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

Representing FLORIDA HOSPITAL ASSOCIATION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/22/18
Meeting Date

1594
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Nursing

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

Representing Florida Association of Nurse Anesthetists

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 1594
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Nursing

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

Representing Florida Nurse Practitioner Network

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-22-18
Meeting Date

1594
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Nursing

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

Representing National Council of State Boards of Nursing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1594
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Nursing

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

Representing FL Health Care Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1622
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee; Environmental Preservation and Conservation Committee; and Senator Flores
SUBJECT:	Lands Used for Governmental Purposes
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Fav/CS**
2.	Sanders	Ryon	MS	**Fav/CS**
3.	Reagan	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1622 revises the procedures the Department of Economic Opportunity (DEO) must follow for the acquisition of nonconservation lands[1] for the purpose of military base buffering.

The bill revises the procedures the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) must use when acquiring land on an immediate basis by:

- Authorizing the acquisition of lands that will prevent or satisfy private property rights claims resulting from the limitations imposed by the designation of an area of critical state concern, and, if such lands are eligible to receive Florida Forever funding, authorizes up to 15 percent of Florida Forever funds distributed for the purchase of such lands;
- Authorizing the waiver or modification of all land acquisition procedures and all competitive bid procedures for the acquisition of such lands; and
- Authorizing the use of reasonably prudent procedures to estimate the value of such lands, if the parcel of land is estimated to be worth $500,000 or less and the director of the Division of State Lands (DSL) finds that the cost of an outside appraisal is not justified.

The bill requires the Department of Environmental Protection (DEP) to make recommendations to the Board of Trustees with respect to the purchase of lands that are used to prevent or satisfy

[1] The bill redefines the term "nonconservation lands" to mean lands acquired for uses other than conservation, outdoor resource based recreation, or archaeological or historic preservation.

private property rights claims resulting from limitations imposed by the designation of an area of critical state concern if the parcel is within an area of critical state concern and is on one of the approved acquisition lists established pursuant to ch. 259, F.S., relating to conservation and recreation lands.

The bill authorizes a land authority to contribute tourist impact tax revenues to the county in which it is located for affordable housing and authorizes a land authority to pay certain costs related to affordable housing projects.

The bill will have an indeterminate impact on costs to the DEP. By authorizing the agency to use alternative valuation methods to ascertain the value of certain lands, costs may be less than a certified appraisal. However, using alternative valuation methods may marginally increase or decrease the costs of the property, as the alternative method will vary from a certified appraisal.

The bill takes effect upon becoming a law.

II. Present Situation:

Board of Trustees of the Internal Improvement Trust Fund

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) holds state lands in trust for the use and benefit of the people of the state pursuant to Art. II, s. 7 and Art. X, s. 11 of the State Constitution. The Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture constitute the trustees of the internal improvement trust fund.[2] The Department of Environmental Protection (DEP) performs all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees.[3]

Section 253.025, F.S., outlines the procedures the state must follow when acquiring lands. Prior to the acquisition of land, a state agency is required to coordinate with the Division of State Lands (DSL) within the DEP to determine the availability of existing, suitable state-owned lands in the area and the public purpose for which the acquisition is being proposed.[4] Additionally, each parcel of land that is to be acquired must have at least one appraisal.[5] If the cost of land exceeds $1,000,000 then two appraisals are required. If a parcel is estimated to be worth $100,000 or less and the director of the DSL finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the DSL, or other reasonably prudent procedures may be used by the DSL to estimate the value of the parcel, provided the public's interest is reasonably protected.[6] The maximum amount that the state may pay for a parcel to be acquired is the value indicated in a single approved appraisal if only one appraisal is

[2] FLA. CONST. Art. IV s. 4.
[3] Section 253.002, F.S.
[4] Section 253.025(2), F.S.
[5] Section 253.025(8), F.S. Appraisals are not required for lands donated to the state.
[6] *Id.*

required.[7] If two appraisals are required and their values do not differ significantly the maximum amount that may be paid is the higher value indicated.[8]

The Board of Trustees, by an affirmative vote of at least three members, may direct the DEP to purchase lands on an immediate basis using up to 15 percent of Florida Forever funds allocated to the DEP for the acquisition of lands that:

- Are listed or placed at auction by the Federal Government as part of the Resolution Trust Corporation sale of lands from failed savings and loan associations;
- Are listed or placed at auction by the Federal Government as part of the Federal Deposit Insurance Corporation sale of lands from failed banks; or
- Will be developed or otherwise lost to potential public ownership, or for which federal matching funds will be lost, by the time the land can be purchased under the program within which the land is listed for acquisition.

For such acquisitions, the Board of Trustees may waive or modify all land acquisition procedures and all competitive bid procedures. Additionally, lands acquired must, at the time of purchase, be on one of the acquisition lists established pursuant to ch. 259, F.S., or be essential for water resource development, protection, or restoration, or a significant portion of the lands must contain natural communities or plant or animal species that are listed by the Florida Natural Areas Inventory as critically imperiled, imperiled, or rare, or as excellent quality occurrences of natural communities.

Military Base Protection Program

The Board of Trustees is authorized to acquire, pursuant to s. 288.980(2)(b), F.S., nonconservation lands[9] from the annual list submitted by the Department of Economic Opportunity (DEO) for the purpose of buffering a military installation against encroachment.[10] Encroachment includes any external factor that inhibits military readiness, including but not limited to, growing competition for land, airspace, waterfront access, and frequency spectrum.[11] Encroachment can be detrimental to the current and future missions of military installations due to the incompatible use of adjacent land. In recognition of this threat, the Military Base Protection Program was created to:

- Secure nonconservation lands to serve as a buffer to protect military installations against encroachment; and
- Support local community efforts to engage in service partnerships with military installations.[12]

The DEO is authorized to annually submit a list of nonconservation lands to the Board of Trustees to acquire, subject to a specific appropriation, through fee simple purchase or through

[7] Fla. Admin. Code R. 18-1.006.
[8] *Id*.
[9] The term "nonconservation lands" is defined to mean "lands not subject to acquisition by the Florida Forever Program."
[10] Section 253.025(21), F.S.
[11] Enterprise Florida, Inc., *Florida Programs to Mitigate Encroachment to Military Installations*, 3 (July 2017), *available at* https://www.enterpriseflorida.com/wp-content/uploads/Florida-Programs-to-Mitigate-Encroachment-to-Military-Installations-FINAL-July-12.pdf (last visited Feb. 13, 2018).
[12] Section 288.980(2)(a), F.S.

perpetual, less-than-fee interest purchase, for the purpose of buffering a military installation.[13] The Board of Trustees is required to consider the recommendations of the Florida Defense Support Task Force when selecting nonconservation lands to purchase.[14] The Florida Defense Support Task Force consists of the Governor and 12 appointed members and was created to make recommendations to preserve and protect military installations.[15] All funds appropriated for the purposes of the Military Base Protection Program are eligible to be used for matching federal funds.

Florida Forever Program

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.[16] The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.[17] Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.[18]

The DSL oversees the Florida Forever program, under which the state has protected over 737,117 acres of land purchased with $2.9 billion in Florida Forever funds.[19] Florida Forever projects and acquisitions are required to contribute to the achievement of one or more of the following program goals:

- Enhance the coordination and completion of land acquisition projects;
- Increase the protection of Florida's biodiversity at the species, natural community, and landscape levels;
- Protect, restore, and maintain the quality and natural functions of land, water, and wetlands systems of the state;
- Ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state;
- Increase natural resource-based public recreational and educational opportunities;
- Preserve significant archaeological or historic sites;
- Increase the amount of forestland available for sustainable management of natural resources; and
- Increase the amount of open space available in urban areas.[20]

The Acquisition and Restoration Council (ARC) is a 10-member body that makes recommendations on the acquisition, management, and disposal of state-owned lands.[21] The

[13] Section 288.980(2)(b), F.S.
[14] *Id*.
[15] Section 288.987, F.S.
[16] Chapter 99-247, Laws of Fla.
[17] Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2017), *available at* http://publicfiles.dep.state.fl.us/DSL/OES/FloridaForeverAnnualRpts/FLDEP_DSL_OES_FloridaForeverAnnualReport2017_20170920.pdf (last visited Feb. 13, 2018).
[18] Section 259.105, F.S.
[19] *Supra* note 17.
[20] Section 259.105(4), F.S.
[21] *Supra* note 17.

ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for Florida Forever funding. In evaluating each application, the ARC is required to consider whether the project:

- Meets multiple program goals;
- Is part of an ongoing governmental effort to restore, protect, or develop land areas or water resources;
- Enhances or facilitates management of properties already under public ownership;
- Has significant archaeological or historic value;
- Contributes to the solution of water resource problems on a regional basis;
- Has a significant portion of its land area in imminent danger of development, in imminent danger of losing its significant natural attributes or recreational open space, or in imminent danger of subdivision that would result in multiple ownership and make acquisition of the project more costly or less likely to be accomplished;
- Implements an element from a plan developed by an ecosystem management team;
- Is one of the components of Everglades restoration efforts;
- May be purchased at 80 percent of appraised value;
- May be acquired, in whole or in part, using alternatives to fee simple; or
- Is a joint acquisition.[22]

The ARC is required to give higher priority to: projects for which matching funds are available; project elements previously identified on an acquisition list, which can be acquired at 80 percent or less of appraised value; projects that can be acquired in less-than-fee ownership; projects that contribute to improving the quality or quantity of surface water or groundwater; projects that contribute to improving the water quality and flow of springs; and projects for which the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions.[23]

Using the established criteria, the ARC develops a priority list of applications submitted. An affirmative vote of at least five members of the ARC is required to place a proposed project on the priority list. The ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.[24] Each project on the priority list is placed in one of the following categories of expenditure for land conservation projects: climate change, critical natural, less-than-fee, partnerships, greater than 85 percent complete, and critical historical.[25] Projects are ranked within each category from highest to lowest priority. The priority list is presented to the Board of Trustees.[26] The Board of Trustees is responsible for acting on the ARC's recommendations by approving the acquisition of each parcel.[27] While the Board of Trustees is authorized to remove projects from the priority list, the Board of Trustees may not add or rearrange projects on the priority list.[28]

[22] Section 259.105(9), F.S.
[23] Section 259.105(10), F.S.
[24] DEP, *Frequently Asked Questions about Florida Forever, Who decides which lands to buy?*, https://floridadep.gov/lands/environmental-services/content/faq-florida-forever (last visited Feb. 13, 2018).
[25] Section 259.105(17), F.S.
[26] Section 259.105(14), F.S.
[27] *Supra* note 17.
[28] Section 259.105(14), F.S.

The DSL prepares an annual work plan based on the priority list developed by the ARC, which outlines the specific projects and acquisitions within projects that will be negotiated for purchase with Florida Forever funds available for that fiscal year for land acquisition.[29] As of 2017, there were 43 projects totaling approximately 1.4 million acres in the work plan.[30]

At least $5,000,000 of the funds allocated to the DSL under the Florida Forever program, beginning in the 2017-2018 fiscal year and continuing through the 2026-2027 fiscal year, are required to be spent on land acquisition within the Florida Keys area of critical state concern as authorized in s. 259.045, F.S.[31] Section 259.045, F.S., requires the DEP to make recommendations for the acquisition of certain lands to the Board of Trustees.[32]

Areas of Critical State Concern

The Areas of Critical State Concern Program was created in the "Florida Environmental Land and Water Management Act of 1972."[33] The purpose of the program is to ensure that the state, in accordance with s. 7, Art. II of the State Constitution, ensures a water management system that will reverse the deterioration of water quality and provide optimum utilization of the state's limited water resources, facilitate orderly and well-planned development, and protect the health, welfare, safety, and quality of life of residents of this state.[34]

An area of critical state concern[35] may only be designated for an area:

- Containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters,[36] and aquifer recharge areas, of which the uncontrolled private or public development would cause substantial deterioration of such resources;
- Containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, of which the private or public development would cause substantial deterioration or complete loss of such resources, sites, or districts; or

[29] Section 259.105(17), F.S.
[30] DEP, *Focused on Florida's Future, Florida Forever Program*, 7, presentation before the Senate Appropriations Subcommittee on the Environment and Natural Resources (Oct. 25, 2017), *available at* https://www.flsenate.gov/Committees/Show/AEN/Meeting%20Packet/3992 (last visited Feb. 13, 2018).
[31] Section 259.105(3)(b), F.S.
[32] Section 259.045, F.S.
[33] Chapter 72-317, s. 1, Laws of Fla.
[34] Section 380.021, F.S.
[35] The designated Areas of Critical State Concern are the Apalachicola Bay Area, the Green Swamp Area, the Big Cypress Area, and the Florida Keys Area and the City of Key West Area.
[36] Section 403.061(27), F.S., defines Outstanding Florida Waters as bodies of water worthy of special protection because of their natural attributes. This special designation is applied to certain waters and is intended to protect existing good water quality. See DEP, *Outstanding Florida Waters*, https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters (last visited Feb. 13, 2018).

- An area 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, but not limited to, highways, ports, airports, energy facilities, and water management projects.[37]

Within 45 days after an area is designated an area of critical state concern, and annually thereafter, the DEP is required to consider the recommendations of the DEO, relating to the purchase of lands within an area of critical state concern or lands outside an area of critical state concern that directly impact such area, which may include lands used to preserve and protect water supply.[38] Pursuant to s. 259.045, F.S., the DEP is required to make recommendations to the Board of Trustees with respect to the purchase of any such lands that are:

- Environmentally endangered lands;
- Outdoor recreation lands;
- Lands that conserve sensitive habitat;
- Lands that protect, restore, or enhance nearshore water quality and fisheries;
- Lands used to protect and enhance water supply to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems; or
- Lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern if the acquisition of such lands fulfills a public purpose listed in s. 259.032(2), F.S., relating to conservation and recreation lands.[39]

Within 180 days after an area is designated an area of critical state concern, the applicable local government may submit to the DEO, as the state land planning agency, its existing land development regulations and local comprehensive plan for the area taking into consideration the rules and principles adopted guiding development in the area of critical state concern.[40] If the DEO determines that the administration of the local land development regulations or the local comprehensive plan within the area is inadequate to protect state or regional interests, the agency may institute appropriate judicial proceedings to complete proper enforcement of the land development regulations or plans.[41]

In recognition of the difficulty of dealing with challenges implementing comprehensive land use plans pursuant to the Areas of Critical State Concern Program, each county in which one or more areas of critical state concern are located is authorized to create, by ordinance, a land authority.[42] A land authority is governed by the governing board of the county and has the flexibility to address plan implementation innovatively and act as an intermediary between individual landowners and the governmental entities regulating land use within the county.[43]

Additionally, any county creating a land authority is authorized to levy by ordinance a tourist impact tax on the taxable privileges on proceeds received from every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel,

[37] Section 380.05(2), F.S.
[38] Section 259.045, F.S.
[39] *Id*.
[40] Section 380.05(5), F.S.
[41] Section 380.05(13), F.S.
[42] Section 380.0661, F.S.
[43] *Id*.

motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less, unless such establishment is exempt.[44] Revenues received are required to be distributed as follows:

- Fifty percent to the land authority to be used in accordance with s. 380.0666, F.S., in the area of critical state concern for which the revenue is generated, with up to five percent authorized to be used for administration and other costs incident to the exercise of said powers; and
- Fifty percent to the governing body of the county where the revenue was generated. Such proceeds shall be used to offset the loss of ad valorem taxes due to acquisitions provided for by this act.[45]

Section 380.0666, F.S., authorizes a land authority to contribute tourist impact tax revenues to its most populous municipality or housing authority of such municipality at the request of the commission or council of such municipality, for the construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality.

The Florida Keys and the City of Key West areas of state concern

The Legislature designated the Florida Keys (Monroe County and its municipalities) and the City of Key West as areas of critical state concern in 1975 due to the area's environmental sensitivity and mounting development pressures.[46] The legislative intent was to establish a land use management system for the Florida Keys that would achieve the following:

- Protect the natural environment and improve the nearshore water quality;
- Support a diverse economic base that promotes balanced growth in accordance with the capacity of public facilities;
- Promote public land acquisition and ensure that the population of the Florida Keys can be safely evacuated;
- Provide affordable housing in close proximity to places of employment; and
- Protect property rights and promote coordination among governmental agencies that have permitting jurisdiction.[47]

Land development in the Keys has displaced nearly 50 percent of all upland habitats and created a patchwork of land cover resulting in reduced ecological functions such as lower biodiversity, increased vulnerability to invasion by exotic plant and animal species, and decreased gene flow among species.[48] Land development in the Florida Keys is limited because the Florida Keys are home to many endangered and threatened species, and all permanent residents of the Florida Keys Area are required to be evacuated within a 24 hour clearance time.[49]

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[44] Section 125.0108, F.S. See s. 212.03, F.S. for exemptions from the tourist impact tax.
[45] *Id.*
[46] Department of Economic Opportunity (DEO), *Florida Keys Area of Critical State Concern 2015 Annual Report*, 1 (Nov. 30, 2015), *available at* http://www.floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2015-florida-keys-area-of-critical-state-concern-annual-report.pdf?sfvrsn=2 (last visited Feb. 13, 2018).
[47] *Id.*, at 2.
[48] *Id*.
[49] Section 380.0552 (9)(a)2., F.S.

In 1992, Monroe County created and implemented the Rate of Growth Ordinance (ROGO) to be consistent with the 1985 Growth Management Act.[50] The ROGO is designed to control growth in a manner that is beneficial to the local environment, as well as the local residents, and establishes rules and procedures for the competitive process to obtain a building permit. The ROGO drew legal challenges from numerous parties with litigation lasting several years. To simplify the ROGO process, a tiered system was adopted in 2006, which includes a built in method of directing growth to acceptable areas and allowing conservation in areas with environmental sensitivity.[51] The process is based on a point system that allows everyone applying for a new residential or commercial building permit to compete against each other for the limited number of allocations issued each year.[52]

Based upon current development trends and hurricane evacuation modeling, it is anticipated that by 2023 there will remain more than 7,000 undeveloped, privately owned parcels that would be prohibited from development within Monroe County at an estimated acquisition value of $322 million.[53] The prohibition on land development could potentially result in litigation under the Takings Clause of the United States Constitution,[54] which requires the government to compensate a property owner when it takes his or her property for public use or when the state excessively regulates his or her property.

The state of Florida has purchased 10,501 acres in the Keys at a cost of $243.9 million for natural resource protection.[55] Monroe County developed a ranking tool to prioritize land for acquisition, which is weighted to consider attributes for conservation lands, listed species focus areas, military influence areas, and lands targeted for acquisition through the Florida Forever program.[56] The evaluation resulted in a report that indicates a need for acquisition of 4,269 conservation parcels at an estimated cost of $82.7 million and a potential purchase of over 900 vacant developable privately owned parcels with an acquisition cost of $29 million.[57] Additionally, there are an estimated 2,339 parcels in Marathon and Islamorada valued at $127 million which may be in need of acquisition or other appropriate strategies to reduce or otherwise account for platted lots.[58]

III. Effect of Proposed Changes:

Section 1 amends s. 253.025(21), F.S., to allow nonconservation lands acquired by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) under the military base buffering program in s. 288.980(2)(b), F.S., to be leased or conveyed at less than appraised value to the benefiting military installation. Such lands must be conveyed or leased in accordance with the installation's procedures, state law, and the terms of the management and monitoring

[50] Monroe County Growth Management Division, *A New Era in Growth Management: The Tier System, A Layman's Guide to Residential ROGO, available at* http://www.floridakeyskeywestrealestate.com/pdf/laymansguideROGO.pdf (last visited Feb. 13, 2018).
[51] *Id*.
[52] *Id*.
[53] *Id*.
[54] U.S. Const. amend. V.
[55] *Supra* note 46, at 12.
[56] *Id*.
[57] *Id*.
[58] *Id*., at 13.

agreement provided in accordance with s. 288.980(2)(b), F.S. A conveyance at less than appraised value must state that the land will revert to the Board of Trustees if the land is not used for its intended purpose as a military installation buffer or if the military installation closes.

The bill also allows the Board of Trustees to lease such military buffer lands at rates determined by competitive bid, which may be less than appraised or market value, to private entities to conduct agricultural or silvicultural operations under terms requiring approval of the military installation. The private entity must implement the best management practices applicable to such operations as adopted by the Department of Agriculture and Consumer Services.

Additionally, the bill provides that if federal partnership funds are available before a military base buffer land is acquired, the Division of State Lands (DSL) must apply Yellow Book appraisal standards[59] and disclose the appraised value to the seller.

Section 253.025(22), F.S., is amended and subsection (23) is created to authorize the Board of Trustees by an affirmative vote of at least three members to direct the Department of Environmental Protection (DEP) to purchase lands on an immediate basis which will prevent or satisfy private property rights claims resulting from the limitations imposed by the designation of an area of critical state concern. The Board of Trustees is authorized to use up to 15 percent of the funds allocated to the DEP through the Florida Forever Trust Fund for the acquisition of such lands, if the lands acquired are, at the time of purchase, on one of the acquisition lists established pursuant to ch. 259, F.S., or essential for water resource development, protection, or restoration, or a significant portion of the lands must contain natural communities or plant or animal species that are listed by the Florida Natural Areas Inventory as critically imperiled, imperiled, or rare, or as excellent quality occurrences of natural communities.[60] The Board of Trustees is authorized to waive or modify all land acquisition procedures and all competitive bid procedures for the acquisition of such lands.

Additionally, if a parcel that is to be acquired by the Board of Trustees on an immediate basis is estimated to be worth $500,000 or less and the director of the DSL finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the DSL, or other reasonably prudent procedures may be used by the DSL to estimate the value of the land, provided the public's interest is reasonably protected.

Section 2 amends s. 259.045, F.S., to require the DEP to make recommendations to the Board of Trustees with respect to the purchase of lands that are used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern if the parcel is within an area of critical state concern and is on one of the approved acquisition lists established pursuant to ch. 259, F.S., relating to conservation and recreation lands. This provision authorizes the Board of Trustees to use Florida Forever funds to purchase such lands as provided in s. 259.105(3)(b), F.S.

The bill authorizes the use of a comparable sales analysis, an appraisal prepared by the DSL, or other reasonably prudent procedures for the purpose of the acquisition of lands used to prevent or

[59] Yellow Book appraisal standards refer to the uniform appraisal standards for federal land acquisitions.
[60] Section 253.025(22), F.S.

satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern if the parcel is estimated to be worth $500,000 or less and the director of the DSL finds that the cost of an outside appraisal is not justified, provided the public's interest is reasonably protected.

Section 3 amends s. 288.980, F.S., to revise the procedures the Department of Economic Opportunity (DEO) must follow in relation to the acquisition of nonconservation lands for the purpose of military base buffering. The bill requires the DEO to request all military installations in the state to provide the agency with a list of base buffering encroachment lands for fee simple or less-than-fee simple acquisitions by October 1 of each year. The Florida Defense Support Task Force is required to analyze the list and provide its recommendations for ranking the lands to the DEO by December 1 of each year. The DEO is required to submit the final list to the DSL, which must contain the following information for each parcel:

- A legal description of the land and its property identification number;
- A detailed map of the land; and
- A management and monitoring agreement to ensure the land serves a base buffering purpose.

The bill also redefines the term "nonconservation lands" to mean lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation. Under current law, the term is defined to mean lands not subject to acquisition by the Florida Forever Program.[61] The revised definition attempts to conform the definition in ch. 288, F.S., with the definition of conservation lands[62] in ch. 253, F.S.

Section 4 amends s. 380.0666, F.S., to authorize a land authority to contribute tourist impact tax revenues to the county in which it is located, instead of just its most populous municipality or housing authority of such municipality, at the request of the county commission for the construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality or any other area of the county.

The bill also authorizes land authority funds to be used to pay the following costs related to affordable housing projects:

- Acquiring real property and any buildings, including payments for contracts to purchase properties;
- Site preparation, demolition, environmental remediation that is not reimbursed by another governmental funding program, and development;

[61] Section 288.980(2)(c), F.S.

[62] The term "conservation lands" is defined in s. 253.034, F.S., to mean lands that are currently managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands that were acquired solely to facilitate the acquisition of other conservation lands. Lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation may not be designated conservation lands except as otherwise authorized under this section. These lands shall include, but not be limited to, the following: correction and detention facilities, military installations and facilities, state office buildings, maintenance yards, state university or Florida College System institution campuses, agricultural field stations or offices, tower sites, law enforcement and license facilities, laboratories, hospitals, clinics, and other sites that do not possess significant natural or historical resources. However, lands acquired solely to facilitate the acquisition of other conservation lands, and for which the land management plan has not yet been completed or updated, may be evaluated by the Board of Trustees of the Internal Improvement Trust Fund on a case-by-case basis to determine if they will be designated conservation lands.

- Professional fees in connection with the planning, design, and construction of the project, such as those of architects, engineers, attorneys, and accountants;
- Studies, surveys, and plans;
- Construction, rehabilitation, and equipping of the project, excluding permit and impact fees and mitigation requirements;
- Onsite land improvements, such as landscaping, parking, and ingress and egress, excluding permit and impact fees and mitigation requirements; and
- The cost of offsite access roads, except those required to meet hurricane evacuation clearance times.

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:

The bill will likely have a positive fiscal impact on property owners whose property is purchased.

C. Government Sector Impact:

The bill will have an indeterminate impact on costs to the Department of Environmental Protection (DEP). By authorizing the agency to use alternative valuation methods to ascertain the value of certain lands, costs may be less than a certified appraisal. However, using alternative valuation methods may marginally increase or decrease the costs of the property, as the alternative method will vary from a certified appraisal.

The bill may shift some affordable housing funds generated by the tourist impact tax from municipalities to the county, if the land authority chooses to contribute the tourist impact tax revenues directly to the county, as authorized under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 253.025, 259.045, 288.980, and 380.0666.

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 Military and Veterans Affairs, Space, and Domestic Security on February 15, 2018:
The Committee Substitute:

- Allows the Board of Trustees to lease land used for military base buffering to private entities to conduct agricultural or silvicultural operations under terms approved by the military installation.
- Relocates provisions amended in s. 253.025, F.S., directing DEO to develop a list of military base encroachment lands, to s. 288.980, F.S.
- Authorizes the Board of Trustees to purchase lands within an area of critical state concern to prevent or satisfy private property rights claims for lands on an approved acquisition list established pursuant to ch. 259, F.S. The Board of Trustees may utilize alternative valuation techniques when purchasing such lands if the parcel is estimated to be valued at $500,000 or less and if the cost of an outside appraisal is not justified, provided the public's interest is protected.
- Specifies the activities related to affordable housing projects that can be paid for using tourist impact tax revenues.

CS by Environmental Conservation and Preservation on February 5, 2018:
The Committee Substitute:

- Removes the authorization for the use of Florida Forever funds for the acquisition of lands that will satisfy private property rights claims within an area of critical state concern generally. Florida Forever funds may be used to acquire such lands but only if the lands are otherwise eligible for Florida Forever funding.
- Redefines the term "nonconservation lands" to mean lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation.
- Authorizes a land authority to pay certain costs related to affordable housing projects.

B. Amendments:

None.

By the Committees on Military and Veterans Affairs, Space, and Domestic Security; and Environmental Preservation and Conservation; and Senator Flores

583-03275-18 20181622c2

A bill to be entitled

An act relating to lands used for governmental purposes; amending s. 253.025, F.S.; providing conditions under which specified appraisal standards are required for acquisition of military installation buffer lands; authorizing such lands to be leased or conveyed for less than appraised value to military installations; authorizing such lands to be leased for less than appraised value to agricultural or silvicultural operations; providing requirements for such leasing and conveyance; authorizing the use of certain funding sources for the immediate acquisition of lands that prevent or satisfy private property rights claims within areas of critical state concern; authorizing the board of trustees to waive or modify certain procedures or competitive bidding requirements; providing procedures for estimating the value of such lands under certain conditions; amending s. 259.045, F.S.; requiring the Department of Environmental Protection to make certain recommendations to the board regarding the acquisition of certain lands to prevent or satisfy private property rights claims within areas of critical state concern; providing procedures for estimating the value of such lands under certain conditions; amending s. 288.980, F.S.; requiring the Department of Economic Opportunity to annually request a list from military installations regarding base buffering encroachment lands before a specified date; requiring the

583-03275-18 20181622c2

department to submit such list to the Florida Defense Support Task Force; requiring the Task Force to review such list annually and provide its recommendations to the department by a specified date; requiring the department to submit such list annually to the Board of Trustees of the Internal Improvement Trust Fund; authorizing the board to acquire such land, subject to certain conditions; specifying requirements for such list; revising the definition of the term "nonconservation lands"; amending s. 380.0666, F.S.; revising the powers of land authorities; authorizing land authorities to contribute tourist impact tax revenues to counties for the construction, redevelopment, and preservation of certain affordable housing; providing an effective date.

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

Section 1. Subsections (21) and (22) of section 253.025, Florida Statutes, are amended, present subsection (23) is redesignated as subsection (25), and a new subsection (23) and subsection (24) are added to that section, to read:

253.025 Acquisition of state lands.—

(21)(a) The board of trustees may acquire, pursuant to s. 288.980(2)(b), nonconservation lands from the annual list submitted by the Department of Economic Opportunity for the purpose of buffering a military installation against encroachment.

(b) If federal partnership funds are available before the

military installation buffer land is acquired, the division shall apply Yellow Book appraisal standards and must disclose the appraised value to the seller.

(c) Following acquisition of the military installation buffer land, the board of trustees is authorized, in accordance with the installation's procedures, the laws of this state, and the terms of the management and monitoring agreement provided in accordance s. 288.980(2)(b), to:

1. Convey the land at less than appraised value to the military installation;

2. Lease the land at less than appraised or market value to the military installation; or

3. Lease the land at rates determined by competitive bid, which may be less than appraised or market value, to private entities to conduct agricultural or silvicultural operations under terms requiring approval of the military installation and that must implement the best management practices applicable to such operations as adopted by the Department of Agriculture and Consumer Services.

(d) A conveyance at less than appraised value must state that the land will revert to the board of trustees if the land is not used for its intended purposes as a military installation buffer or if the military installation closes.

(22) The board of trustees, by an affirmative vote of at least three members, may direct the department to purchase lands on an immediate basis using up to 15 percent of the funds allocated to the department pursuant to s. 259.105 for the acquisition of lands that:

(a) Are listed or placed at auction by the Federal

Government as part of the Resolution Trust Corporation sale of lands from failed savings and loan associations;

(b) Are listed or placed at auction by the Federal Government as part of the Federal Deposit Insurance Corporation sale of lands from failed banks; ~~or~~

(c) Will be developed or otherwise lost to potential public ownership, or for which federal matching funds will be lost, by the time the land can be purchased under the program within which the land is listed for acquisition; or

(d) Will prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern pursuant to chapter 380.

~~For such acquisitions, the board of trustees may waive or modify all procedures required for land acquisition pursuant to this chapter and all competitive bid procedures required pursuant to chapters 255 and 287.~~ Lands acquired pursuant to this subsection must, at the time of purchase, be on one of the acquisition lists established pursuant to chapter 259, or be essential for water resource development, protection, or restoration, or a significant portion of the lands must contain natural communities or plant or animal species that are listed by the Florida Natural Areas Inventory as critically imperiled, imperiled, or rare, or as excellent quality occurrences of natural communities.

(23) The board of trustees, by an affirmative vote of at least three members, may direct the division to purchase lands on an immediate basis that will prevent or satisfy private property rights claims resulting from limitations imposed by the

designation of an area of critical state concern pursuant to chapter 380.

(24) For acquisitions directed pursuant to subsection (22) or subsection (23):

(a) The board of trustees may waive or modify all procedures required for land acquisition pursuant to this chapter and all competitive bid procedures required pursuant to chapters 255 and 287; and

(b) If a parcel is estimated to be worth $500,000 or less and the director of the division finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the division, or other reasonably prudent procedure may be used by the division to estimate the value of the land, provided the public interest is reasonably protected.

Section 2. Subsection (6) of section 259.045, Florida Statutes, is amended to read:

259.045 Purchase of lands in areas of critical state concern; recommendations by department and land authorities.—Within 45 days after the Administration Commission designates an area as an area of critical state concern under s. 380.05, and annually thereafter, the Department of Environmental Protection shall consider the recommendations of the state land planning agency pursuant to s. 380.05(1)(a) relating to purchase of lands within an area of critical state concern or lands outside an area of critical state concern that directly impact an area of critical state concern, which may include lands used to preserve and protect water supply, and shall make recommendations to the board with respect to the purchase of the fee or any lesser

interest in any such lands that are:

(6) Lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern if the acquisition of such lands fulfills a public purpose listed in s. 259.032(2) or if the parcel is wholly or partially, at the time of acquisition, on one of the board's approved acquisition lists established pursuant to this chapter. For the purposes of this subsection, if a parcel is estimated to be worth $500,000 or less and the director of the division finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the division, or other reasonably prudent procedures may be used by the division to estimate the value of the parcel, provided the public's interest is reasonably protected.

The department, a local government, a special district, or a land authority within an area of critical state concern may make recommendations with respect to additional purchases which were not included in the state land planning agency recommendations.

Section 3. Paragraphs (b) and (c) of subsection (2) of section 288.980, Florida Statutes, are amended to read:

288.980 Military base retention; legislative intent; grants program.—

(2)

(b)1. The department shall annually request military installations in the state to provide the department with a list of base buffering encroachment lands for fee simple or less-than-fee simple acquisitions before October 1.

2. The department shall submit the list of base buffering encroachment lands to the Florida Defense Support Task Force created in s. 288.987.

3. The Florida Defense Support Task Force shall, annually by December 1, review the list of base buffering encroachment lands submitted by the military installations and provide its recommendations for ranking the lands for acquisition to the department.

4. The department shall annually submit the list of base buffering encroachment lands provided by the Florida Defense Support Task Force to the Board of Trustees of the Internal Improvement Trust Fund, which may acquire the lands pursuant to s. 253.025. At a minimum, the annual list must contain for each recommended land acquisition:

a. A legal description of the land and its property identification number;

b. A detailed map of the land; and

c. A management and monitoring agreement to ensure the land serves a base buffering purpose. ~~The department may annually submit a list to the Board of Trustees of the Internal Improvement Trust Fund of nonconservation lands to acquire, subject to a specific appropriation, through fee simple purchase or through perpetual, less-than-fee interest purchase, for the purpose of buffering a military installation against encroachment. The Board of Trustees of the Internal Improvement Trust Fund shall also consider the recommendations of the Florida Defense Support Task Force, created in s. 288.987, when selecting nonconservation lands to purchase for the purpose of securing and protecting a military installation against~~

~~encroachment. This paragraph does not preclude the acquisition of such lands by local governments through fee simple purchase or through perpetual, less-than-fee interest purchase, for the purpose of buffering a military installation against encroachment.~~

(c) As used in this subsection, the term "nonconservation lands" means lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation ~~not subject to acquisition by the Florida Forever Program~~.

Section 4. Subsection (3) of section 380.0666, Florida Statutes, is amended, present subsection (4) is redesignated as subsection (5), and a new subsection (4) is added to that subsection to read:

380.0666 Powers of land authority.—The land authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers, which are in addition to all other powers granted by other provisions of this act:

(3) To acquire and dispose of real and personal property or any interest therein when such acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area, prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern, or provide access to management of acquired lands; to acquire interests in land by means of land

exchanges; to contribute tourist impact tax revenues received pursuant to s. 125.0108 to the county in which it is located and its most populous municipality or the housing authority of such county or municipality, at the request of the county commission or the commission or council of such municipality, for the construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality or any other area of the county; to contribute funds to the Department of Environmental Protection for the purchase of lands by the department; and to enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements. However, the land authority shall make an acquisition or contribution only if:

(a) Such acquisition or contribution is consistent with land development regulations and local comprehensive plans adopted and approved pursuant to this chapter;

(b) The property acquired is within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation;

(c) The property to be acquired has not been selected for purchase through another local, regional, state, or federal public land acquisition program. Such restriction shall not apply if the land authority cooperates with the other public land acquisition programs which listed the lands for acquisition, to coordinate the acquisition and disposition of

such lands. In such cases, the land authority may enter into contractual or other agreements to acquire lands jointly or for eventual resale to other public land acquisition programs; and

(d) The acquisition or contribution is not used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.

(4) Land authority funds received pursuant to s. 125.0108 may be used to pay costs related to affordable housing projects, including:

(a) The cost of acquiring real property and any buildings thereon, including payments for contracts to purchase properties.

(b) The cost of site preparation, demolition, environmental remediation that is not reimbursed by another governmental funding program, and development.

(c) Professional fees in connection with the planning, design, and construction of the project, such as those of architects, engineers, attorneys, and accountants.

(d) The cost of studies, surveys, and plans.

(e) The cost of the construction, rehabilitation, and equipping of the project, excluding permit and impact fees and mitigation requirements.

(f) The cost of onsite land improvements, such as landscaping, parking, and ingress and egress, excluding permit and impact fees and mitigation requirements.

(g) The cost of offsite access roads, except those required to meet hurricane evacuation clearance times.

Section 5. 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:	PCS/SB 1788 (847484)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senator Passidomo
SUBJECT:	Medication Administration Training
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Fav/CS**
2.	Gerbrandt	Williams	AHS	**Recommend: Fav/CS**
3.	Gerbrandt	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1788 revises training, competency and validation requirements for certain direct service providers who administer or assist with the administration of prescription medications to persons with developmental disabilities.

The bill increases from 4 hours to 6 hours the minimum number of training hours that a direct service provider must complete before the provider is permitted to supervise the self-administration of medication or administer certain prescription medications. The bill implements new competency and validation requirements based on the route of medication administered.

The bill requires each direct service provider to complete an annual 2-hour agency-developed in-service training course in medication administration and error prevention.

The bill revises the type of licensed professional that can provide training, competency determination, and initial and annual validations to include licensed practical nurses.

The bill expands the Agency for Persons with Disabilities (APD) rule making authority to include adopting rules to establish qualification requirements for trainers, and methods of enforcement to ensure compliance with the revised training, competency and validation requirements.

The APD is expected to incur minimal costs to implement this bill. Such costs can be absorbed within its existing resources.

The bill takes effect July 1, 2018.

II. Present Situation:

Direct Service Providers

Clients receiving services from the Agency for Persons with Disabilities (APD) in home and community-based settings often receive care from direct service providers.[1] A direct service provider is defined as a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client or has access to a client's living areas or to a client's funds or personal property.[2]

Administration of Medication

A direct service provider may supervise a client's self-administration of medication or may directly administer medication to a client.[3] Currently, a trained unlicensed direct service provider may use the following routes to supervise or administer medications to clients:

- Oral,
- Transdermal,
- Ophthalmic,
- Otic,
- Rectal,
- Inhaled,
- Enteral, or
- Topical.[4]

The client or the client's guardian or legal representative must give his or her informed consent to self-administering medication under the supervision of an unlicensed direct service provider or to receiving medication administered by an unlicensed direct service provider.[5]

Training Requirements

In order to supervise the self-administration of medication or to administer medications, a direct service provider must satisfactorily complete a 4-hour training course in medication administration and be found competent by a registered nurse or physician to administer or supervise the self-administration of medication to a client in a safe and sanitary manner.[6]

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[1] The Agency for Persons with Disabilities, *Agency Legislative Bill Analysis for Senate Bill 1788* (Dec. 21, 2017), *available at*: http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=22337&yr=2018 (last visited February 5, 2018).
[2] Section 393.063(13), F.S.
[3] Section 393.506(1), F.S.
[4] *Id.*
[5] Section 393.506(3), F.S.
[6] See ss. 393.506(2), and (4), F.S.

Currently, competency is assessed and validated at least annually for all routes of medication administration in an onsite setting, and must include the registered nurse or physician personally observing the direct service provider satisfactorily supervising the self-administration of medication by a client, and administering medication to a client.[7]

III. Effect of Proposed Changes:

The bill amends s. 393.506, F.S., to require all direct service providers to complete an initial training course of no less than 6 hours (rather than 4 hours) and be validated as competent before supervising the self-administration of medications or administering certain prescription medications to a client.

The bill requires all direct service providers to complete an annual 2-hour agency developed in-service training course in medication administration and error prevention conducted by an agency-approved trainer.

For oral, enteral, ophthalmic, rectal and inhaled routes of medication administration, the bill requires annual revalidation while maintaining that initial competency and validation require onsite administration of medication on an actual client.

For otic, transdermal, or topical routes of medication administration, the bill removes the annual onsite competency and validation requirement and provides that competency may be validated by simulation during an initial training course and does not need to be revalidated annually. The bill exempts direct providers from the 6-hour training course requirement if they have taken an initial 4-hour training course but are not currently validated for otic, transdermal or topical medication administration before July 1, 2018. The provider must seek validation and the bill allows the validation to be performed through simulation.

For oral and enteral routes of medication administration, the bill exempts direct service providers from the 6-hour training course requirement if they have taken an initial 4-hour training course and they have a current validation on or before July 1, 2018. The bill requires direct service providers who do not maintain their annual validation to retake a 6-hour initial training course and obtain additional validations before administering medications.

The bill revises the type of licensed professional that can provide training, competency determination, and initial and annual validations to include licensed practical nurses.

The bill expands the APD rule making authority to include adopting rules to establish qualification requirements for trainers, and methods of enforcement to ensure compliance with the revised training, competency and validation requirements.

The effective date of the bill is July 1, 2018.

[7] See 393.506(2), F.S.

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:

Employers of the direct service providers may have increased costs due to the expanded initial training hours required by the bill.[8] However, the employers of the direct service providers will no longer incur the annual costs of a registered nurse or doctor validating direct service providers for otic, topical, and transdermal routes Providers will only be responsible for the initial validation of direct service providers for ophthalmic, rectal, and inhaled routes. The only drug administration routes that will continue to require annual validation are oral and enteral.[9]

C. Government Sector Impact:

The Agency for Persons with Disabilities may incur minimal costs associated with updating forms and rule promulgation, which the agency can absorb within existing resources.[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the APD, the intent of the bill is to revise the training and competency requirements for unlicensed direct service providers. However, subsection (6) of s. 393.506, F.S., as amended by section 1 of this bill states that only direct service providers who have met the training requirements of this section and who are validated as competent may administer

[8] *Supra* Note at 1.
[9] *Supra* Note at 1.
[10] *Supra* Note at 1.

medication to a client. Subsection (6) may preclude licensed professionals, such as nurses and physicians, from being able to administer medications to ADP clients if they have not gone through the APD training and competency determination.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 393.506.

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 February 14, 2018:
The committee substitute:

- Requires direct service providers to complete an initial training course of no less than 6 hours before supervising the self-administration of medication or administering medication;
- Requires direct service providers to annually complete a 2-hour agency-developed inservice training course and allows the course to count toward annual inservice training hours;
- Revises the type of licensed professional that can provide training, the determination of competency, and initial and annual validations to include licensed practical nurses;
- Provides that certain direct service providers who have taken an initial training course and have a current validation on or before July 1, 2018, do not have to retake the initial 6 hour training course and certain validations may be obtained through simulation;
- Provides that certain validations may be obtained through simulation during the initial training course and do not require annual revalidation; and
- Expands the APD rulemaking authority to include adopting rules to establish qualification requirements for trainers, and methods of enforcement to ensure compliance with the revised training, competency and validation requirements.

CS by Children, Families, and Elder Affairs on January 29, 2018:

- Removes language requiring that new comprehensive transitional education programs (CTEPs) may not be licensed in Florida after July 1, 2018, and existing licenses may not be renewed after December 31, 2020.
- Expands the requirement for direct service providers to complete an annual 2-hour training course on medication administration and error prevention to apply to all unlicensed staff administering or supervising self-administration of medication, not strictly those who administer oral or enteral medications.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 393.506, Florida Statutes, is amended to read:

393.506 Administration of medication.—

(1) An unlicensed ~~A~~ direct service provider ~~who is not currently licensed to administer medication~~ may supervise the self-administration of medication or may administer oral,

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transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a client if the unlicensed direct service provider meets the requirements of ~~as provided in~~ this section.

(2) In order to supervise the self-administration of medication or to administer medications as provided in subsection (1), an unlicensed ~~a~~ direct service provider must satisfactorily complete an initial ~~a~~ training course conducted by an agency-approved trainer of not less than 6 ~~4~~ hours in medication administration and be found competent to supervise the self-administration of medication by a client and ~~or~~ to administer medication to a client in a safe and sanitary manner. ~~Competency must be assessed and validated at least annually in an onsite setting and must include personally observing the direct service provider satisfactorily:~~

(a) The competency of the unlicensed direct service provider to supervise and administer otic, transdermal, and topical medication must be assessed and validated using simulation during the initial training course, and need not be revalidated annually. ~~Supervising the self-administration of medication by a client; and~~

(b) Competency must be validated initially and revalidated annually for oral, enteral, ophthalmic, rectal, and inhaled medication administration. The initial validation and annual revalidations of medication administration must be performed onsite with an actual client using the client's actual medication and must include the validating practitioner personally observing the unlicensed direct service provider satisfactorily:

1. Supervising the oral, enteral, ophthalmic, rectal, or inhaled self-administration of medication by a client; and

2. Administering medication to a client by oral, enteral, ophthalmic, rectal, or inhaled medication routes.

(c)1. An unlicensed direct service provider who completes the required initial training course and is validated in the oral or enteral route of medication administration is not required to retake the initial training course unless he or she fails to maintain annual validation in the oral or enteral route, in which case, the provider must complete the initial 6-hour training course again and obtain all required validations before he or she may supervise the self-administration of medication by a client or administer medication to a client.

2. If the unlicensed direct service provider has already completed an initial training course of at least 4 hours and has a current validation for oral or enteral routes of medication administration on or before July 1, 2018, he or she is not required to complete the initial 6-hour training course. If for any reason the unlicensed direct service provider fails to meet the annual validation requirement for oral or enteral medication administration, or the annual inservice training requirement in subsection (4), the unlicensed direct service provider must satisfactorily complete the initial training course again and obtain all required validations before he or she may supervise the self-administration of medication by a client or administer medication to a client.

3. If an unlicensed direct service provider has completed an initial training course of at least 4 hours but has not obtained validation for otic, transdermal, or topical medication

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administration before July 1, 2018, that direct service provider must obtain validation before administering otic, transdermal, and topical medication, which may be performed through simulation.

(3) An unlicensed direct service provider may administer medication to a client only if the provider has met the training requirements of this section and has been validated as competent. An unlicensed direct service provider may not supervise the self-administration of medication by a client or administer medication to a client unless the client or the client's guardian or legal representative has given his or her informed written consent.

(4) An unlicensed direct service provider must annually and satisfactorily complete a 2-hour agency-developed inservice training course in medication administration and medication error prevention conducted by an agency-approved trainer. The inservice training course shall count toward annual inservice training hours required by agency rule or by Agency for Health Care Administration rule. This subsection may not be construed to require an increase in the total number of hours required for annual inservice training for direct service providers

~~Administering medication to a client~~.

~~(3) A direct service provider may supervise the self-administration of medication by a client or may administer medication to a client only if the client, or the client's guardian or legal representative, has given his or her informed consent to self-administering medication under the supervision of an unlicensed direct service provider or to receiving medication administered by an unlicensed direct service~~

~~provider. Such informed consent must be based on a description of the medication routes and procedures that the direct service provider is authorized to supervise or administer. Only a provider who has received appropriate training and has been validated as competent may supervise the self-administration of medication by a client or may administer medication to a client.~~

(5)~~(4)~~ The training, determination of competency, and initial and annual validations ~~validation~~ required in this section shall be conducted by a registered nurse licensed pursuant to chapter 464 or by a licensed practical nurse in accordance with the requirements of chapter 464. A physician licensed pursuant to chapter 458 or chapter 459 may validate or revalidate competency.

(6)~~(5)~~ The agency shall establish by rule standards and procedures that an unlicensed ~~a~~ direct service provider must follow when supervising the self-administration of medication by a client and when administering medication to a client. Such rules must, at a minimum, address qualification requirements for trainers, requirements for labeling medication, documentation and recordkeeping, the storage and disposal of medication, instructions concerning the safe administration of medication or supervision of self-administered medication, informed-consent requirements and records, and the training curriculum and validation procedures. The agency shall adopt rules to establish methods of enforcement to ensure compliance with this section.

Section 2. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to medication administration; amending s. 393.506, F.S.; revising training requirements for unlicensed direct service providers to assist with the administration of or to supervise the self-administration of medication if specified requirements are met; providing validation requirements for the competency and skills of unlicensed direct service providers; providing that an unlicensed direct service provider may administer medication to a client only if he or she has met specified training requirements and has been validated as competent; prohibiting such administration and the supervision of self-administration without specified informed written consent; requiring unlicensed direct service providers to complete an annual inservice training course in medication administration and medication error prevention developed by the Agency for Persons with Disabilities; providing that such training counts toward training required by agency or Agency for Health Care Administration rule; providing construction; providing that training, the determination of competency, and initial and annual validations be conducted by a registered nurse or by a licensed practical nurse; providing that certain physicians may validate or revalidate competency; requiring the Agency for Persons with Disabilities to

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adopt certain rules; providing an effective date.

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576-03269-18

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to medication administration; amending s. 393.506, F.S.; revising training requirements for direct service providers to assist with the administration of or to supervise the self-administration of medication under certain circumstances; providing requirements for the competency and skills of direct service providers to be validated; requiring direct service providers to complete an annual inservice training course in medication administration and medication error prevention developed by the Agency for Persons with Disabilities; providing construction; requiring the validation and revalidation of competency for certain medication administrations to be performed with an actual client; requiring the agency to adopt specified rules; providing an effective date.

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

Section 1. Section 393.506, Florida Statutes, is amended to read:

393.506 Administration of medication.—

(1) A direct service provider who is not currently licensed to administer medication may supervise the self-administration of medication or may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription

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576-03269-18

medications to a client if the provider meets the requirements of ~~as provided in~~ this section.

(2) In order to supervise the self-administration of medication or to administer medications as provided in subsection (1), a direct service provider must satisfactorily complete an initial ~~a~~ training course conducted by an agency-approved trainer of not less than 6 ~~4~~ hours in medication administration and be found competent to supervise the self-administration of medication by a client and ~~or~~ to administer medication to a client in a safe and sanitary manner. The competency of the direct service provider to supervise and administer otic, transdermal, and topical medication must be assessed and validated using simulation during the course, and need not be revalidated annually. If the direct service provider has already completed an initial training course of at least 4 hours and has a current validation for oral or enteral routes of medication administration on or before July 1, 2018, then he or she is not required to complete the course. If for any reason the direct service provider loses his or her validation by failing to meet the annual validation requirement for oral or enteral medication administration, or the annual inservice training requirement in subsection (3), then the direct service provider must complete the initial training course and obtain all required validations before he or she may supervise the self-administration of medication by a client or administer medication to a client. If a direct service provider has completed an initial training course of at least 4 hours, but has not received validation for otic, transdermal, or topical medication administration before July 1, 2018, then that direct

service provider must seek separate validation before administering otic, transdermal, and topical medication. Those validations may be performed through simulation.

(3) In addition to the initial training course, a direct service provider must annually and satisfactorily complete a 2-hour agency-developed inservice training course in medication administration and medication error prevention conducted by an agency-approved trainer. The inservice training course will count toward annual inservice training hours. This subsection may not be construed to require an increase in the total number of hours required for annual inservice training for direct service providers.

(4) Competency must be validated initially and revalidated annually for oral, enteral, ophthalmic, rectal, and inhaled medication administration. The initial and annual validations of medication administration must be performed onsite with an actual client using the client's actual medication and must include the validating practitioner personally observing the direct service provider satisfactorily:

(a) Supervising the oral, enteral, ophthalmic, rectal, or inhaled self-administration of medication by a client; and

(b) Administering medication to a client by oral, enteral, ophthalmic, rectal, or inhaled medication routes.

(5) Any unlicensed direct service provider who completes the required initial training course and is validated in the oral or enteral route of medication administration is not required to retake the initial training course unless he or she fails to maintain annual validation in the oral or enteral route, in which case, the provider must complete again the

initial 6-hour training course and any additional validations before he or she may supervise the self-administration of medication by a client or to administer any medication to a client.

(6) Only a direct service provider who has met the training requirements of this section and who has been validated as competent may administer medication to a client. In addition, a direct service provider who is not currently licensed to administer medication may supervise the self-administration of medication by a client or may administer medication to a client only if the client, or the client's guardian or legal representative, has given his or her informed written consent ~~must be assessed and validated at least annually in an onsite setting and must include personally observing the direct service provider satisfactorily:~~

~~(a) Supervising the self-administration of medication by a client; and~~

~~(b) Administering medication to a client~~.

~~(3) A direct service provider may supervise the self-administration of medication by a client or may administer medication to a client only if the client, or the client's guardian or legal representative, has given his or her informed consent to self-administering medication under the supervision of an unlicensed direct service provider or to receiving medication administered by an unlicensed direct service provider. Such informed consent must be based on a description of the medication routes and procedures that the direct service provider is authorized to supervise or administer. Only a provider who has received appropriate training and has been~~

~~validated as competent may supervise the self-administration of medication by a client or may administer medication to a client~~.

(7) ~~(4)~~ The training, determination of competency, and initial and annual validations ~~validation~~ required in this section shall be conducted by a registered nurse licensed pursuant to chapter 464 or by a practical nurse licensed under chapter 464. A physician licensed pursuant to chapter 458 or chapter 459 may validate or revalidate competency.

(8) ~~(5)~~ The agency shall establish by rule standards and procedures that a direct service provider must follow when supervising the self-administration of medication by a client and when administering medication to a client. Such rules must, at a minimum, address qualification requirements for trainers, requirements for labeling medication, documentation and recordkeeping, the storage and disposal of medication, instructions concerning the safe administration of medication or supervision of self-administered medication, informed-consent requirements and records, and the training curriculum and validation procedures. The agency shall adopt rules to establish methods of enforcement to ensure compliance with this section.

Section 2. This act shall take effect July 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 1788
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senator Passidomo
SUBJECT:	Medication Administration Training
DATE:	February 23, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Fav/CS**
2.	Gerbrandt	Williams	AHS	**Recommend: Fav/CS**
3.	Gerbrandt	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1788 revises training, competency and validation requirements for certain direct service providers who administer or assist with the administration of prescription medications to persons with developmental disabilities.

The bill increases from 4 hours to 6 hours the minimum number of training hours that a direct service provider must complete before the provider is permitted to supervise the self-administration of medication or administer certain prescription medications. The bill implements new competency and validation requirements based on the route of medication administered.

The bill requires each direct service provider to complete an annual 2-hour agency-developed in-service training course in medication administration and error prevention.

The bill revises the type of licensed professional that can provide training, competency determination, and initial and annual validations to include licensed practical nurses.

The bill expands the Agency for Persons with Disabilities (APD) rule making authority to include adopting rules to establish qualification requirements for trainers, and methods of enforcement to ensure compliance with the revised training, competency and validation requirements.

The APD is expected to incur minimal costs to implement this bill. Such costs can be absorbed within its existing resources.

The bill takes effect July 1, 2018.

II. Present Situation:

Direct Service Providers

Clients receiving services from the Agency for Persons with Disabilities (APD) in home and community-based settings often receive care from direct service providers.[1] A direct service provider is defined as a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client or has access to a client's living areas or to a client's funds or personal property.[2]

Administration of Medication

A direct service provider may supervise a client's self-administration of medication or may directly administer medication to a client.[3] Currently, a trained unlicensed direct service provider may use the following routes to supervise or administer medications to clients:

- Oral,
- Transdermal,
- Ophthalmic,
- Otic,
- Rectal,
- Inhaled,
- Enteral, or
- Topical.[4]

The client or the client's guardian or legal representative must give his or her informed consent to self-administering medication under the supervision of an unlicensed direct service provider or to receiving medication administered by an unlicensed direct service provider.[5]

Training Requirements

In order to supervise the self-administration of medication or to administer medications, a direct service provider must satisfactorily complete a 4-hour training course in medication administration and be found competent by a registered nurse or physician to administer or supervise the self-administration of medication to a client in a safe and sanitary manner.[6]

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[1] The Agency for Persons with Disabilities, *Agency Legislative Bill Analysis for Senate Bill 1788* (Dec. 21, 2017), *available at*: http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=22337&yr=2018 (last visited February 5, 2018).
[2] Section 393.063(13), F.S.
[3] Section 393.506(1), F.S.
[4] *Id.*
[5] Section 393.506(3), F.S.
[6] See ss. 393.506(2), and (4), F.S.

Currently, competency is assessed and validated at least annually for all routes of medication administration in an onsite setting, and must include the registered nurse or physician personally observing the direct service provider satisfactorily supervising the self-administration of medication by a client, and administering medication to a client.[7]

III. Effect of Proposed Changes:

The bill amends s. 393.506, F.S., to require all direct service providers to complete an initial training course of no less than 6 hours (rather than 4 hours) and be validated as competent before supervising the self-administration of medications or administering certain prescription medications to a client.

The bill requires all direct service providers to complete an annual 2-hour agency developed in-service training course in medication administration and error prevention conducted by an agency-approved trainer.

For oral, enteral, ophthalmic, rectal and inhaled routes of medication administration, the bill requires annual revalidation while maintaining that initial competency and validation require onsite administration of the medication on an actual client.

For otic, transdermal, or topical routes of medication administration, the bill removes the annual onsite competency and validation requirement and provides that competency may be validated by simulation during an initial training course and does not need to be revalidated annually. The bill exempts direct service providers from the 6-hour training course requirement if they have taken an initial 4-hour training course but are not currently validated for otic, transdermal or topical medication administration before July 1, 2018. The provider must seek validation and the bill allows the validation to be performed through simulation.

For oral and enteral routes of medication administration, the bill exempts direct service providers from the 6-hour training course requirement if they have taken an initial 4-hour training course and they have a current validation on or before July 1, 2018. The bill requires direct service providers who do not maintain their annual validation to retake a 6-hour initial training course and obtain all required validations before administering medications.

The bill revises the type of licensed professional that can provide training, competency determination, and initial and annual validations to include licensed practical nurses.

The bill expands the APD rule making authority to include adopting rules to establish qualification requirements for trainers, and methods of enforcement to ensure compliance with the revised training, competency and validation requirements.

The effective date of the bill is July 1, 2018.

[7] See 393.506(2), F.S.

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:

Employers of the direct service providers may have increased costs due to the expanded initial training hours required by the bill.[8] However, the employers of the direct service providers will no longer incur the annual costs of a registered nurse or doctor validating direct service providers for otic, topical, and transdermal routes Providers will only be responsible for the initial validation of direct service providers for ophthalmic, rectal, and inhaled routes. The only drug administration routes that will continue to require annual validation are oral and enteral.[9]

C. Government Sector Impact:

The Agency for Persons with Disabilities may incur minimal costs associated with updating forms and rule promulgation, which the agency can absorb within existing resources.[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 393.506.

[8] *Supra* Note at 1.
[9] *Supra* Note at 1.
[10] *Supra* Note at 1.

IX. Additional Information:

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

CS/CS by Appropriations on February 22, 2018:
The committee substitute:

- Requires direct service providers to complete an initial training course of no less than 6 hours before supervising the self-administration of medication or administering medication;
- Requires direct service providers to annually complete a 2-hour agency-developed inservice training course and allows the course to count toward annual inservice training hours;
- Revises the type of licensed professional that can provide training, the determination of competency, and initial and annual validations to include licensed practical nurses;
- Provides that certain direct service providers who have taken an initial training course and have a current validation on or before July 1, 2018, do not have to retake the initial 6 hour training course and certain validations may be obtained through simulation;
- Provides that certain validations may be obtained through simulation during the initial training course and do not require annual revalidation; and
- Expands the APD rulemaking authority to include adopting rules to establish qualification requirements for trainers, and methods of enforcement to ensure compliance with the revised training, competency and validation requirements.

CS by Children, Families, and Elder Affairs on January 29, 2018:

- Removes language requiring that new comprehensive transitional education programs (CTEPs) may not be licensed in Florida after July 1, 2018, and existing licenses may not be renewed after December 31, 2020.
- Expands the requirement for direct service providers to complete an annual 2-hour training course on medication administration and error prevention to apply to all unlicensed staff administering or supervising self-administration of medication, not strictly those who administer oral or enteral medications.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and Senator Passidomo

A bill to be entitled

An act relating to medication administration training; amending s. 393.506, F.S.; revising competency assessment and validation requirements for direct service providers who administer or supervise the self-administration of medication; providing an effective date.

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

Section 1. Subsections (2) and (4) of section 393.506, Florida Statutes, are amended, and subsections (1), (3), and (5) of that section are republished, to read:

393.506 Administration of medication. —

(1) A direct service provider who is not currently licensed to administer medication may supervise the self-administration of medication or may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a client as provided in this section.

(2) In order to supervise the self-administration of medication or to administer medications as provided in subsection (1), a direct service provider must satisfactorily complete a training course of not less than 8 ~~4~~ hours in medication administration and be found competent to supervise the self-administration of medication by a client or to administer medication to a client in a safe and sanitary manner. In addition, a direct service provider must annually and satisfactorily complete a 2-hour course in medication administration and error prevention provided by the agency or its designee.

(a) Competency must be assessed and validated at least annually if oral or enteral medication administration is performed in the ~~an~~ onsite setting and must include personally observing the direct service provider satisfactorily:

1.~~(a)~~ Supervising the oral or enteral self-administration of medication by a client; and

2.~~(b)~~ Orally or enterally administering medication to a client.

(b) Competency must be assessed and validated during the initial medication administration training course if otic, transdermal, or topical medication administration is performed in the onsite setting. The competency assessment must include personally observing the direct service provider satisfactorily simulating otic, transdermal, or topical medication administration.

(c) Competency must be assessed and validated and need not be revalidated if ophthalmic, rectal, or inhaled medication administration is performed in the onsite setting. The competency assessment must include the performance of ophthalmic, rectal, or inhaled medication administration on an actual client in the onsite setting.

(3) A direct service provider may supervise the self-administration of medication by a client or may administer medication to a client only if the client, or the client's guardian or legal representative, has given his or her informed consent to self-administering medication under the supervision of an unlicensed direct service provider or to receiving medication administered by an unlicensed direct service

provider. Such informed consent must be based on a description of the medication routes and procedures that the direct service provider is authorized to supervise or administer. Only a provider who has received appropriate training and has been validated as competent may supervise the self-administration of medication by a client or may administer medication to a client.

(4) The determination of competency and annual validation described ~~required~~ in this section shall be conducted by a registered nurse licensed pursuant to chapter 464 or a physician licensed pursuant to chapter 458 or chapter 459.

(5) The agency shall establish by rule standards and procedures that a direct service provider must follow when supervising the self-administration of medication by a client and when administering medication to a client. Such rules must, at a minimum, address requirements for labeling medication, documentation and recordkeeping, the storage and disposal of medication, instructions concerning the safe administration of medication or supervision of self-administered medication, informed-consent requirements and records, and the training curriculum and validation procedures.

Section 2. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 15, 2018

I respectfully request that **Senate Bill #1788**, relating to Medication Administration, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1788
Bill Number (if applicable)

Topic MEDICATION ADMINISTRATION

Amendment Barcode (if applicable)

Name CALEB HAWKES

Job Title LEGISLATIVE AFFAIRS DIRECTOR

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

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

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

Representing AGENCY FOR PERSONS WITH DISABILITIES

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 1876 (764628)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Young
SUBJECT:	Trauma Services
DATE:	February 21, 2018 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1876 amends various sections of law related to the selection and approval of trauma centers and the reporting of trauma center data. The bill:

- Eliminates outdated language related to a Department of Health (DOH) assessment of the trauma system and continuing annual reviews of the assignment of counties to trauma service areas (TSA).
- Eliminates TSA 19 and revises the county composition of certain TSAs.
- Restricts the DOH from designating additional Level I trauma centers in the same TSA where another Level I trauma center exists.
- Restricts the DOH from designating a Level II trauma center as a pediatric or a Level I trauma center.
- Designates the number of trauma centers assigned to each TSA for a total of 35 trauma centers statewide and specifies that each TSA may have no more than five total Level I, Level II, Level II/pediatric, and stand-alone pediatric trauma centers, and no more than one standalone pediatric trauma center.
- Requires the DOH to establish the Florida Trauma System Advisory Council (FTSAC) by October 1, 2018. The bill specifies the composition of the FTSAC and allows the FTSAC to submit recommendations to the DOH on how to maximize existing resources to achieve an inclusive trauma system.

- Requires the DOH to prepare an analysis of the Florida trauma system every three years, beginning August 2020, to include information on the population growth in each TSA, the caseload levels of severely injured patients for each trauma center and acute care hospital in the TSA, and the percentage of minimum caseload levels established under the bill for each trauma center.
- Revises the procedure for the DOH to select and approve new trauma centers if there is statutory capacity within a TSA.
- Allows the DOH to approve new trauma centers that exceed the statutory limit in a TSA if there is a sufficient volume of severely injured patients.
- Provides grandfathering language for currently verified trauma centers and for certain provisionally approved trauma centers and provides that if any of the grandfathering provisions are found to be invalid, the entire act is invalid.
- Requires the DOH to designate any hospital as a Level II trauma center if the hospital receives a final recommended order from the Division of Administrative Hearings (DOAH) or a final determination from the DOH or a court that it was entitled to be a Level II trauma center and was provisionally approved and operating within specified dates.
- Eliminates the trauma registry under the DOH in favor of requiring trauma centers to participate in the National Trauma Data Bank. Trauma centers and acute care hospitals are still required to report all transfers and outcomes of trauma patients to the DOH.
- Replaces provisions requiring the use of data in the trauma registry with provisions requiring the use of data reported to the Agency for Health Care Administration (AHCA) pursuant to s. 408.061.

The DOH may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of the DOH.

The bill takes effect July 1, 2018.

II. Present Situation:

The regulation of trauma centers in Florida is established under part II of ch. 395, F.S. Trauma centers treat individuals who have incurred single or multiple injuries because of blunt or penetrating means or burns, and who require immediate medical intervention or treatment. Currently, there are 36 verified and provisional trauma centers in the state.[1]

Trauma centers in Florida are divided into three categories including Level I, Level II, and Pediatric trauma centers.

- A Level I trauma center is defined as a trauma center that:
  - Has formal research and education programs for the enhancement of trauma care; is verified by the DOH to be in substantial compliance with Level I trauma center and pediatric trauma center standards; and has been approved by the DOH to operate as a Level I trauma center;
  - Serves as a resource facility to Level II trauma centers, pediatric trauma centers, and general hospitals through shared outreach, education, and quality improvement activities; and

[1] Department of Health, *Senate Bill 1876 Analysis* (January 17, 2018) (on file with the Senate Committee on Health Policy).

  - Participates in an inclusive system of trauma care, including providing leadership, system evaluation, and quality improvement activities.[2]
- A Level II trauma center is defined as a trauma center that:
  - Is verified by the DOH to be in substantial compliance with Level II trauma center standards and has been approved by the DOH to operate as a Level II trauma center or is designated pursuant to s. 395.4025(14), F.S.;
  - Serves as a resource facility to general hospitals through shared outreach, education, and quality improvement activities; and
  - Participates in an inclusive system of trauma care.[3]
- A Pediatric trauma center is defined as a hospital that is verified by the DOH to be in substantial compliance with pediatric trauma center standards and has been approved by the DOH to operate as a pediatric trauma center.[4,5]

Trauma Center Apportionment

Pursuant to s. 395.402, F.S., Florida is divided into 19 trauma service areas (TSA). A TSA is determined based on population density and an ability to respond to a specified number of patients in a trauma center environment. For purposes of medical response time, the trauma service area should have at least one Level I or Level II trauma center, and the DOH is required to allocate, by rule, the number of trauma centers for each trauma service area. There cannot be more than 44 trauma centers in the state.

Administrative Rule Litigation

Since 2011, the DOH has been involved in litigation involving its annual assessment of need for trauma centers. The majority of this litigation is based on the state's TSA allocation methodology, which imposes limitations on hospitals seeking trauma center verification. Protests have been levied regarding the validity of the DOH's allocation of new trauma centers in specific geographic areas. Despite prevailing in an administrative rule challenge in June 2014 that validated the DOH's allocation methodology, the DOH has been unable to promulgate the required annual rule change since 2014 due to litigation.[6]

In 2016, the DOH attempted to promulgate an apportionment rule that interpreted need to mean the "minimum" number of trauma centers in a TSA. Several hospitals subsequently challenged the proposed rule.[7] The DOAH issued an order that invalidated the proposed rule in March

[2] Section 395.4001(6), F.S.
[3] Section 395.4001(7), F.S.
[4] Section 395.4001(9), F.S.
[5] For Level I, Level II, and pediatric trauma center standards *see* http://www.floridahealth.gov/licensing-and-regulation/trauma-system/_documents/traumacntrstandpamphlet150-9-2009rev1-14-10.pdf, (last visited on Jan. 19, 2018).
[6] Shands Teaching Hospital and Clinics, Inc., d/b/a UF Shands Hospital v. Dep't of Health and Osceola Regional Hospital, Inc., d/b/a Osceola Regional Medical Center, DOAH Case No. 14-1022RP (June 20, 2014). This order also resolved the rule challenges filed by The Public Health Trust of Miami-Dade County (DOAH Case No. 14-1027RP); St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (DOAH Case No. 14-1028RP); Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 14-1034RP); and Bayfront HMA Medical Center, LLC, d/b/a Bayfront Medical Center (DOAH Case No. 14-1035RP).
[7] According to the DOAH's website, the challenges were filed by St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (Tampa) (DOAH Case No. 16-5841RP); Bayfront HMA Medical Center, LLC, d/b/a Bayfront Heath – St. Petersburg (DOAH Case No. 16- 5840RP); Lee Memorial Health System, d/b/a Lee Memorial Hospital (DOAH Case No. 16-5839RP);

2017.[8] The administrative law judge recognized the challenges faced by the DOH and Florida's trauma system in his final order by stating, "[a]fter considering all of the evidence and testimony, the undersigned is of the opinion that it would be impossible to draft a set of rules that would satisfy the concerns/interests of all the relevant stakeholders."[9] The case was appealed to the First District Court of Appeals (DCA) and is awaiting final disposition.[10] Since the invalidation of the rule, the DOH has been unable to promulgate a new rule.

In 2016, an administrative law judge outlined in a recommended order that the DOH must grant provisional trauma center status to all applicants that demonstrate compliance with the critical elements of the trauma center standards, regardless if there is an allocated slot in the TSA.[11] In addition, he indicated the DOH's determination of need happens at the point in which a trauma center is granted verification.[12] On appeal, the First DCA stated that a hospital may apply over multiple years without jeopardizing the previous application.[13] In a separate case, the First DCA addressed the issue of need and concurred that need is not addressed at the provisional licensure and is relevant only upon verification.[14]In combination, a hospital may essentially operate indefinitely as a provisional trauma center so long as they submit and receive approval of their provisional application annually.

The DOH has been unable to promulgate a valid allocation rule since July 2014.[15]

Trauma Center Approval

Section 395.4025, F.S., provides a scheduled application process and specific criteria for trauma center selection. Standards for verification and approval are based on national guidelines established by the American College of Surgeons.[16] Standards for verification and approval as a

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Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 16-5838RP); and Shands Jacksonville Medical Center, Inc., d/b/a U.F. Hospital Jacksonville (DOAH Case No. 16-5837RP). Intervenors included JFK Medical Center Limited Partnership, d/b/a JFK Medical Center (Atlantis); The Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson South Community Hospital; and Orange Park Medical Center, Inc., d/b/a Orange Park Medical Center.

[8] Shands Jacksonville Medical Center, Inc., d/b/a UF Health Jacksonville v. Dep't of Health, DOAH Case No. 16-5837RP (March 28, 2017). This order also resolved the rule challenges filed by Florida Health Science Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 16-5838RP); Lee Memorial Health System, d/b/a Lee Memorial Hospital (DOAH Case No. 16-5839RP); Bayfront HMA Medical Center, LLC, d/b/a Bayfront Health – St. Petersburg (DOAH Case No. 16-5840RP); and St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (DOAH Case No. 16-5841RP).

[9] Id.

[10] Dep't of Health, et al. v. Shands Jacksonville Medical Center, Inc., et al., Case No. 1D17-1713.

[11] The Public Health Trust of Miami-Dade County, Florida d/b/a Jackson South Community Hospital v. Dep't of Health and Kendall Healthcare Group, Ltd., d/b/a Kendall Regional Medical Center, DOAH Case No. 15-3171)

[12] Id. *See also* Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson Medical Center and Jackson South Community Hospital v. Dep't of Health et al., DOAH Case No. 16-3370, 16-3372 ("Order Granting Motion to Partially Dismiss Petition for Administrative Hearing," pg. 4).

[13] The Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson South Community Hospital v. Dep't of Health and Kendall Healthcare Group, Ltd., d/b/a Kendall Regional Medical Center, Case No. 1D16-3244.

[14] State of Florida, Department of Health v. Bayfront HMA Medical Center, LLC, d/b/a Bayfront Health-St. Petersburg, Case No. 1D17-2174 (consolidated with Galencare, Inc., d/b/a Northside Hospital v. Bayfront HMA. Medical Center, LLC, d/b/a Bayfront Health-St. Petersburg, Case No. 1D17-2229).

[15] Supra note 1

[16] The American College of Surgeons requirements for Level I, Level II, and pediatric trauma centers are available at: http://www.facs.org/trauma/verifivisitoutcomes.html, (last visited on Jan. 19, 2018).

pediatric trauma center are developed in conjunction with the DOH's Division of Children's Medical Services.

Acute care hospitals that submit a Letter of Intent to the DOH by October 1 are eligible to submit a trauma center application by April 1.[17] Once an applicant hospital receives the DOH's notification letter of provisional status designation, the hospital may begin operation as a provisional trauma center. During the provisional phase, the DOH conducts an in-depth review of the hospital's application. An onsite visit is conducted by an out-of-state survey team to verify compliance with the *Trauma Center Standards, DH Pamphlet 150-9*.[18] Based on the recommendations from the out-of-state survey team, the DOH makes the decision to approve or deny the hospital to operate as a verified trauma center.[19]

Hospitals verified by the DOH receive a seven-year certificate. A verified trauma center that intends to renew its verification must submit a renewal application form to the DOH at least 14 months prior to the expiration of the certificate. All renewing verified trauma centers receive an onsite visit by an out-of-state survey team after the DOH's receipt of the completed renewal form. Hospitals that have been verified by the DOH to comply with the requirements of s. 395.4025, F.S., are approved to operate as a verified trauma center.[20]

Florida's current trauma center verification process has experienced a number of challenges. Section 395.4025(7), F.S., allows any hospital in the state to protest verification decisions by the DOH. Hypothetically, under this subsection, a 25-bed acute care hospital in northwest Florida can protest the verification of a trauma center in Miami-Dade County. In actual application, the DOH has been involved in litigation numerous times where one or more parties operating a trauma center in one geographic area of the state have challenged trauma center verification in another area of the state.[21]

Florida Trauma Registry

The DOH has maintained a trauma registry since at least 2000. Currently, only a small number of states nationwide do not have a state trauma registry. In 2014, the DOH upgraded the trauma registry to receive patient data from every verified trauma center in the state. Changes made to the registry in 2016, based on feedback received from trauma stakeholders, allow a Florida trauma center to submit the same data elements as those required by the National Trauma Data Bank (NTDB).

The trauma registry serves two critical functions. First, the DOH is able to perform local, regional, and statewide data analysis much faster than the NTDB. The NTDB does not perform local and regional analysis and due to the reporting requirements of the NTDB, data analysis is not available for 18 months after the initial reporting period and is limited to standardized reports provided to all participants. In contrast, the DOH is able to provide information as quickly as

[17] The required criteria included in the application package is outlined in the DOH's *Trauma Center Standards, DH Pamphlet 150-9*, in accordance with s. 395.401(2), F.S., and is incorporated by reference in Rule 64J-2.011, F.A.C.
[18] Section 395.4025(5), F.S.
[19] Section 395.4025(6), F.S.
[20] Id.
[21] Supra note 1. A list of current litigation is on file with Senate Health Policy Committee staff.

six months after the end of the reporting period. The DOH is also able to create customized, analytical reports not currently available from the NTDB. Second, s. 305.4036, F.S., requires that patient volumes from the Florida Trauma Registry be used as part of the formula to calculate the distribution of traffic fine revenues.[22]

Injury Severity Score

An injury severity score (ISS) is a score assigned to a patient that has suffered an injury to one or more parts of his or her body. A lower ISS indicates a less severe injury with the threshold of 15 commonly used to indicate major trauma or severe injury.[23] A hospital generates an ISS by converting and aggregating individual injury scores assigned to regions of a patient's body using the Abbreviated Injury Scale (AIS). The AIS classifies an individual injury by body region according to its relative severity on a six point scale from one being minor injury to six indicating maximal injury in that region.[24] An ISS is the sum of the squares of each individual injury score generated by the AIS. In Florida, an ISS is typically calculated by a hospital using software provided to the hospital by the DOH.[25]

Health Care Data Submitted to the AHCA

Section 408.061, F.S., requires health care facilities to submit data to the AHCA including:

- Case-mix data;
- Patient admission and discharge data;
- Hospital emergency department data which includes the number of patients treated in the emergency department reported by patient acuity level;
- Data on hospital-acquired infections as specified by rule;
- Data on complications as specified by rule:
- Data on readmissions as specified by rule, with patient and provider-specific identifiers included;
- Actual charge data by diagnostic groups or other bundled groupings as specified by rule;
- Financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, and depreciation expenses based on the expected useful life of the property and equipment involved; and
- Demographic data.

Additionally, s. 408.05, F.S., creates the Florida Center for Health Information and Transparency (Center) within the AHCA to collect, compile, coordinate, analyze, index, and disseminate health-related data and statistics. Among its other duties, the Center is required to promote data sharing through dissemination of state-collected health data by making such data available,

[22] Supra note 1.
[23] Association for the Advancement of Automotive Medicine, *Major Trauma and the Injury Severity Score – Where Should We Set the Bar?*, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217501/, (last visited on Feb. 16, 2018).
[24] AIS Overview, available at https://www.aaam.org/abbreviated-injury-scale-ais/, (last visited on Feb. 16, 2018).
[25] Email from Paul Runk, DOH Director of the Office of Legislative Planning, and Steve McCoy, Emergency Medical Services Administrator, Feb. 12, 2018, on file with Senate Health Policy Committee staff.

transferable, and readily usable[26] and to develop written agreements with local, state, and federal agencies to facilitate the sharing of data related to health care.[27]

III. Effect of Proposed Changes:

Sections 1 through 4 and 8 amend ss. 318.14, 318.18, 318.21, 395.4001, and 395.4036, F.S., respectively, to replace provisions requiring the use of data in the trauma registry with provisions requiring the use of data reported to the AHCA pursuant to s. 408.061, F.S.

Section 5 amends s. 395.402, F.S., to:

- Delete language requiring Level I and Level II trauma centers to be capable of treating a minimum of 1,000 and 500 patients annually (or 1,000 in a county with 500,000 or more population) with an injury severity score (ISS) of 9 or greater, respectively.
- Delete outdated language requiring the DOH to conduct a one-time assessment of the trauma system.
- Delete a requirement that the DOH conduct annual assessments of the assignment of the counties in TSAs.
- Revise the composition of the TSAs as follows:
  - Eliminate TSA 19 and place Miami-Dade and Monroe counties into TSA 18;
  - Move Broward County from TSA 18 to TSA 17; and
  - Move Collier County from TSA 17 to TSA 15.
- Restrict the DOH from designating a Level II trauma center as a Level I or pediatric trauma center in a TSA that already has a Level I trauma center or pediatric trauma center.
- Delete the delegation of authority to the DOH to allocate the number of trauma centers by TSA and, instead, set by law the number of trauma centers allowed in each TSA for a total of 35, as follows:
  - TSAs 2, 3, 4, 6, 7, 11, 12, 14, and 15 are allocated one trauma center;
  - TSAs 10, 13, and 16 are allocated two trauma centers;
  - TSAs 1, 5, 8, 9, and 17 are allocated three trauma centers; and
  - TSA 18 is allocated five trauma centers.
- Specify that no TSA may have more than five total Level I, Level II, Level II/pediatric, and stand-alone pediatric trauma centers, and more than one stand-alone pediatric trauma center.
- Require the DOH to establish the FTSAC by October 1, 2018. The FSTAC will consist of the following 11 members appointed by the Governor:
  - The State Trauma Medical Director;
  - A representative from an emergency medical services organization;
  - A representative of a local or regional trauma agency;
  - A trauma program manager or trauma medical director actively working in a trauma center who represents an investor-owned hospital with a trauma center;
  - A trauma program manager or trauma medical director actively working in a trauma center who represents a nonprofit or public hospital with a trauma center;
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level II trauma center who represents an investor-owned hospital with a trauma center;

[26] Section 408.05(3)(b), F.S.
[27] Section 408.05(3)(d), F.S.

  - A trauma surgeon who is board-certified in critical care and actively practicing medicine who represents a nonprofit or public hospital with a trauma center;
  - A representative of the American College of Surgeons Committee on Trauma;
  - A representative of the Safety Net Hospital Alliance of Florida;
  - A representative of the Florida Hospital Association; and
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level I trauma center.
- Require members of the FTSAC to be appointed for staggered terms and no two members may be employed by the same health care facility.
- Require the FTSAC to conduct its first meeting no later than January 5, 2019 and quarterly thereafter.
- Allow the FTSAC to submit recommendations to the DOH on how to maximize existing trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.

Section 6 amends s. 395.4025, F.S., to:
- Require the DOH to prepare an analysis of the Florida trauma system every three years, beginning in August 2020. The DOH must use discharge data collected by the AHCA pursuant to s. 408.061, F.S., and the most current five years of population data for Florida available from the United States Census Bureau. The report must include the following:
  - The population growth for each trauma service area and for the state of Florida;
  - The number of severely injured patients with an Injury Severity Score of 15 or greater treated at each trauma center within each trauma service area, including pediatric trauma centers;
  - The total number of severely injured patients with an Injury Severity Score of 15 or greater treated at all acute care hospitals inclusive of non-trauma centers in the trauma service area; and
  - The percentage of each trauma center's sufficient volume of trauma patients, as described in subparagraph (3)(d)2., in accordance with the Injury Severity Score for the trauma center's designation, inclusive of the additional caseload volume required for those trauma centers with graduate medical education programs.
- Rework how the DOH selects and licenses trauma centers.[28] The process under the bill will proceed under the following steps:

Letter of Intent

The bill requires the DOH to notify hospitals that the DOH is accepting letters of intent from applicants when there is statutory capacity for an additional trauma center based on the limits established in **Section 5** of the bill, the report generated by the DOH detailed above, and the exception to the statutory capacity limits established in s. 395.4025(3)(d), F.S. The DOH may not accept a letter of intent from a hospital if there is not statutory capacity, in accordance with the limits established in **Section 5** of the bill, the DOH's report, and exceptions to the statutory capacity limits provided in the bill.

[28] Note: Some of the information presented in this section is current law. However, for the sake of providing a timeline for how the process will work after changes are made by SB 1876, the portions that are current law are integrated into the changes made by the bill.

Letters of Intent must be postmarked by October 1 of year one. [29]

Application

By October 15 of year one, the DOH must send each hospital that provided a letter of intent an application package. Completed applications must be received by the DOH by April 1 [of year two].[30] Between April 1 and May 1 [of year two], the DOH will conduct an initial review of each application package it received to determine if each application shows that the hospital will be capable of attaining and operating with specified criteria by April 30 of year three. The operating criteria include:

- Equipment and physical facilities necessary to provide trauma services.
- Personnel in sufficient numbers and with proper qualifications to provide trauma services.
- An effective quality assurance process.

The bill specifies that the DOH may not approve an application for a trauma center if the approval would exceed the limits on the number of trauma centers established in **Section 5** of the bill. However, the DOH may approve an application that will exceed the limits if the applicant demonstrates and the DOH determines that:

- Each existing trauma centers' caseload volume of severely injured patients with an ISS of 15 or more in that TSA is double the minimum volume requirement for Level I and Level II trauma centers and more than triple the minimum volume requirements for stand-alone pediatric trauma centers and the population growth for the trauma service area exceeds the statewide population growth by more than 15 percent based on the United States census data for the five-year period before the date the applicant files its letter of intent; and
- A sufficient volume of potential trauma patients exists within the trauma service area to ensure that existing trauma centers' volumes are at the following levels:[31]

Level I trauma center; In a TSA with a population > 1.5 million.	1,200 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
Level I trauma center; In a TSA with a population < 1.5 million.	1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
Level II or Level II/Pediatric trauma center; In a TSA with a population > 1.25 million.	1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

[29] The timeframes in the bill use dates over multiple years. In order to simplify the timeline, the timeframes will be referred to as happening in year one, year two, or year three.
[30] The actual year that this takes place is not specified in the bill; however for the purposes of the timeline in this analysis the year will be assumed to be year two.
[31] Calculations of patient caseloads must be based on the most recent available hospital discharge data collected by the AHCA pursuant to s. 408.061, F.S.

Level II or Level II/Pediatric trauma center; In a TSA with a population < 1.25 million.	500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
All pediatric stand-alone trauma centers.	500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

By May 1 [of year two],[32] the DOH must select one or more hospitals that meet the operating criteria detailed above, up to the statutory capacity designated in s. 395.402, F.S., or allowed by the exception detail above for each TSA. If the DOH receives more applications than available capacity, the DOH must select one or more applicants, as necessary, that the DOH determines will provide the highest quality patient care using the most recent technological, medical, and staffing resources available as well as any other criteria as determined by the DOH in rule. At this point, the applicant may begin preparing to operate, but the bill restricts an applicant from operating until the DOH completes its initial and in-depth review and approves the applicant to operate as a provisional trauma center. A hospital that is not ready to operate by April 30 of year three may not be designated as trauma center.

In-Depth Evaluation

Following the initial review, the DOH must conduct an in-depth evaluation of each application against the criteria enumerated in the application packages. An applicant may not operate as a provisional trauma center until the DOH completes and approves the applicant through the initial and in-depth review stages. Within the year after the hospital begins operating as a provisional trauma center, the DOH must assemble a review team of out-of-state experts to make onsite visits to all existing trauma centers. The bill maintains current law regarding the survey instrument that the out-of-state experts must use.

Designation as a Trauma Center

Based on the recommendations from the out-of-state review team, the DOH must designate a trauma center that complies with trauma center standards, as established by the DOH in rule, and the requirements in s. 395.4025, F.S. A trauma center is designated for a seven-year approval period after which it must apply for renewal of its designation.

The bill also restricts protests against any decision made by the DOH regarding approval of an application or whether need has been established for a new trauma center unless the protest is made by an applicant or a hospital with an existing trauma center in the same or contiguous TSA.

Grandfathering

Notwithstanding any other provision of the act including statutory capacity limits and the limits placed on protests of DOH decisions, the bill deems certain currently operational trauma centers to be compliant with trauma center application and operational standards as follows:

[32] Supra n. 30

- A trauma center that was verified by the DOH before December 15, 2017, is deemed to have met the trauma center application and operational requirements of this section and must be verified and designated as a trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, but that was provisionally approved by the DOH to be in substantial compliance with Level II trauma standards before January 1, 2017, and is operating as a Level II trauma center is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level II trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, as a Level I trauma center but that was provisionally approved by the DOH as a Level I trauma center before January 1, 2017, and is operating as a Level I trauma center is deemed to have met the application and operational requirements for a Level I trauma center and must be verified and designated as a Level I trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, as a pediatric trauma center but that was provisionally approved by the DOH to be in substantial compliance with the pediatric trauma standards established by rule before January 1, 2018, and is operating as a pediatric trauma center is deemed to have met the application and operational requirements of this section for a pediatric trauma center and, upon successful completion of the in-depth and site review process, must be verified and designated as a pediatric trauma center. The bill prohibits protests of the in-depth review, site survey, and verification decisions made by the DOH regarding an applicant that meets the requirements of this paragraph.

Notwithstanding the statutory capacity limits established in s. 395.402(1), F.S., or any other provisions of the act, a hospital operating as a Level II after January 1, 2017, must be designated and verified if all of the following apply:

- The hospital was provisionally approved after January 1, 2017, to operate as a Level II trauma center, and was in operation on or before January 1, 2018;
- The department's decision to approve the hospital to operate a provisional Level II trauma center was in litigation on or before January 1, 2018;
- The hospital receives a recommended order from the Division of Administrative Hearings, a final order from the department, or an order from a court of competent jurisdiction that it was entitled to be designated and verified as a Level II trauma center; and
- The department determines that the hospital is in substantial compliance with the Level II trauma center standards, including the in-depth and site reviews.

A provisional trauma center operating under this provision may not be required to cease operations unless a court of competent jurisdiction or the DOH determines that is has failed to meet the trauma center standards established by the DOH in rule.

The bill specifies that nothing in the grandfathering provisions limits the DOH's authority to review and approve trauma center applications.

Section 9 amends s. 395.404, F.S., to eliminate the trauma registry under the DOH in favor of requiring trauma centers to participate in the National Trauma Data Bank. The bill requires the DOH to solely use the National Trauma Data Bank for quality and assessment purposes. Trauma

centers and acute care hospitals are still required to report all transfers and outcomes of trauma patients to the DOH.

The bill also eliminates a public records exemption for the DOH's trauma registry and eliminates the requirement that pediatric trauma centers report certain data to the DOH's brain and spinal cord injury central registry.

Sections 7 and 10 amend ss. 395.403 and 395.401, F.S., respectively, to make conforming and cross-reference changes.

Section 11 creates an undesignated section of Florida law to specify that if any provision in the act relating to the grandfathering provisions established in s. 395.4025(16), F.S., is found to be invalid or inoperative for any reason, the remaining provisions of the act shall be deemed void and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included.

Section 12 provides that the bill takes effect July 1, 2018.

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

When establishing the grandfathering provisions in s. 395.4025(16), F.S., the bill provides that "notwithstanding the provisions of subsection (8), no existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located may protest the in-depth review, site survey, or verification decision of the department regarding an applicant that meets the requirements of this paragraph." Additionally, the provisions of s. 395.4025(8), F.S., restrict any party from brining protests of DOH decisions related to application approval and need determination unless the party is the applicant or a hospital with a trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located. These provisions together may provide an unconstitutional restriction on access to the courts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate positive fiscal impact on hospitals that are not currently verified as trauma centers but that become designated as a trauma center due to changes made by the bill.

Hospitals that are currently verified trauma centers in TSAs where new trauma centers are designated under the provisions of the bill may experience a loss in volume of trauma patients and other economic impacts of competition.

C. Government Sector Impact:

The DOH may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of the DOH.

VI. Technical Deficiencies:

See below.

VII. Related Issues:

The bill contains multiple technical and related issues that may cause certain provisions in the bill to be misinterpreted or that may cause internal conflicts within the provisions of the bill. Topics in the bill that contain such technical and related issues include, but are not limited to:

- The report that the DOH is required to prepare;
- Certain portions of the application and approval process for new trauma centers;
- Calculations of statutory capacity and determinations of need; and
- Data the DOH may use for quality and assessment purposes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 318.14, 318.18, 318.21, 395.4001, 395.401, 395.402, 395.4025, 395.403, 395.4036, and 395.404.

The bill creates one undesignated section of Florida law.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on February 14, 2018:
The committee substitute:

- Adds references to AHCA discharge data collected pursuant to s. 408.061, F.S., to replace data reported to the DOH's Trauma Registry in multiple sections of the Florida Statutes.
- Corrects additional cross-references related to the elimination of the Trauma Registry.
- Specifies that no TSA may have more than five total Level I, Level II, Level II/pediatric, and stand-alone pediatric trauma centers and no more than one stand-alone pediatric trauma center.
- Revises the make-up and duties of the Florida Trauma System Advisory Council.
  - Eliminates the requirement that the Council determine the need for additional trauma centers and the adequacy of the existing trauma system.
  - Eliminates the requirement to submit a biennial report to the Governor and the Legislature on whether to recommend an increase in the number of trauma centers within each service area.
  - Allows the Council to submit recommendations to the DOH on how to maximize existing trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.
  - Eliminates the following members of the Council: The State Surgeon General, a representative from the AHCA; a trauma program manager recommended by the Florida Teaching Hospital Council of Florida; a trauma surgeon recommended by the Florida Teaching Hospital Council of Florida, a representative of the Associated Industries of Florida, and a trauma program manager or medical director representing a public hospital.
  - Adds the state Trauma Medical Director and a trauma surgeon board-certified in critical care actively practicing medicine in a Level I trauma center to the council.
  - Requires the Council to meet quarterly.
- Requires the DOH to prepare an analysis of the Florida trauma system every three years, beginning in August 2020. The DOH must make all data, formulas, methodologies, and risk adjustment tools used in the report available.
- Requires the analysis to use AHCA discharge data and the most current 5 years of population data for Florida and must include:
  - The population growth for each TSA and for the state of Florida;
  - The number of severely injured patients with an ISS of 15 or more at each trauma center within each TSA;
  - The total number of severely injured patients with an ISS of 15 or more at all acute care hospitals, including non-trauma centers in each TSA; and
  - The percentage of each trauma center's sufficient volume of trauma patients as established in the bill.

- Allows the DOH accept a letter of intent and to approve an application for a new trauma center in a TSA that is already at its statutory maximum if each existing trauma centers' case load volume of severely injured patients with an ISS of 15 or more is double the minimum volume requirement for Level I and Level II trauma centers and more than triple the minimum volume requirements for stand-alone pediatric trauma centers.
- The minimum caseload volumes established in the bill are as follows:
  - Level I trauma center in a TSA with a population > 1.5 million: 1,200 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - Level I trauma center in a TSA with a population < 1.5 million: 1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - Level II or Level II/Pediatric trauma center in a TSA with a population > 1.25 million: 1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - Level II or Level II/Pediatric trauma center in a TSA with a population < 1.25 million: 500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - All pediatric stand-alone trauma centers: 500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
- Allows an applicant to operate as a provisional trauma center after the DOH has completed the initial and in-depth review processes.
- Requires the out-of-state review team to perform an onsite visit within the year after the trauma center has begun provisionally operating.
- Requires (rather than allows) the DOH to designate a trauma center that is in compliance with trauma center standards based on the recommendation from the review team.
- Allows the applicant, as well as hospitals with trauma centers in the same or contiguous TSAs, to protest decisions made by the DOH regarding application approval and determination of need.
- Restricts such protests for the designation of a pediatric trauma center that is grandfathered in.
- Specifies that certain provisional trauma centers must be allowed to continue operations until a court or the DOH determines that they have failed to meet the Florida trauma standards.
- Specifies that none of the grandfathering provisions limit the DOH's authority to review and approve trauma center applications.
- Specifies that if the grandfathering provisions of the act are found to be invalid or inoperative, the entire act becomes invalid.
- Changes the effective date from upon becoming a law to July 1, 2018.

CS by Health Policy on January 23, 2018:
The CS replaces grandfathering language related to Level II trauma centers in ongoing court proceedings to clarify that it is the DOH, and not a court, that must determine that the trauma center has met application and operational requirements; specifies the required court actions that qualify a trauma center under the paragraph; and conforms the title of the bill to changes made by the amendment.

B. Amendments:

None.

917002

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
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The Committee on Appropriations (Young) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (5) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(5) Any person electing to appear before the designated official or who is required so to appear shall be deemed to have

waived his or her right to the civil penalty provisions of s. 318.18. The official, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed $500, except that in cases involving unlawful speed in a school zone or involving unlawful speed in a construction zone, the civil penalty may not exceed $1,000; or require attendance at a driver improvement school, or both. If the person is required to appear before the designated official pursuant to s. 318.19(1) and is found to have committed the infraction, the designated official shall impose a civil penalty of $1,000 in addition to any other penalties and the person’s driver license shall be suspended for 6 months. If the person is required to appear before the designated official pursuant to s. 318.19(2) and is found to have committed the infraction, the designated official shall impose a civil penalty of $500 in addition to any other penalties and the person’s driver license shall be suspended for 3 months. If the official determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned. Moneys received from the mandatory civil penalties imposed pursuant to this subsection upon persons required to appear before a designated official pursuant to s. 318.19(1) or (2) shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Emergency Medical Services

Trust Fund under this section shall be allocated as follows:

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the Agency for Health Care Administration's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry~~.

Section 2. Paragraph (h) of subsection (3) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(3)

(h) A person cited for a second or subsequent conviction of speed exceeding the limit by 30 miles per hour and above within a 12-month period shall pay a fine that is double the amount listed in paragraph (b). For purposes of this paragraph, the term "conviction" means a finding of guilt as a result of a jury verdict, nonjury trial, or entry of a plea of guilty. Moneys received from the increased fine imposed by this paragraph shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

1. Fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

2. Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the Agency for Health Care Administration's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry~~.

Section 3. Paragraph (b) of subsection (15) of section 318.21, Florida Statutes, is amended to read:

318.21 Disposition of civil penalties by county courts.—All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(15) Of the additional fine assessed under s. 318.18(3)(e) for a violation of s. 316.1893, 50 percent of the moneys received from the fines shall be appropriated to the Agency for Health Care Administration as general revenue to provide an enhanced Medicaid payment to nursing homes that serve Medicaid recipients with brain and spinal cord injuries. The remaining 50 percent of the moneys received from the enhanced fine imposed under s. 318.18(3)(e) shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers in the counties where enhanced penalty zones are established to ensure the availability and accessibility of trauma services. Funds deposited into the Emergency Medical Services Trust Fund under this subsection shall be allocated as follows:

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative

volume of trauma cases as calculated using the Agency for Health Care Administration's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry~~.

Section 4. Present subsections (4) through (18) of section 395.4001, Florida Statutes, are renumbered as subsections (5) through (19), respectively, paragraph (a) of present subsection (7) and present subsections (13) and (14) of that section are amended, and a new subsection (4) is added to that section, to read:

395.4001 Definitions.—As used in this part, the term:

(4) "High-risk patient" means a trauma patient with an International Classification Injury Severity Score of less than 0.85.

(8) ~~(7)~~ "Level II trauma center" means a trauma center that:

(a) Is verified by the department to be in substantial compliance with Level II trauma center standards and has been approved by the department to operate as a Level II trauma center or is designated pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

(14) ~~(13)~~ "Trauma caseload volume" means the number of trauma patients calculated by the department using the data reported by each designated trauma center to the hospital discharge database maintained by the agency pursuant to s. 408.061 ~~reported by individual trauma centers to the Trauma Registry and validated by the department~~.

(15) ~~(14)~~ "Trauma center" means a hospital that has been verified by the department to be in substantial compliance with the requirements in s. 395.4025 and has been approved by the

department to operate as a Level I trauma center, Level II trauma center, or pediatric trauma center, or is designated by the department as a Level II trauma center pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

Section 5. Section 395.402, Florida Statutes, is amended to read:

395.402 Trauma service areas; number and location of trauma centers.—

(1) The Legislature recognizes the need for a statewide, cohesive, uniform, and integrated trauma system, as well as the need to ensure the viability of existing trauma centers when designating new trauma centers. Consistent with national standards, future trauma center designations must be based on need as a factor of demand and capacity. ~~Within the trauma service areas, Level I and Level II trauma centers shall each be capable of annually treating a minimum of 1,000 and 500 patients, respectively, with an injury severity score (ISS) of 9 or greater. Level II trauma centers in counties with a population of more than 500,000 shall have the capacity to care for 1,000 patients per year.~~

~~(2) Trauma service areas as defined in this section are to be utilized until the Department of Health completes an assessment of the trauma system and reports its finding to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the substantive legislative committees. The report shall be submitted by February 1, 2005. The department shall review the existing trauma system and determine whether it is effective in providing trauma care uniformly throughout the state. The assessment shall:~~

917002

~~(a) Consider aligning trauma service areas within the trauma region boundaries as established in July 2004.~~

~~(b) Review the number and level of trauma centers needed for each trauma service area to provide a statewide integrated trauma system.~~

~~(c) Establish criteria for determining the number and level of trauma centers needed to serve the population in a defined trauma service area or region.~~

~~(d) Consider including criteria within trauma center approval standards based upon the number of trauma victims served within a service area.~~

~~(e) Review the Regional Domestic Security Task Force structure and determine whether integrating the trauma system planning with interagency regional emergency and disaster planning efforts is feasible and identify any duplication of efforts between the two entities.~~

~~(f) Make recommendations regarding a continued revenue source which shall include a local participation requirement.~~

~~(g) Make recommendations regarding a formula for the distribution of funds identified for trauma centers which shall address incentives for new centers where needed and the need to maintain effective trauma care in areas served by existing centers, with consideration for the volume of trauma patients served, and the amount of charity care provided.~~

~~(3) In conducting such assessment and subsequent annual reviews, the department shall consider:~~

~~(a) The recommendations made as part of the regional trauma system plans submitted by regional trauma agencies.~~

~~(b) Stakeholder recommendations.~~

~~(c) The geographical composition of an area to ensure rapid access to trauma care by patients.~~

~~(d) Historical patterns of patient referral and transfer in an area.~~

~~(e) Inventories of available trauma care resources, including professional medical staff.~~

~~(f) Population growth characteristics.~~

~~(g) Transportation capabilities, including ground and air transport.~~

~~(h) Medically appropriate ground and air travel times.~~

~~(i) Recommendations of the Regional Domestic Security Task Force.~~

~~(j) The actual number of trauma victims currently being served by each trauma center.~~

~~(k) Other appropriate criteria.~~

~~(4) Annually thereafter, the department shall review the assignment of the 67 counties to trauma service areas, in addition to the requirements of paragraphs (2)(b)-(g) and subsection (3). County assignments are made for the purpose of developing a system of trauma centers. Revisions made by the department shall take into consideration the recommendations made as part of the regional trauma system plans approved by the department and the recommendations made as part of the state trauma system plan. In cases where a trauma service area is located within the boundaries of more than one trauma region, the trauma service area's needs, response capability, and system requirements shall be considered by each trauma region served by that trauma service area in its regional system plan. Until the department completes the February 2005 assessment, the~~

~~assignment of counties shall remain as established in this section.~~

(a) The following trauma service areas are ~~hereby~~ established:

1. Trauma service area 1 shall consist of Escambia, Okaloosa, Santa Rosa, and Walton Counties.

2. Trauma service area 2 shall consist of Bay, Gulf, Holmes, and Washington Counties.

3. Trauma service area 3 shall consist of Calhoun, Franklin, Gadsden, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.

4. Trauma service area 4 shall consist of Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.

5. Trauma service area 5 shall consist of Baker, Clay, Duval, Nassau, and St. Johns Counties.

6. Trauma service area 6 shall consist of Citrus, Hernando, and Marion Counties.

7. Trauma service area 7 shall consist of Flagler and Volusia Counties.

8. Trauma service area 8 shall consist of Lake, Orange, Osceola, Seminole, and Sumter Counties.

9. Trauma service area 9 shall consist of Pasco and Pinellas Counties.

10. Trauma service area 10 shall consist of Hillsborough County.

11. Trauma service area 11 shall consist of Hardee, Highlands, and Polk Counties.

12. Trauma service area 12 shall consist of Brevard and

Indian River Counties.

13. Trauma service area 13 shall consist of DeSoto, Manatee, and Sarasota Counties.

14. Trauma service area 14 shall consist of Martin, Okeechobee, and St. Lucie Counties.

15. Trauma service area 15 shall consist of Charlotte, Collier, Glades, Hendry, and Lee Counties.

16. Trauma service area 16 shall consist of Palm Beach County.

17. Trauma service area 17 shall consist of Broward ~~Collier~~ County.

18. Trauma service area 18 shall consist of ~~Broward County.~~

~~19. Trauma service area 19 shall consist of~~ Miami-Dade and Monroe Counties.

(b) Each trauma service area must ~~should~~ have at least one Level I or Level II trauma center. Except as otherwise provided in s. 395.4025(16), the department may not designate an existing Level II trauma center as a new pediatric trauma center or designate an existing Level II trauma center as a Level I trauma center in a trauma service area that already has an existing Level I or pediatric trauma center ~~The department shall allocate, by rule, the number of trauma centers needed for each trauma service area~~.

(c) Trauma centers, including Level I, Level II, Level II with a pediatric trauma center, jointly certified pediatric trauma centers, and stand-alone pediatric trauma centers, shall be apportioned as follows:

1. Trauma service area 1 shall have three trauma centers.

2. Trauma service area 2 shall have one trauma center.

3. Trauma service area 3 shall have one trauma center.
4. Trauma service area 4 shall have one trauma center.
5. Trauma service area 5 shall have three trauma centers.
6. Trauma service area 6 shall have one trauma center.
7. Trauma service area 7 shall have one trauma center.
8. Trauma service area 8 shall have three trauma centers.
9. Trauma service area 9 shall have three trauma centers.
10. Trauma service area 10 shall have two trauma centers.
11. Trauma service area 11 shall have one trauma center.
12. Trauma service area 12 shall have one trauma center.
13. Trauma service area 13 shall have two trauma centers.
14. Trauma service area 14 shall have one trauma center.
15. Trauma service area 15 shall have one trauma center.
16. Trauma service area 16 shall have two trauma centers.
17. Trauma service area 17 shall have three trauma centers.
18. Trauma service area 18 shall have five trauma centers.

Notwithstanding other provisions of this chapter, a trauma service area may not have more than a total of five Level I, Level II, Level II with a pediatric trauma center, jointly certified pediatric trauma centers, and stand-alone pediatric trauma centers. A trauma service area may not have more than one stand-alone pediatric trauma center ~~There shall be no more than a total of 44 trauma centers in the state~~.

(2)(a) By October 1, 2018, the department shall establish the Florida Trauma System Advisory Council to promote an inclusive trauma system and enhance cooperation among trauma system stakeholders. The advisory council may submit recommendations to the department on how to maximize existing

trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.

(b)1. The advisory council shall consist of 12 members appointed by the Governor, including:

a. The State Trauma Medical Director;

b. A standing member of the Emergency Medical Services Advisory Council;

c. A representative of a local or regional trauma agency;

d. A trauma program manager or trauma medical director who is actively working in a trauma center and who represents an investor-owned hospital with a trauma center;

e. A trauma program manager or trauma medical director actively working in a trauma center who represents a nonprofit or public hospital with a trauma center;

f. A trauma surgeon who is board-certified in an appropriate trauma or critical care specialty and who is actively practicing medicine in a Level II trauma center who represents an investor-owned hospital with a trauma center;

g. A trauma surgeon who is board-certified in an appropriate trauma or critical care specialty and actively practicing medicine who represents a nonprofit or public hospital with a trauma center;

h. A representative of the American College of Surgeons Committee on Trauma who has pediatric expertise;

i. A representative of the Safety Net Hospital Alliance of Florida;

j. A representative of the Florida Hospital Association;

k. A Florida-licensed, board-certified emergency medicine

physician who is not affiliated with a trauma center; and

1. A trauma surgeon who is board-certified in an appropriate trauma or critical care specialty and actively practicing medicine in a Level I trauma center.

2. No two members may be employed by the same health care facility.

3. Each council member shall be appointed to a 3-year term; however, for the purpose of providing staggered terms, of the initial appointments, four members shall be appointed to 1-year terms, four members shall be appointed to 2-year terms, and four members shall be appointed to 3-year terms.

(c) The department shall use existing and available resources to administer and support the activities of the advisory council. Members of the advisory council shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(d) The advisory council shall convene no later than January 5, 2019, and shall meet at least quarterly.

Section 6. Section 395.4025, Florida Statutes, is amended to read:

395.4025 Trauma centers; selection; quality assurance; records.—

(1) For purposes of developing a system of trauma centers, the department shall use the 18 ~~19~~ trauma service areas established in s. 395.402. ~~Within each service area and based on the state trauma system plan, the local or regional trauma services system plan, and recommendations of the local or regional trauma agency, the department shall establish the approximate number of trauma centers needed to ensure reasonable~~

~~access to high-quality trauma services.~~ The department shall designate ~~select~~ those hospitals that are to be recognized as trauma centers.

(2)(a) The department shall prepare an analysis of the Florida trauma system by August 31, 2020, and every 3 years thereafter, using the agency's hospital discharge database described in s. 408.061 for the current year and the most recent 5 years of population data for Florida available from the American Community Survey 5-Year Estimates by the United States Census Bureau. The department's report must, at a minimum, include all of the following:

1. The population growth for each trauma service area and for this state;

2. The number of high-risk patients treated at each trauma center within each trauma service area, including pediatric trauma centers;

3. The total number of high-risk patients treated at all acute care hospitals inclusive of nontrauma centers in the trauma service area; and

4. The percentage of each trauma center's sufficient volume of trauma patients, as described in subparagraph (3)(d)2., in accordance with the International Classification Injury Severity Score for the trauma center's designation, inclusive of the additional caseload volume required for those trauma centers with graduate medical education programs.

(b) The department shall make available all data, formulas, methodologies, calculations, and risk adjustment tools used in preparing the report.

(3)(a) ~~(2)(a)~~ The department shall ~~annually~~ notify each

acute care general hospital and each local and each regional trauma agency in a trauma service area with an identified need for an additional trauma center ~~the state~~ that the department is accepting letters of intent from hospitals that are interested in becoming trauma centers. The department may accept a letter of intent only if there is statutory capacity for an additional trauma center in accordance with subsection (2), paragraph (d), and s. 395.402 ~~In order to be considered by the department, a hospital that operates within the geographic area of a local or regional trauma agency must certify that its intent to operate as a trauma center is consistent with the trauma services plan of the local or regional trauma agency, as approved by the department, if such agency exists~~. Letters of intent must be postmarked no later than midnight October 1 of the year in which the department notifies hospitals that it plans to accept letters of intent.

(b) By October 15, the department shall send to all hospitals that submitted a letter of intent an application package that will provide the hospitals with instructions for submitting information to the department for selection as a trauma center. The standards for trauma centers provided for in s. 395.401(2), as adopted by rule of the department, shall serve as the basis for these instructions.

(c) In order to be considered by the department, applications from those hospitals seeking selection as trauma centers, including those current verified trauma centers that seek a change or redesignation in approval status as a trauma center, must be received by the department no later than the close of business on April 1 of the year following submission of

the letter of intent. The department shall conduct an initial ~~a provisional~~ review of each application for the purpose of determining whether ~~that~~ the hospital's application is complete and whether ~~that~~ the hospital is capable of constructing and operating a trauma center that includes ~~has~~ the critical elements required for a trauma center. This critical review must ~~will~~ be based on trauma center standards and must ~~shall~~ include, but need not be limited to, a review as to ~~of~~ whether the hospital is prepared to attain and operate with all of the following components before April 30 of the following year ~~has~~:

1. Equipment and physical facilities necessary to provide trauma services.

2. Personnel in sufficient numbers and with proper qualifications to provide trauma services.

3. An effective quality assurance process.

~~4. Submitted written confirmation by the local or regional trauma agency that the hospital applying to become a trauma center is consistent with the plan of the local or regional trauma agency, as approved by the department, if such agency exists.~~

(d)~~1.~~ Except as otherwise provided in this section, the department may not approve an application for a Level I, a Level II, a Level II with a pediatric trauma center, a jointly certified pediatric trauma center, or a stand-alone pediatric trauma center if approval of the application would exceed the limits on the numbers of Level I, Level II, Level II with a pediatric trauma center, jointly certified pediatric trauma centers, or stand-alone pediatric trauma centers established in s. 395.402(1). However, the department shall review and may

approve an application for a trauma center when approval of the application would result in a number of trauma centers which exceeds the limit on the numbers of trauma centers in a trauma service area imposed in s. 395.402(1), if, using the analysis performed by the department as required in paragraph (2)(a), the applicant demonstrates and the department determines that:

1. The existing trauma center actual caseload volume of high-risk patients exceeds the minimum caseload volume capabilities, inclusive of the additional caseload volume for graduate medical education critical care and trauma surgical subspecialty residents or fellows by more than two times the statutory minimums listed in sub-subparagraphs 2.a.-d. or three times the statutory minimum listed in sub-subparagraph 2.e., and the population growth for the trauma service area exceeds the statewide population growth by more than 15 percent based on the American Community Survey 5-Year Estimates by the United States Census Bureau for the 5-year period before the date the applicant files its letter of intent; and

2. A sufficient caseload volume of potential trauma patients exists within the trauma service area to ensure that existing trauma centers caseload volumes are at the following levels:

a. For Level I trauma centers in trauma service areas with a population of greater than 1.5 million, a minimum caseload volume of the greater of 1,200 high-risk patients admitted or greater per year or, for a trauma center with a trauma or critical care residency or fellowship program, 1,200 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident

or fellow.

b. For Level I trauma centers in trauma service areas with a population of less than 1.5 million, a minimum caseload volume of the greater of 1,000 high-risk patients admitted per year or, for a trauma center with a critical care or trauma residency or fellowship program, 1,000 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

c. For Level II trauma centers and Level II trauma centers with a pediatric trauma center in trauma service areas with a population of greater than 1.25 million, a minimum caseload volume of the greater of 1,000 high-risk patients admitted or for a trauma center with a critical care or trauma residency or fellowship program, 1,000 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

d. For Level II trauma centers and Level II trauma centers with a pediatric trauma center in trauma service areas with a population of less than 1.25 million, a minimum caseload volume of the greater of 500 high-risk patients admitted per year or for a trauma center with a critical care or trauma residency or fellowship program, 500 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

e. For pediatric trauma centers, a minimum caseload volume of the greater of 500 high-risk admitted patients per year or for a trauma center with a critical care or trauma residency or fellowship program, 500 high-risk admitted patients per year plus 40 cases per year for each accredited critical care and

trauma surgical subspecialty medical resident or fellow.

The International Classification Injury Severity Score calculations and caseload volume must be calculated using the most recent available hospital discharge data collected by the agency from all acute care hospitals pursuant to s. 408.061. The agency, in consultation with the department, shall adopt rules for trauma centers and acute care hospitals for the submission of data required for the department to perform its duties under this chapter.

(e) If the department determines that the hospital is capable of attaining and operating with the components required by paragraph (c), the applicant must be ready to operate in compliance with Florida trauma center standards no later than April 30 of the year following the department's initial review and approval of the hospital's application to proceed with preparation to operate as a trauma center. A hospital that fails to comply with this subsection may not be designated as a trauma center ~~Notwithstanding other provisions in this section, the department may grant up to an additional 18 months to a hospital applicant that is unable to meet all requirements as provided in paragraph (c) at the time of application if the number of applicants in the service area in which the applicant is located is equal to or less than the service area allocation, as provided by rule of the department. An applicant that is granted additional time pursuant to this paragraph shall submit a plan for departmental approval which includes timelines and activities that the applicant proposes to complete in order to meet application requirements. Any applicant that demonstrates~~

~~an ongoing effort to complete the activities within the timelines outlined in the plan shall be included in the number of trauma centers at such time that the department has conducted a provisional review of the application and has determined that the application is complete and that the hospital has the critical elements required for a trauma center.~~

~~2. Timeframes provided in subsections (1)-(8) shall be stayed until the department determines that the application is complete and that the hospital has the critical elements required for a trauma center~~.

(4)~~(3)~~ By May 1, the department shall select one or more hospitals ~~After April 30, any hospital~~ that submitted an application found acceptable by the department based on initial ~~provisional~~ review for approval to prepare ~~shall be eligible~~ to operate with the components required by paragraph (3)(c). If the department receives more applications than may be approved, the department must select the best applicant or applicants from the available pool based on the department's determination of the capability of an applicant to provide the highest quality patient care using the most recent technological, medical, and staffing resources available, which is located the farthest away from an existing trauma center in the applicant's trauma service area to maximize access. The number of applicants selected is limited to available statutory need in the specified trauma service area, as designated in paragraph (3)(d) or s. 395.402(1) ~~as a provisional trauma center~~.

(5)~~(4)~~ Following the initial review, ~~Between May 1 and October 1 of each year~~, the department shall conduct an in-depth evaluation of all applications found acceptable in the initial

~~provisional~~ review. The applications shall be evaluated against criteria enumerated in the application packages as provided to the hospitals by the department. An applicant may not operate as a provisional trauma center until the department completes the initial and in-depth review and approves the application.

(6)~~(5)~~ Within ~~Beginning October 1 of each year and ending no later than June 1 of~~ the ~~following~~ year after the hospital begins operating as a provisional trauma center, a review team of out-of-state experts assembled by the department shall make onsite visits to all provisional trauma centers. The department shall develop a survey instrument to be used by the expert team of reviewers. The instrument must ~~shall~~ include objective criteria and guidelines for reviewers based on existing trauma center standards such that all trauma centers are assessed equally. The survey instrument must ~~shall~~ also include a uniform rating system that ~~will be used by~~ reviewers must use to indicate the degree of compliance of each trauma center with specific standards, and to indicate the quality of care provided by each trauma center as determined through an audit of patient charts. In addition, hospitals being considered as provisional trauma centers must ~~shall~~ meet all the requirements of a trauma center and must ~~shall~~ be located in a trauma service area that has a need for such a trauma center.

(7)~~(6)~~ Based on recommendations from the review team, the department shall approve for designation a trauma center that is in compliance with trauma center standards, as established by department rule, and with this section ~~shall select trauma centers by July 1. An applicant for designation as a trauma center may request an extension of its provisional status if it~~

~~submits a corrective action plan to the department. The corrective action plan must demonstrate the ability of the applicant to correct deficiencies noted during the applicant's onsite review conducted by the department between the previous October 1 and June 1. The department may extend the provisional status of an applicant for designation as a trauma center through December 31 if the applicant provides a corrective action plan acceptable to the department. The department or a team of out-of-state experts assembled by the department shall conduct an onsite visit on or before November 1 to confirm that the deficiencies have been corrected. The provisional trauma center is responsible for all costs associated with the onsite visit in a manner prescribed by rule of the department. By January 1, the department must approve or deny the application of any provisional applicant granted an extension~~. Each trauma center shall be granted a 7-year approval period during which time it must continue to maintain trauma center standards and acceptable patient outcomes as determined by department rule. An approval, unless sooner suspended or revoked, automatically expires 7 years after the date of issuance and is renewable upon application for renewal as prescribed by rule of the department.

(8) ~~(7)~~ Only an applicant, or hospital with an existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant has applied to operate a trauma center, may protest a decision made by the department with regard to whether the application should be approved, or whether need has been established through the criteria established in paragraph (3)(d) ~~Any hospital that wishes to protest a decision made by the~~

~~department based on the department's preliminary or in-depth review of applications or on the recommendations of the site visit review team pursuant to this section shall proceed as provided in chapter 120~~. Hearings held under this subsection shall be conducted in the same manner as provided in ss. 120.569 and 120.57. Cases filed under chapter 120 may combine all disputes between parties.

(9)~~(8)~~ Notwithstanding any provision of chapter 381, a hospital licensed under ss. 395.001-395.3025 that operates a trauma center may not terminate or substantially reduce the availability of trauma service without providing at least 180 days' notice of its intent to terminate such service. Such notice shall be given to the department, to all affected local or regional trauma agencies, and to all trauma centers, hospitals, and emergency medical service providers in the trauma service area. The department shall adopt by rule the procedures and process for notification, duration, and explanation of the termination of trauma services.

(10)~~(9)~~ Except as otherwise provided in this subsection, the department or its agent may collect trauma care and registry data, as prescribed by rule of the department, from trauma centers, hospitals, emergency medical service providers, local or regional trauma agencies, or medical examiners for the purposes of evaluating trauma system effectiveness, ensuring compliance with the standards, and monitoring patient outcomes. A trauma center, hospital, emergency medical service provider, medical examiner, or local trauma agency or regional trauma agency, or a panel or committee assembled by such an agency under s. 395.50(1) may, but is not required to, disclose to the

department patient care quality assurance proceedings, records, or reports. However, the department may require a local trauma agency or a regional trauma agency, or a panel or committee assembled by such an agency to disclose to the department patient care quality assurance proceedings, records, or reports that the department needs solely to conduct quality assurance activities under s. 395.4015, or to ensure compliance with the quality assurance component of the trauma agency's plan approved under s. 395.401. The patient care quality assurance proceedings, records, or reports that the department may require for these purposes include, but are not limited to, the structure, processes, and procedures of the agency's quality assurance activities, and any recommendation for improving or modifying the overall trauma system, if the identity of a trauma center, hospital, emergency medical service provider, medical examiner, or an individual who provides trauma services is not disclosed.

(11) ~~(10)~~ Out-of-state experts assembled by the department to conduct onsite visits are agents of the department for the purposes of s. 395.3025. An out-of-state expert who acts as an agent of the department under this subsection is not liable for any civil damages as a result of actions taken by him or her, unless he or she is found to be operating outside the scope of the authority and responsibility assigned by the department.

(12) ~~(11)~~ Onsite visits by the department or its agent may be conducted at any reasonable time and may include but not be limited to a review of records in the possession of trauma centers, hospitals, emergency medical service providers, local or regional trauma agencies, or medical examiners regarding the

care, transport, treatment, or examination of trauma patients.

(13) ~~(12)~~ Patient care, transport, or treatment records or reports, or patient care quality assurance proceedings, records, or reports obtained or made pursuant to this section, s. 395.3025(4)(f), s. 395.401, s. 395.4015, s. 395.402, s. 395.403, s. 395.404, s. 395.4045, s. 395.405, s. 395.50, or s. 395.51 must be held confidential by the department or its agent and are exempt from the provisions of s. 119.07(1). Patient care quality assurance proceedings, records, or reports obtained or made pursuant to these sections are not subject to discovery or introduction into evidence in any civil or administrative action.

(14) ~~(13)~~ The department may adopt, by rule, the procedures and process by which it will select trauma centers. Such procedures and process must be used in ~~annually~~ selecting trauma centers and must be consistent with subsections (1)-(9) ~~(1)-(8)~~ except in those situations in which it is in the best interest of, and mutually agreed to by, all applicants within a service area and the department to reduce the timeframes.

(15) ~~(14)~~ Notwithstanding the procedures established pursuant to subsections (1) through (14) ~~(13)~~, hospitals located in areas with limited access to trauma center services shall be designated by the department as Level II trauma centers based on documentation of a valid certificate of trauma center verification from the American College of Surgeons. Areas with limited access to trauma center services are defined by the following criteria:

(a) The hospital is located in a trauma service area with a population greater than 600,000 persons but a population density

of less than 225 persons per square mile;

(b) The hospital is located in a county with no verified trauma center; and

(c) The hospital is located at least 15 miles or 20 minutes travel time by ground transport from the nearest verified trauma center.

(16)(a) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, an adult Level I trauma center, an adult Level II trauma center, a Level II trauma center with a pediatric trauma center, a jointly certified pediatric trauma center, or a stand-alone pediatric trauma center that was verified by the department before December 15, 2017, is deemed to have met the trauma center application and operational requirements of this section and must be verified and designated as a trauma center.

(b) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, a trauma center that was not verified by the department before December 15, 2017, but that was provisionally approved by the department to be in substantial compliance with Level II trauma standards before January 1, 2017, and which is operating as a Level II trauma center, is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level II trauma center.

(c) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, a trauma center that was not

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verified by the department before December 15, 2017, as a Level I trauma center but that was provisionally approved by the department to be in substantial compliance with Level I trauma standards before January 1, 2017, and is operating as a Level I trauma center is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level I trauma center.

(d) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, a trauma center that was not verified by the department before December 15, 2017, as a pediatric trauma center but was provisionally approved by the department and found to be in substantial compliance with the pediatric trauma standards established by rule before January 1, 2018, and is operating as a pediatric trauma center is deemed to have met the application and operational requirements of this section for a pediatric trauma center and, upon successful completion of the in-depth and site review process, shall be verified and designated as a pediatric trauma center. Notwithstanding the provisions of subsection (8), no existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located may protest the in-depth review, site survey, or verification decision of the department regarding an applicant that meets the requirements of this paragraph.

(e) Notwithstanding the statutory capacity limits established in s. 395.402(1) or any other provision of this act, any hospital operating as a Level II trauma center after January 1, 2017, must be designated and verified by the department as a

Level II trauma center if all of the following apply:

1. The hospital was provisionally approved after January 1, 2017, to operate as a Level II trauma center and was in operation on or before June 1, 2017;

2. The department's decision to approve the hospital to operate a provisional Level II trauma center was in litigation on or before January 1, 2018;

3. The hospital receives a recommended order from the Division of Administrative Hearings, a final order from the department, or an order from a court of competent jurisdiction which provides that it was entitled to be designated and verified as a Level II trauma center; and

4. The department determines that the hospital is in substantial compliance with the Level II trauma center standards, including the in-depth and site reviews.

Any provisional trauma center operating under this paragraph may not be required to cease trauma operations unless a court of competent jurisdiction or the department determines that it has failed to meet the trauma center standards, as established by department rule.

(f) Notwithstanding the statutory capacity limits established in s. 395.402(1), or any other provision of this act, a joint pediatric trauma center involving a Level II trauma center and a specialty licensed children's hospital which was verified by the department before December 15, 2017, is deemed to have met the application and operational requirements of this section for a pediatric trauma center and shall be verified and designated as a pediatric trauma center even if the joint

program is dissolved upon the expiration of the existing certificate and the pediatric trauma center continues operations independently through the specialty licensed children's hospital, provided that the pediatric trauma center meets all requirements for verification by the department.

(g) Nothing in this subsection shall limit the department's authority to review and approve trauma center applications.

Section 7. Section 395.403, Florida Statutes, is amended to read:

395.403 Reimbursement of trauma centers.—

(1) All verified trauma centers shall be considered eligible to receive state funding when state funds are specifically appropriated for state-sponsored trauma centers in the General Appropriations Act. Effective July 1, 2010, the department shall make payments from the Emergency Medical Services Trust Fund under s. 20.435 to the trauma centers. Payments shall be in equal amounts for the trauma centers approved by the department as of July 1 of the fiscal year in which funding is appropriated. In the event a trauma center does not maintain its status as a trauma center for any state fiscal year in which such funding is appropriated, the trauma center shall repay the state for the portion of the year during which it was not a trauma center.

(2) Trauma centers eligible to receive distributions from the Emergency Medical Services Trust Fund under s. 20.435 in accordance with subsection (1) may request that such funds be used as intergovernmental transfer funds in the Medicaid program.

(3) In order to receive state funding, a hospital must

~~shall~~ be a verified trauma center and shall:

(a) Agree to conform to all departmental requirements as provided by rule to assure high-quality trauma services.

(b) Agree to report trauma data to the National Trauma Data Bank ~~provide information concerning the provision of trauma services to the department, in a form and manner prescribed by rule of the department~~.

(c) Agree to accept all trauma patients, regardless of ability to pay, on a functional space-available basis.

(4) A trauma center that fails to comply with any of the conditions listed in subsection (3) or the applicable rules of the department may ~~shall~~ not receive payments under this section for the period in which it was not in compliance.

Section 8. Section 395.4036, Florida Statutes, is amended to read:

395.4036 Trauma payments.—

(1) Recognizing the Legislature’s stated intent to provide financial support to the current verified trauma centers and to provide incentives for the establishment of additional trauma centers as part of a system of state-sponsored trauma centers, the department shall use ~~utilize~~ funds collected under s. 318.18 and deposited into the Emergency Medical Services Trust Fund of the department to ensure the availability and accessibility of trauma services throughout the state as provided in this subsection.

(a) Funds collected under s. 318.18(15) shall be distributed as follows:

1. Twenty percent of the total funds collected during the state fiscal year shall be distributed to verified trauma

centers that have a local funding contribution as of December 31. Distribution of funds under this subparagraph shall be based on trauma caseload volume for the most recent calendar year available.

2. Forty percent of the total funds collected shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of funds under this subparagraph shall be based on the agency's hospital discharge data reported by each trauma center pursuant to s. 408.061 and meeting the criteria for classification as a trauma patient ~~department's Trauma Registry data~~.

3. Forty percent of the total funds collected shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of funds under this subparagraph shall be based on the department's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by the department by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by the department by rule.

(b) Funds collected under s. 318.18(5)(c) and (20) shall be distributed as follows:

1. Thirty percent of the total funds collected shall be distributed to Level II trauma centers operated by a public hospital governed by an elected board of directors as of

December 31, 2008.

2. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of funds under this subparagraph shall be based on the agency's hospital discharge data reported by each trauma center pursuant to s. 408.061 and meeting the criteria for classification as a trauma patient ~~department's Trauma Registry data~~.

3. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of funds under this subparagraph shall be based on the department's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by the department by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by the department by rule.

(2) Funds deposited in the department's Emergency Medical Services Trust Fund for verified trauma centers may be used to maximize the receipt of federal funds that may be available for such trauma centers. Notwithstanding this section and s. 318.14, distributions to trauma centers may be adjusted in a manner to ensure that total payments to trauma centers represent the same proportional allocation as set forth in this section and s. 318.14. For purposes of this section and s. 318.14, total funds

distributed to trauma centers may include revenue from the Emergency Medical Services Trust Fund and federal funds for which revenue from the Administrative Trust Fund is used to meet state or local matching requirements. Funds collected under ss. 318.14 and 318.18 and deposited in the Emergency Medical Services Trust Fund of the department shall be distributed to trauma centers on a quarterly basis using the most recent calendar year data available. Such data shall not be used for more than four quarterly distributions unless there are extenuating circumstances as determined by the department, in which case the most recent calendar year data available shall continue to be used and appropriate adjustments shall be made as soon as the more recent data becomes available.

(3)(a) Any trauma center not subject to audit pursuant to s. 215.97 shall annually attest, under penalties of perjury, that such proceeds were used in compliance with law. The annual attestation shall be made in a form and format determined by the department. The annual attestation shall be submitted to the department for review within 9 months after the end of the organization’s fiscal year.

(b) Any trauma center subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules adopted by the Auditor General.

(4) The department, working with the Agency for Health Care Administration, shall maximize resources for trauma services wherever possible.

Section 9. Section 395.404, Florida Statutes, is amended to read:

395.404 Reporting ~~Review~~ of trauma ~~registry~~ data; report to

National Trauma Data Bank ~~central registry; confidentiality and limited release~~.—

(1)~~(a)~~ Each trauma center shall participate in the National Trauma Data Bank, and the department shall solely use the National Trauma Data Bank for quality and assessment purposes.

(2) Each trauma center and acute care hospital shall report to the department all transfers of trauma patients and the outcomes of such patients ~~furnish, and, upon request of the department, all acute care hospitals shall furnish for department review trauma registry data as prescribed by rule of the department for the purpose of monitoring patient outcome and ensuring compliance with the standards of approval~~.

~~(b) Trauma registry data obtained pursuant to this subsection are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, the department may provide such trauma registry data to the person, trauma center, hospital, emergency medical service provider, local or regional trauma agency, medical examiner, or other entity from which the data were obtained. The department may also use or provide trauma registry data for purposes of research in accordance with the provisions of chapter 405.~~

(3)~~(2)~~ Each trauma center~~, pediatric trauma center,~~ and acute care hospital shall report to the department's brain and spinal cord injury central registry, consistent with the procedures and timeframes of s. 381.74, any person who has a moderate-to-severe brain or spinal cord injury, and shall include in the report the name, age, residence, and type of disability of the individual and any additional information that the department finds necessary.

Section 10. Paragraph (k) of subsection (1) of section 395.401, Florida Statutes, is amended to read:

395.401 Trauma services system plans; approval of trauma centers and pediatric trauma centers; procedures; renewal.—

(1)

(k) It is unlawful for any hospital or other facility to hold itself out as a trauma center unless it has been so verified or designated pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

Section 11. Paragraph (l) of subsection (3) of section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review; exemptions.—

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(l) For the establishment of:

1. A Level II neonatal intensive care unit with at least 10 beds, upon documentation to the agency that the applicant hospital had a minimum of 1,500 births during the previous 12 months;

2. A Level III neonatal intensive care unit with at least 15 beds, upon documentation to the agency that the applicant hospital has a Level II neonatal intensive care unit of at least 10 beds and had a minimum of 3,500 births during the previous 12 months; or

3. A Level III neonatal intensive care unit with at least 5 beds, upon documentation to the agency that the applicant hospital is a verified trauma center pursuant to s. 395.4001(15) ~~s. 395.4001(14)~~, and has a Level II neonatal intensive care unit,

997
998 if the applicant demonstrates that it meets the
999 requirements for quality of care, nurse staffing, physician
1000 staffing, physical plant, equipment, emergency transportation,
1001 and data reporting found in agency certificate-of-need rules for
1002 Level II and Level III neonatal intensive care units and if the
1003 applicant commits to the provision of services to Medicaid and
1004 charity patients at a level equal to or greater than the
1005 district average. Such a commitment is subject to s. 408.040.
1006 Section 12. Paragraph (a) of subsection (1) of section
1007 409.975, Florida Statutes, is amended to read:
1008 409.975 Managed care plan accountability.—In addition to
1009 the requirements of s. 409.967, plans and providers
1010 participating in the managed medical assistance program shall
1011 comply with the requirements of this section.
1012 (1) PROVIDER NETWORKS.—Managed care plans must develop and
1013 maintain provider networks that meet the medical needs of their
1014 enrollees in accordance with standards established pursuant to
1015 s. 409.967(2)(c). Except as provided in this section, managed
1016 care plans may limit the providers in their networks based on
1017 credentials, quality indicators, and price.
1018 (a) Plans must include all providers in the region that are
1019 classified by the agency as essential Medicaid providers, unless
1020 the agency approves, in writing, an alternative arrangement for
1021 securing the types of services offered by the essential
1022 providers. Providers are essential for serving Medicaid
1023 enrollees if they offer services that are not available from any
1024 other provider within a reasonable access standard, or if they
1025 provided a substantial share of the total units of a particular

service used by Medicaid patients within the region during the last 3 years and the combined capacity of other service providers in the region is insufficient to meet the total needs of the Medicaid patients. The agency may not classify physicians and other practitioners as essential providers. The agency, at a minimum, shall determine which providers in the following categories are essential Medicaid providers:

1. Federally qualified health centers.

2. Statutory teaching hospitals as defined in s. 408.07(45).

3. Hospitals that are trauma centers as defined in s. 395.4001(15) ~~s. 395.4001(14)~~.

4. Hospitals located at least 25 miles from any other hospital with similar services.

Managed care plans that have not contracted with all essential providers in the region as of the first date of recipient enrollment, or with whom an essential provider has terminated its contract, must negotiate in good faith with such essential providers for 1 year or until an agreement is reached, whichever is first. Payments for services rendered by a nonparticipating essential provider shall be made at the applicable Medicaid rate as of the first day of the contract between the agency and the plan. A rate schedule for all essential providers shall be attached to the contract between the agency and the plan. After 1 year, managed care plans that are unable to contract with essential providers shall notify the agency and propose an alternative arrangement for securing the essential services for Medicaid enrollees. The arrangement must

rely on contracts with other participating providers, regardless of whether those providers are located within the same region as the nonparticipating essential service provider. If the alternative arrangement is approved by the agency, payments to nonparticipating essential providers after the date of the agency's approval shall equal 90 percent of the applicable Medicaid rate. Except for payment for emergency services, if the alternative arrangement is not approved by the agency, payment to nonparticipating essential providers shall equal 110 percent of the applicable Medicaid rate.

Section 13. Study on pediatric trauma services; report.—

(1) The Department of Health shall work with the Office of Program Policy Analysis and Government Accountability to study the department's licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services and compare them to the licensure requirements, rules, regulations, standards, and guidelines for verification of pediatric trauma services by the American College of Surgeons.

(2) The Office of Program Policy Analysis and Government Accountability shall submit a report of the findings of the study to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Florida Trauma System Advisory Council established under s. 395.402, Florida Statutes, by December 31, 2018.

(3) This section shall expire on January 31, 2019.

Section 14. If the provisions of this act relating to s. 395.4025(16), Florida Statutes, are held to be invalid or inoperative for any reason, the remaining provisions of this act shall be deemed to be void and of no effect, it being the

legislative intent that this act as a whole would not have been adopted had any provision of the act not been included.

Section 15. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to trauma services; amending ss. 318.14, 318.18, and 318.21, F.S.; requiring that moneys received from specified penalties be allocated to certain trauma centers by a calculation that uses the Agency for Health Care Administration's hospital discharge data; amending s. 395.4001, F.S.; conforming cross-references; defining and redefining terms; amending s. 395.402, F.S.; revising legislative intent; revising the trauma service areas and provisions relating to the number and location of trauma centers; prohibiting the Department of Health from designating an existing Level II trauma center as a new pediatric trauma center or from designating an existing Level II trauma center as a Level I trauma center in a trauma service area that already has an existing Level I or pediatric trauma center; apportioning trauma centers within each trauma service area; requiring the department to establish the Florida Trauma System Advisory Council by a specified date; authorizing the council to submit certain

recommendations to the department; providing for the membership of the council; requiring the council to meet no later than a specified date and to meet at least quarterly; amending s. 395.4025, F.S.; conforming provisions to changes made by the act; requiring the department to periodically prepare an analysis of the state trauma system using the agency's hospital discharge data and specified population data; specifying contents of the report; requiring the department to make available all data, formulas, methodologies, calculations, and risk adjustment tools used in preparing the data in the report; requiring the department to notify each acute care general hospital and local and regional trauma agency in a trauma service area that has an identified need for an additional trauma center that the department is accepting letters of intent; prohibiting the department from accepting a letter of intent and from approving an application for a trauma center if there is not statutory capacity for an additional trauma center; revising the department's review process for hospitals seeking designation as a trauma center; authorizing the department to approve certain applications for designation as a trauma center if specified requirements are met; providing that a hospital applicant that meets such requirements must be ready to operate in compliance with specified trauma standards by a specified date; deleting a provision authorizing the department to grant a

hospital applicant an extension of time to meet certain standards and requirements; requiring the department to select one or more hospitals for approval to prepare to operate as a trauma center; providing selection requirements; prohibiting an applicant from operating as a provisional trauma center until the department has completed its review process and approved the application; requiring a specified review team to make onsite visits to newly operational trauma centers within a certain timeframe; requiring the department, based on recommendations from the review team, to designate a trauma center that is in compliance with specified requirements; deleting the date by which the department must select trauma centers; providing that only certain hospitals may protest a decision made by the department; providing that certain trauma centers that were verified by the department or determined by the department to be in substantial compliance with specified standards before specified dates are deemed to have met application and operational requirements; requiring the department to designate a certain provisionally approved Level II trauma center as a trauma center if certain criteria are met; prohibiting such designated trauma center from being required to cease trauma operations unless the department or a court determines that it has failed to meet certain standards; providing construction; amending ss. 395.403 and 395.4036, F.S.; conforming provisions to

changes made by the act; amending s. 395.404, F.S.; requiring trauma centers to participate in the National Trauma Data Bank; requiring trauma centers and acute care hospitals to report trauma patient transfer and outcome data to the department; deleting provisions relating to the department review of trauma registry data; amending ss. 395.401, 408.036, and 409.975; conforming cross-references; requiring the department to work with the Office of Program Policy Analysis and Government Accountability to study the department’s licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services and compare them to those of the American College of Surgeons; requiring the office to submit a report of the findings of the study to the Governor, Legislature, and advisory council by a specified date; providing for the expiration of provisions relating to the study; providing for invalidity; providing an effective date.

335256

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2018	.	
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The Committee on Appropriations (Braynon) recommended the following:

Senate Amendment to Amendment (788174) (with title amendment)

Delete lines 1080 - 1085
and insert:
Section 14. Section 16.63, Florida Statutes, is created to read:
16.63 Medical Reimbursement Program for Victims of Mass Shootings.—The Medical Reimbursement Program for Victims of Mass Shootings is established in the Division of Victim Services of

335256

the Department of Legal Affairs to reimburse trauma centers verified or designated pursuant to s. 395.4025 for the medical costs of treating victims for injuries associated with a mass shooting. For purposes of this section, the term "mass shooting" means an incident in which at least four or more people are killed or injured by firearms in one or more locations in close proximity. The Department of Legal Affairs must reimburse a trauma center based on a department-approved fee schedule for the documented medical costs of treating victims for injuries associated with a mass shooting. A trauma center that requests a reimbursement through the program must accept the reimbursement as payment in full and may not bill the victim of a mass shooting or his or her family.

Section 15. The sum of $10 million in recurring funds from the General Revenue Fund is appropriated to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

Section 16. Each January 1, the Department of Agriculture and Consumer Services shall transfer 10 percent of fees collected for new and renewal concealed weapon or firearm licenses from the Division of Licensing Trust Fund to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

Section 17. If the provisions of this act relating to s. 395.4025(16), Florida Statutes, are held to be invalid or

335256

inoperative for any reason, the remaining provisions of this act, except for the creation by the act of s. 16.63, shall be deemed to be void and of no effect, it being the legislative intent that bill sections 1 through 13 of this act as a whole would not have been adopted.

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

And the title is amended as follows:

Delete line 1188

and insert:

provisions relating to the study; creating s. 16.63, F.S.; establishing the Medical Reimbursement Program for Victims of Mass Shootings in the Department of Legal Affairs; defining the term "mass shooting"; requiring the department to reimburse verified or designated trauma centers for certain costs associated with treating victims for injuries associated with a mass shooting; requiring a verified or designated trauma center that accepts such reimbursement to accept it as payment in full; providing an appropriation; requiring the Department of Agriculture and Consumer Services to transfer, annually and by a specified date, a percentage of fees collected for new and renewal concealed weapon or firearm licenses from the Division of Licensing Trust Fund to the Department of Legal Affairs to fund the program; providing for

398166

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2018	.	
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	.	
	.	

The Committee on Appropriations (Braynon) recommended the following:

Senate Amendment to Amendment (917002) (with title amendment)

Delete lines 1080 - 1085
and insert:
Section 14. Section 16.63, Florida Statutes, is created to read:
16.63 Medical Reimbursement Program for Victims of Mass Shootings.—The Medical Reimbursement Program for Victims of Mass Shootings is established in the Division of Victim Services of

the Department of Legal Affairs to reimburse trauma centers verified or designated pursuant to s. 395.4025 for the medical costs of treating victims for injuries associated with a mass shooting. For purposes of this section, the term "mass shooting" means an incident in which at least four or more people are killed or injured by firearms in one or more locations in close proximity. The Department of Legal Affairs must reimburse a trauma center based on a department-approved fee schedule for the documented medical costs of treating victims for injuries associated with a mass shooting. A trauma center that requests a reimbursement through the program must accept the reimbursement as payment in full and may not bill the victim of a mass shooting or his or her family.

Section 15. The sum of $10 million in recurring funds from the General Revenue Fund is appropriated to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

Section 16. Each January 1, the Department of Agriculture and Consumer Services shall transfer 10 percent of fees collected for new and renewal concealed weapon or firearm licenses from the Division of Licensing Trust Fund to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

Section 17. If the provisions of this act relating to s. 395.4025(16), Florida Statutes, are held to be invalid or

398166

inoperative for any reason, the remaining provisions of this act, except for the creation by the act of s. 16.63, shall be deemed to be void and of no effect, it being the legislative intent that bill sections 1 through 13 of this act as a whole would not have been adopted.

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

And the title is amended as follows:

Delete line 1188

and insert:

provisions relating to the study; creating s. 16.63, F.S.; establishing the Medical Reimbursement Program for Victims of Mass Shootings in the Department of Legal Affairs; defining the term "mass shooting"; requiring the department to reimburse verified or designated trauma centers for certain costs associated with treating victims for injuries associated with a mass shooting; requiring a verified or designated trauma center that accepts such reimbursement to accept it as payment in full; providing an appropriation; requiring the Department of Agriculture and Consumer Services to transfer, annually and by a specified date, a percentage of fees collected for new and renewal concealed weapon or firearm licenses from the Division of Licensing Trust Fund to the Department of Legal Affairs to fund the program; providing for

788174

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2018	.	
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	.	
	.	

The Committee on Appropriations (Braynon) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1024 - 1029
and insert:
Section 11. Section 16.63, Florida Statutes, is created to read:
16.63 Medical Reimbursement Program for Victims of Mass Shootings.—The Medical Reimbursement Program for Victims of Mass Shootings is established in the Division of Victim Services of the Department of Legal Affairs to reimburse trauma centers

788174

verified or designated pursuant to s. 395.4025 for the medical costs of treating victims for injuries associated with a mass shooting. For purposes of this section, the term "mass shooting" means an incident in which at least four or more people are killed or injured by firearms in one or more locations in close proximity. The Department of Legal Affairs must reimburse a trauma center based on a department-approved fee schedule for the documented medical costs of treating victims for injuries associated with a mass shooting. A trauma center that requests a reimbursement through the program must accept the reimbursement as payment in full and may not bill the victim of a mass shooting or his or her family.

Section 12. The sum of $10 million in recurring funds from the General Revenue Fund is appropriated to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

Section 13. Each January 1, the Department of Agriculture and Consumer Services shall transfer 10 percent of fees collected for new and renewal concealed weapon or firearm licenses from the Division of Licensing Trust Fund to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

Section 14. If the provisions of this act relating to s. 395.4025(16), Florida Statutes, are held to be invalid or inoperative for any reason, the remaining provisions of this

788174

act, except for the creation by the act of s. 16.63, shall be deemed to be void and of no effect, it being the legislative intent that bill sections 1 through 10 of this act as a whole would not have been adopted.

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

And the title is amended as follows:

Delete line 86

and insert:

cross-reference; creating s. 16.63, F.S.; establishing the Medical Reimbursement Program for Victims of Mass Shootings in the Department of Legal Affairs; defining the term "mass shooting"; requiring the department to reimburse verified or designated trauma centers for certain costs associated with treating victims for injuries associated with a mass shooting; requiring a verified or designated trauma center that accepts such reimbursement to accept it as payment in full; providing an appropriation; requiring the Department of Agriculture and Consumer Services to transfer, annually and by a specified date, a percentage of fees collected for new and renewal concealed weapon or firearm licenses from the Division of Licensing Trust Fund to the Department of Legal Affairs to fund the program; providing for invalidity; providing


764628

576-03268-18

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to trauma services; amending ss. 318.14, 318.18, and 318.21, F.S.; requiring that moneys received from specified penalties be allocated to certain trauma centers by a calculation that uses the Agency of Health Care Administration's hospital discharge data; amending s. 395.4001, F.S.; conforming cross-references; redefining the term "trauma caseload volume"; amending s. 395.402, F.S.; revising legislative intent; revising the trauma service areas and provisions relating to the number and location of trauma centers; prohibiting the Department of Health from designating an existing Level II trauma center as a new pediatric trauma center or from designating an existing Level II trauma center as a Level I trauma center in a trauma service area that already has an existing Level I or pediatric trauma center; apportioning trauma centers within each trauma service area; requiring the department to establish the Florida Trauma System Advisory Council by a specified date; authorizing the council to submit certain recommendations to the department; providing for the membership of the council; requiring the council to meet no later than a specified date and to meet at least quarterly; amending s. 395.4025, F.S.; conforming provisions to changes made by the act; requiring the department to periodically prepare an


764628

576-03268-18

analysis of the state trauma system using the agency's hospital discharge data and specified population data; specifying contents of the report; requiring the department to make available all data, formulas, methodologies, and risk adjustment tools used in analyzing the data in the report; requiring the department to notify each acute care general hospital and local and regional trauma agency in a trauma service area that has an identified need for an additional trauma center that the department is accepting letters of intent; prohibiting the department from accepting a letter of intent and from approving an application for a trauma center if there is not statutory capacity for an additional trauma center; revising the department's review process for hospitals seeking designation as a trauma center; authorizing the department to approve certain applications for designation as a trauma center if specified requirements are met; providing that a hospital applicant that meets such requirements must be ready to operate in compliance with specified trauma standards by a specified date; deleting a provision authorizing the department to grant a hospital applicant an extension time to meet certain standards and requirements; requiring the department to select one or more hospitals for approval to prepare to operate as a trauma center; providing selection requirements; prohibiting an applicant from operating as a trauma center until the department has

completed its review process and approved the application; requiring a specified review team to make onsite visits to newly operational trauma centers within a certain timeframe; requiring the department, based on recommendations from the review team, to designate a trauma center that is in compliance with specified requirements; deleting the date by which the department must select trauma centers; providing that only certain hospitals may protest a decision made by the department; providing that certain trauma centers that were verified by the department or determined by the department to be in substantial compliance with specified standards before specified dates are deemed to have met application and operational requirements; requiring the department to designate a certain provisionally approved Level II trauma center as a trauma center if certain criteria are met; prohibiting such designated trauma center from being required to cease trauma operations unless the department or a court determines that it has failed to meet certain standards; providing construction; amending ss. 395.403 and 395.4036, F.S.; conforming provisions to changes made by the act; amending s. 395.404, F.S.; requiring trauma centers to participate in the National Trauma Data Bank; requiring trauma centers and acute care hospitals to report trauma patient transfer and outcome data to the department; deleting provisions relating to the department review of trauma registry data; amending s. 395.401, F.S.; conforming a

cross-reference; providing for invalidity; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(5) Any person electing to appear before the designated official or who is required so to appear shall be deemed to have waived his or her right to the civil penalty provisions of s. 318.18. The official, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed $500, except that in cases involving unlawful speed in a school zone or involving unlawful speed in a construction zone, the civil penalty may not exceed $1,000; or require attendance at a driver improvement school, or both. If the person is required to appear before the designated official pursuant to s. 318.19(1) and is found to have committed the infraction, the designated official shall impose a civil penalty of $1,000 in addition to any other penalties and the person’s driver license shall be suspended for 6 months. If the person is required to appear before the designated official pursuant to s. 318.19(2) and is found to have committed the infraction, the designated official shall impose a civil penalty of $500 in addition to any other penalties and the person’s driver license shall be suspended for

3 months. If the official determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned. Moneys received from the mandatory civil penalties imposed pursuant to this subsection upon persons required to appear before a designated official pursuant to s. 318.19(1) or (2) shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the agency's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry~~.

Section 2. Paragraph (h) of subsection (3) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(3)

(h) A person cited for a second or subsequent conviction of speed exceeding the limit by 30 miles per hour and above within a 12-month period shall pay a fine that is double the amount listed in paragraph (b). For purposes of this paragraph, the term "conviction" means a finding of guilt as a result of a jury verdict, nonjury trial, or entry of a plea of guilty. Moneys

received from the increased fine imposed by this paragraph shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

1. Fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

2. Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the agency's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry~~.

Section 3. Paragraph (b) of subsection (15) of section 318.21, Florida Statutes, is amended to read:

318.21 Disposition of civil penalties by county courts.—All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(15) Of the additional fine assessed under s. 318.18(3)(e) for a violation of s. 316.1893, 50 percent of the moneys received from the fines shall be appropriated to the Agency for Health Care Administration as general revenue to provide an enhanced Medicaid payment to nursing homes that serve Medicaid recipients with brain and spinal cord injuries. The remaining 50 percent of the moneys received from the enhanced fine imposed under s. 318.18(3)(e) shall be remitted to the Department of

Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers in the counties where enhanced penalty zones are established to ensure the availability and accessibility of trauma services. Funds deposited into the Emergency Medical Services Trust Fund under this subsection shall be allocated as follows:

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the agency's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry~~.

Section 4. Paragraph (a) of subsection (7) and subsections (13) and (14) of section 395.4001, Florida Statutes, are amended to read:

395.4001 Definitions.—As used in this part, the term:

(7) "Level II trauma center" means a trauma center that:

(a) Is verified by the department to be in substantial compliance with Level II trauma center standards and has been approved by the department to operate as a Level II trauma center or is designated pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

(13) "Trauma caseload volume" means the number of trauma patients calculated by the department using the data reported by each designated trauma center to the hospital discharge data reported to the agency pursuant to s. 408.061 ~~reported by individual trauma centers to the Trauma Registry and validated by the department~~.

(14) "Trauma center" means a hospital that has been

verified by the department to be in substantial compliance with the requirements in s. 395.4025 and has been approved by the department to operate as a Level I trauma center, Level II trauma center, or pediatric trauma center, or is designated by the department as a Level II trauma center pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

Section 5. Section 395.402, Florida Statutes, is amended to read:

395.402 Trauma service areas; number and location of trauma centers.—

(1) The Legislature recognizes the need for a statewide, cohesive, uniform, and integrated trauma system, as well as the need to ensure the viability of existing trauma centers when designating new trauma centers. Consistent with national standards, future trauma center designations must be based on need as a factor of demand and capacity. ~~Within the trauma service areas, Level I and Level II trauma centers shall each be capable of annually treating a minimum of 1,000 and 500 patients, respectively, with an injury severity score (ISS) of 9 or greater. Level II trauma centers in counties with a population of more than 500,000 shall have the capacity to care for 1,000 patients per year.~~

~~(2) Trauma service areas as defined in this section are to be utilized until the Department of Health completes an assessment of the trauma system and reports its finding to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the substantive legislative committees. The report shall be submitted by February 1, 2005. The department shall review the existing trauma system and determine~~

~~whether it is effective in providing trauma care uniformly throughout the state. The assessment shall:~~

~~(a) Consider aligning trauma service areas within the trauma region boundaries as established in July 2004.~~

~~(b) Review the number and level of trauma centers needed for each trauma service area to provide a statewide integrated trauma system.~~

~~(c) Establish criteria for determining the number and level of trauma centers needed to serve the population in a defined trauma service area or region.~~

~~(d) Consider including criteria within trauma center approval standards based upon the number of trauma victims served within a service area.~~

~~(e) Review the Regional Domestic Security Task Force structure and determine whether integrating the trauma system planning with interagency regional emergency and disaster planning efforts is feasible and identify any duplication of efforts between the two entities.~~

~~(f) Make recommendations regarding a continued revenue source which shall include a local participation requirement.~~

~~(g) Make recommendations regarding a formula for the distribution of funds identified for trauma centers which shall address incentives for new centers where needed and the need to maintain effective trauma care in areas served by existing centers, with consideration for the volume of trauma patients served, and the amount of charity care provided.~~

~~(3) In conducting such assessment and subsequent annual reviews, the department shall consider:~~

~~(a) The recommendations made as part of the regional trauma~~

~~system plans submitted by regional trauma agencies.~~

~~(b) Stakeholder recommendations.~~

~~(c) The geographical composition of an area to ensure rapid access to trauma care by patients.~~

~~(d) Historical patterns of patient referral and transfer in an area.~~

~~(e) Inventories of available trauma care resources, including professional medical staff.~~

~~(f) Population growth characteristics.~~

~~(g) Transportation capabilities, including ground and air transport.~~

~~(h) Medically appropriate ground and air travel times.~~

~~(i) Recommendations of the Regional Domestic Security Task Force.~~

~~(j) The actual number of trauma victims currently being served by each trauma center.~~

~~(k) Other appropriate criteria.~~

~~(4) Annually thereafter, the department shall review the assignment of the 67 counties to trauma service areas, in addition to the requirements of paragraphs (2)(b)-(g) and subsection (3). County assignments are made for the purpose of developing a system of trauma centers. Revisions made by the department shall take into consideration the recommendations made as part of the regional trauma system plans approved by the department and the recommendations made as part of the state trauma system plan. In cases where a trauma service area is located within the boundaries of more than one trauma region, the trauma service area's needs, response capability, and system requirements shall be considered by each trauma region served by~~

~~that trauma service area in its regional system plan. Until the department completes the February 2005 assessment, the assignment of counties shall remain as established in this section.~~

(a) The following trauma service areas are ~~hereby~~ established:

1. Trauma service area 1 shall consist of Escambia, Okaloosa, Santa Rosa, and Walton Counties.

2. Trauma service area 2 shall consist of Bay, Gulf, Holmes, and Washington Counties.

3. Trauma service area 3 shall consist of Calhoun, Franklin, Gadsden, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.

4. Trauma service area 4 shall consist of Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.

5. Trauma service area 5 shall consist of Baker, Clay, Duval, Nassau, and St. Johns Counties.

6. Trauma service area 6 shall consist of Citrus, Hernando, and Marion Counties.

7. Trauma service area 7 shall consist of Flagler and Volusia Counties.

8. Trauma service area 8 shall consist of Lake, Orange, Osceola, Seminole, and Sumter Counties.

9. Trauma service area 9 shall consist of Pasco and Pinellas Counties.

10. Trauma service area 10 shall consist of Hillsborough County.

11. Trauma service area 11 shall consist of Hardee,

Highlands, and Polk Counties.

12. Trauma service area 12 shall consist of Brevard and Indian River Counties.

13. Trauma service area 13 shall consist of DeSoto, Manatee, and Sarasota Counties.

14. Trauma service area 14 shall consist of Martin, Okeechobee, and St. Lucie Counties.

15. Trauma service area 15 shall consist of Charlotte, Collier, Glades, Hendry, and Lee Counties.

16. Trauma service area 16 shall consist of Palm Beach County.

17. Trauma service area 17 shall consist of Broward ~~Collier~~ County.

18. Trauma service area 18 shall consist of ~~Broward County.~~

~~19. Trauma service area 19 shall consist of~~ Miami-Dade and Monroe Counties.

(b) Each trauma service area must ~~should~~ have at least one Level I or Level II trauma center. Except as otherwise provided in s. 395.4025(16), the department may not designate an existing Level II trauma center as a new pediatric trauma center or designate an existing Level II trauma center as a Level I trauma center in a trauma service area that already has an existing Level I or pediatric trauma center ~~The department shall allocate, by rule, the number of trauma centers needed for each trauma service area~~.

(c) Trauma centers, including Level I, Level II, Level II/pediatric, and stand-alone pediatric trauma centers, shall be apportioned as follows:

1. Trauma service area 1 shall have three trauma centers.

2. Trauma service area 2 shall have one trauma center.
3. Trauma service area 3 shall have one trauma center.
4. Trauma service area 4 shall have one trauma center.
5. Trauma service area 5 shall have three trauma centers.
6. Trauma service area 6 shall have one trauma center.
7. Trauma service area 7 shall have one trauma center.
8. Trauma service area 8 shall have three trauma centers.
9. Trauma service area 9 shall have three trauma centers.
10. Trauma service area 10 shall have two trauma centers.
11. Trauma service area 11 shall have one trauma center.
12. Trauma service area 12 shall have one trauma center.
13. Trauma service area 13 shall have two trauma centers.
14. Trauma service area 14 shall have one trauma center.
15. Trauma service area 15 shall have one trauma center.
16. Trauma service area 16 shall have two trauma centers.
17. Trauma service area 17 shall have three trauma centers.
18. Trauma service area 18 shall have five trauma centers.

Notwithstanding other provisions of this chapter, a trauma service area may not have more than a total of five Level I, Level II, Level II/pediatric, and stand-alone pediatric trauma centers. A trauma service area may not have more than one stand-alone pediatric trauma center ~~There shall be no more than a total of 44 trauma centers in the state~~.

(2)(a) By October 1, 2018, the department shall establish the Florida Trauma System Advisory Council to promote an inclusive trauma system and enhance cooperation among trauma system stakeholders. The advisory council may submit recommendations to the department on how to maximize existing

trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.

(b)1. The advisory council shall consist of 11 members appointed by the Governor, including:

a. The State Trauma Medical Director;

b. A representative from an emergency medical services organization;

c. A representative of a local or regional trauma agency;

d. A trauma program manager or trauma medical director actively working in a trauma center who represents an investor-owned hospital with a trauma center;

e. A trauma program manager or trauma medical director actively working in a trauma center who represents a nonprofit or public hospital with a trauma center;

f. A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level II trauma center who represents an investor-owned hospital with a trauma center;

g. A trauma surgeon who is board-certified in critical care and actively practicing medicine who represents a nonprofit or public hospital with a trauma center;

h. A representative of the American College of Surgeons Committee on Trauma;

i. A representative of the Safety Net Hospital Alliance of Florida;

j. A representative of the Florida Hospital Association; and

k. A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level I trauma center.

2. No two members may be employed by the same health care facility.

3. Each council member shall be appointed to a 3-year term; however, for the purpose of providing staggered terms, of the initial appointments, four members shall be appointed to 1-year terms, four members shall be appointed to 2-year terms, and three members shall be appointed to 3-year terms.

(c) The advisory council shall convene no later than January 5, 2019, and shall meet at least quarterly.

Section 6. Section 395.4025, Florida Statutes, is amended to read:

395.4025 Trauma centers; selection; quality assurance; records.—

(1) For purposes of developing a system of trauma centers, the department shall use the 18 ~~19~~ trauma service areas established in s. 395.402. ~~Within each service area and based on the state trauma system plan, the local or regional trauma services system plan, and recommendations of the local or regional trauma agency, the department shall establish the approximate number of trauma centers needed to ensure reasonable access to high-quality trauma services.~~ The department shall select those hospitals that are to be recognized as trauma centers.

(2)(a) The department shall prepare an analysis of the Florida trauma system every 3 years, beginning in August 2020, using the agency's hospital discharge database described in s. 408.061 for the most current year and the most recent 5 years of population data for Florida available from the United States Census Bureau. The department's report must include all of the

following:

1. The population growth for each trauma service area and for the state of Florida;

2. The number of severely injured patients with an Injury Severity Score of 15 or greater treated at each trauma center within each trauma service area, including pediatric trauma centers;

3. The total number of severely injured patients with an Injury Severity Score of 15 or greater treated at all acute care hospitals inclusive of non-trauma centers in the trauma service area;

4. The percentage of each trauma center's sufficient volume of trauma patients, as described in subparagraph (3)(d)2., in accordance with the Injury Severity Score for the trauma center's designation, inclusive of the additional caseload volume required for those trauma centers with graduate medical education programs.

(b) The department shall make available all data, formulas, methodologies, and risk adjustment tools used in preparing the report.

(3)(a) ~~(2)(a)~~ The department shall ~~annually~~ notify each acute care general hospital and each local and each regional trauma agency in the trauma service area with an identified need for an additional trauma center ~~state~~ that the department is accepting letters of intent from hospitals that are interested in becoming trauma centers. The department may accept a letter of intent only if there is statutory capacity for an additional trauma center in accordance with subsection (2), paragraph (d), and s. 395.402. ~~In order to be considered by the department, a~~

~~hospital that operates within the geographic area of a local or regional trauma agency must certify that its intent to operate as a trauma center is consistent with the trauma services plan of the local or regional trauma agency, as approved by the department, if such agency exists.~~ Letters of intent must be postmarked no later than midnight October 1 of the year in which the department notifies hospitals that it plans to accept letters of intent.

(b) By October 15, the department shall send to all hospitals that submitted a letter of intent an application package that will provide the hospitals with instructions for submitting information to the department for selection as a trauma center. The standards for trauma centers provided for in s. 395.401(2), as adopted by rule of the department, shall serve as the basis for these instructions.

(c) In order to be considered by the department, applications from those hospitals seeking selection as trauma centers, including those current verified trauma centers that seek a change or redesignation in approval status as a trauma center, must be received by the department no later than the close of business on April 1 of the year following submission of the letter of intent. The department shall conduct an initial ~~a provisional~~ review of each application for the purpose of determining whether ~~that~~ the hospital's application is complete and that the hospital is capable of constructing and operating a trauma center that includes ~~has~~ the critical elements required for a trauma center. This critical review must ~~will~~ be based on trauma center standards and must ~~shall~~ include, but need not be limited to, a review as to ~~of~~ whether the hospital is prepared

to attain and operate with all of the following components before April 30 of the following year ~~has~~:

1. Equipment and physical facilities necessary to provide trauma services.

2. Personnel in sufficient numbers and with proper qualifications to provide trauma services.

3. An effective quality assurance process.

~~4. Submitted written confirmation by the local or regional trauma agency that the hospital applying to become a trauma center is consistent with the plan of the local or regional trauma agency, as approved by the department, if such agency exists.~~

(d)~~1.~~ Except as otherwise provided in this act, the department may not approve an application for a Level I, Level II, Level II/pediatric, or stand-alone pediatric trauma center if approval of the application would exceed the limits on the numbers of Level I, Level II, Level II/pediatric, or stand-alone pediatric trauma centers set forth in s. 395.402(1). However, the department shall review and may approve an application for a trauma center when approval of the application would result in a number of trauma centers which exceeds the limit on the numbers of trauma centers in a trauma service area as set forth in s. 395.402(1), if the applicant demonstrates and the department determines that:

1. The existing trauma centers' actual caseload volume of severely injured patients with an Injury Severity Score of 15 or greater exceeds the minimum caseload volume capabilities, inclusive of the additional caseload volume for graduate medical education critical care and trauma surgical subspecialty

residents or fellows by more than two times the statutory minimums listed in sub-subparagraphs 2.a.-d. and three times the statutory minimum listed in sub-subparagraph 2.e., and the population growth for the trauma service area exceeds the statewide population growth by more than 15 percent based on the United States census data for the 5-year period before the date the applicant files its letter of intent; and

2. A sufficient volume of potential trauma patients exists within the trauma service area to ensure that existing trauma centers' volumes are at the following levels:

a. For Level I trauma centers in trauma service areas with a population of greater than 1.5 million, a minimum caseload of the greater of 1,200 severely injured admitted patients with an Injury Severity Score of 15 or greater per year or 1,200 severely injured admitted patients with an Injury Severity Score of 15 or greater plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

b. For Level I trauma centers in trauma service areas with a population of less than 1.5 million, the minimum caseload of the greater of 1,000 severely injured admitted patients with an Injury Severity Score of 15 or greater per year or 1,000 severely injured admitted patients with an Injury Severity Score of 15 or greater plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

c. For Level II and Level II/pediatric trauma centers in trauma service areas with a population of greater than 1.25 million, the minimum caseload of the greater of 1,000 severely

injured admitted patients with an Injury Severity Score of 15 or greater per year or 1,000 severely injured admitted patients with an Injury Severity Score of 15 or greater plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

d. For Level II and Level II/pediatric trauma centers in trauma service areas with a population of less than 1.25 million, the minimum caseload of the greater of 500 severely injured admitted patients with an Injury Severity Score of 15 or greater per year or 500 severely injured admitted patients with an Injury Severity Score of 15 or greater per year plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

e. For pediatric trauma centers, the minimum caseload of the greater of 500 severely injured admitted patients with an Injury Severity Score of 15 or greater per year or 500 severely injured admitted patients with an Injury Severity Score of 15 or greater per year plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

The Injury Severity Score calculations and caseload volume must be calculated using the most recent available hospital discharge data collected by the agency from all acute care hospitals pursuant to s. 408.061.

(e) If the department determines that the hospital is capable of attaining and operating with the components required in paragraph (c), the applicant must be ready to operate in compliance with Florida trauma center standards no later than

April 30 of the year following the department's initial review and approval of the hospital's application to proceed with preparation to operate as a trauma center. A hospital that fails to comply with this subsection may not be designated as a trauma center ~~Notwithstanding other provisions in this section, the department may grant up to an additional 18 months to a hospital applicant that is unable to meet all requirements as provided in paragraph (c) at the time of application if the number of applicants in the service area in which the applicant is located is equal to or less than the service area allocation, as provided by rule of the department. An applicant that is granted additional time pursuant to this paragraph shall submit a plan for departmental approval which includes timelines and activities that the applicant proposes to complete in order to meet application requirements. Any applicant that demonstrates an ongoing effort to complete the activities within the timelines outlined in the plan shall be included in the number of trauma centers at such time that the department has conducted a provisional review of the application and has determined that the application is complete and that the hospital has the critical elements required for a trauma center.~~

~~2. Timeframes provided in subsections (1)-(8) shall be stayed until the department determines that the application is complete and that the hospital has the critical elements required for a trauma center~~.

(4)~~(3)~~ By May 1, the department shall select one or more hospitals ~~After April 30, any hospital~~ that submitted an application found acceptable by the department based on initial ~~provisional~~ review for approval to prepare ~~shall be eligible~~ to

operate with the components required in paragraph (3)(c). If the department receives more applications than may be approved under the statutory capacity in the specified trauma service area, the department must select the best applicant or applicants from the available pool based on the department's determination of the capability of an applicant to provide the greatest improvement in access to trauma services and the highest quality patient care using the most recent technological, medical, and staffing resources available. The number of applicants selected is limited to available statutory need in the specified trauma service area, as designated in paragraph (3)(d) or s. 395.402(1) ~~as a provisional trauma center~~.

(5)~~(4)~~ Following the initial review, ~~Between May 1 and October 1 of each year~~, the department shall conduct an in-depth evaluation of all applications found acceptable in the initial ~~provisional~~ review. The applications shall be evaluated against criteria enumerated in the application packages as provided to the hospitals by the department. An applicant may not operate as a provisional trauma center until the department completes the initial and in-depth review and approves the application through those review stages.

(6)~~(5)~~ Within ~~Beginning October 1 of each year and ending no later than June 1 of~~ the ~~following~~ year after the hospital begins operating as a provisional trauma center, a review team of out-of-state experts assembled by the department shall make onsite visits to all provisional trauma centers. The department shall develop a survey instrument to be used by the expert team of reviewers. The instrument must ~~shall~~ include objective criteria and guidelines for reviewers based on existing trauma

center standards such that all trauma centers are assessed equally. The survey instrument must ~~shall~~ also include a uniform rating system that ~~will be used by~~ reviewers must use to indicate the degree of compliance of each trauma center with specific standards, and to indicate the quality of care provided by each trauma center as determined through an audit of patient charts. In addition, hospitals being considered as provisional trauma centers must ~~shall~~ meet all the requirements of a trauma center and must ~~shall~~ be located in a trauma service area that has a need for such a trauma center.

(7) ~~(6)~~ Based on recommendations from the review team, the department shall designate a trauma center that is in compliance with trauma center standards, as established by department rule, and with this section ~~shall select trauma centers by July 1. An applicant for designation as a trauma center may request an extension of its provisional status if it submits a corrective action plan to the department. The corrective action plan must demonstrate the ability of the applicant to correct deficiencies noted during the applicant's onsite review conducted by the department between the previous October 1 and June 1. The department may extend the provisional status of an applicant for designation as a trauma center through December 31 if the applicant provides a corrective action plan acceptable to the department. The department or a team of out-of-state experts assembled by the department shall conduct an onsite visit on or before November 1 to confirm that the deficiencies have been corrected. The provisional trauma center is responsible for all costs associated with the onsite visit in a manner prescribed by rule of the department. By January 1, the department must~~

~~approve or deny the application of any provisional applicant granted an extension~~. Each trauma center shall be granted a 7-year approval period during which time it must continue to maintain trauma center standards and acceptable patient outcomes as determined by department rule. An approval, unless sooner suspended or revoked, automatically expires 7 years after the date of issuance and is renewable upon application for renewal as prescribed by rule of the department.

(8) ~~(7)~~ Only an applicant, or hospital with an existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant has applied to operate a trauma center, may protest a decision made by the department with regard to whether the application should be approved, or whether need has been established through the criteria in paragraph (3)(d) ~~Any hospital that wishes to protest a decision made by the department based on the department's preliminary or in-depth review of applications or on the recommendations of the site visit review team pursuant to this section shall proceed as provided in chapter 120~~. Hearings held under this subsection shall be conducted in the same manner as provided in ss. 120.569 and 120.57. Cases filed under chapter 120 may combine all disputes between parties.

(9) ~~(8)~~ Notwithstanding any provision of chapter 381, a hospital licensed under ss. 395.001-395.3025 that operates a trauma center may not terminate or substantially reduce the availability of trauma service without providing at least 180 days' notice of its intent to terminate such service. Such notice shall be given to the department, to all affected local

or regional trauma agencies, and to all trauma centers, hospitals, and emergency medical service providers in the trauma service area. The department shall adopt by rule the procedures and process for notification, duration, and explanation of the termination of trauma services.

(10) ~~(9)~~ Except as otherwise provided in this subsection, the department or its agent may collect trauma care and registry data, as prescribed by rule of the department, from trauma centers, hospitals, emergency medical service providers, local or regional trauma agencies, or medical examiners for the purposes of evaluating trauma system effectiveness, ensuring compliance with the standards, and monitoring patient outcomes. A trauma center, hospital, emergency medical service provider, medical examiner, or local trauma agency or regional trauma agency, or a panel or committee assembled by such an agency under s. 395.50(1) may, but is not required to, disclose to the department patient care quality assurance proceedings, records, or reports. However, the department may require a local trauma agency or a regional trauma agency, or a panel or committee assembled by such an agency to disclose to the department patient care quality assurance proceedings, records, or reports that the department needs solely to conduct quality assurance activities under s. 395.4015, or to ensure compliance with the quality assurance component of the trauma agency's plan approved under s. 395.401. The patient care quality assurance proceedings, records, or reports that the department may require for these purposes include, but are not limited to, the structure, processes, and procedures of the agency's quality assurance activities, and any recommendation for improving or

modifying the overall trauma system, if the identity of a trauma center, hospital, emergency medical service provider, medical examiner, or an individual who provides trauma services is not disclosed.

(11) ~~(10)~~ Out-of-state experts assembled by the department to conduct onsite visits are agents of the department for the purposes of s. 395.3025. An out-of-state expert who acts as an agent of the department under this subsection is not liable for any civil damages as a result of actions taken by him or her, unless he or she is found to be operating outside the scope of the authority and responsibility assigned by the department.

(12) ~~(11)~~ Onsite visits by the department or its agent may be conducted at any reasonable time and may include but not be limited to a review of records in the possession of trauma centers, hospitals, emergency medical service providers, local or regional trauma agencies, or medical examiners regarding the care, transport, treatment, or examination of trauma patients.

(13) ~~(12)~~ Patient care, transport, or treatment records or reports, or patient care quality assurance proceedings, records, or reports obtained or made pursuant to this section, s. 395.3025(4)(f), s. 395.401, s. 395.4015, s. 395.402, s. 395.403, s. 395.404, s. 395.4045, s. 395.405, s. 395.50, or s. 395.51 must be held confidential by the department or its agent and are exempt from the provisions of s. 119.07(1). Patient care quality assurance proceedings, records, or reports obtained or made pursuant to these sections are not subject to discovery or introduction into evidence in any civil or administrative action.

(14) ~~(13)~~ The department may adopt, by rule, the procedures

and process by which it will select trauma centers. Such procedures and process must be used in annually selecting trauma centers and must be consistent with subsections (1)-(9) ~~(1)-(8)~~ except in those situations in which it is in the best interest of, and mutually agreed to by, all applicants within a service area and the department to reduce the timeframes.

(15)~~(14)~~ Notwithstanding the procedures established pursuant to subsections (1) through (14) ~~(13)~~, hospitals located in areas with limited access to trauma center services shall be designated by the department as Level II trauma centers based on documentation of a valid certificate of trauma center verification from the American College of Surgeons. Areas with limited access to trauma center services are defined by the following criteria:

(a) The hospital is located in a trauma service area with a population greater than 600,000 persons but a population density of less than 225 persons per square mile;

(b) The hospital is located in a county with no verified trauma center; and

(c) The hospital is located at least 15 miles or 20 minutes travel time by ground transport from the nearest verified trauma center.

(16)(a) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, an adult Level I trauma center, an adult Level II trauma center, or a pediatric trauma center that was verified by the department before December 15, 2017, is deemed to have met the trauma center application and operational requirements of this section and must be verified

and designated as a trauma center.

(b) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, a trauma center that was not verified by the department before December 15, 2017, but that was provisionally approved by the department to be in substantial compliance with Level II trauma standards before January 1, 2017, and is operating as a Level II trauma center, is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level II trauma center.

(c) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, a trauma center that was not verified by the department before December 15, 2017, as a Level I trauma center but that was provisionally approved by the department to be in substantial compliance with Level I trauma standards before January 1, 2017, and is operating as a Level I trauma center is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level I trauma center.

(d) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, a trauma center that was not verified by the department before December 15, 2017, as a pediatric trauma center but was provisionally approved by the department to be in substantial compliance with the pediatric trauma standards established by rule before January 1, 2018, and is operating as a pediatric trauma center is deemed to have met

the application and operational requirements of this section for a pediatric trauma center and, upon successful completion of the in-depth and site review process, shall be verified and designated as a pediatric trauma center. Notwithstanding the provisions of subsection (8), no existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located may protest the in-depth review, site survey, or verification decision of the department regarding an applicant that meets the requirements of this paragraph.

(e) Notwithstanding the statutory capacity limits established in s. 395.402(1) or any other provision of this act, any hospital operating as a Level II trauma center after January 1, 2017, must be designated and verified by the department as a Level II trauma center if all of the following apply:

1. The hospital was provisionally approved after January 1, 2017, to operate as a Level II trauma center, and was in operation on or before January 1, 2018;

2. The department's decision to approve the hospital to operate a provisional Level II trauma center was in litigation on or before January 1, 2018;

3. The hospital receives a recommended order from the Division of Administrative Hearings, a final order from the department, or an order from a court of competent jurisdiction that it was entitled to be designated and verified as a Level II trauma center; and

4. The department determines that the hospital is in substantial compliance with the Level II trauma center standards, including the in-depth and site reviews.

Any provisional trauma center operating under this paragraph may not be required to cease trauma operations unless a court of competent jurisdiction or the department determines that it has failed to meet the trauma center standards, as established by department rule.

(f) Nothing in this subsection shall limit the department's authority to review and approve trauma center applications.

Section 7. Section 395.403, Florida Statutes, is amended to read:

395.403 Reimbursement of trauma centers.—

(1) All verified trauma centers shall be considered eligible to receive state funding when state funds are specifically appropriated for state-sponsored trauma centers in the General Appropriations Act. Effective July 1, 2010, the department shall make payments from the Emergency Medical Services Trust Fund under s. 20.435 to the trauma centers. Payments shall be in equal amounts for the trauma centers approved by the department as of July 1 of the fiscal year in which funding is appropriated. In the event a trauma center does not maintain its status as a trauma center for any state fiscal year in which such funding is appropriated, the trauma center shall repay the state for the portion of the year during which it was not a trauma center.

(2) Trauma centers eligible to receive distributions from the Emergency Medical Services Trust Fund under s. 20.435 in accordance with subsection (1) may request that such funds be used as intergovernmental transfer funds in the Medicaid program.

(3) In order to receive state funding, a hospital must ~~shall~~ be a verified trauma center and shall:

(a) Agree to conform to all departmental requirements as provided by rule to assure high-quality trauma services.

(b) Agree to report trauma data to the National Trauma Data Bank ~~provide information concerning the provision of trauma services to the department, in a form and manner prescribed by rule of the department~~.

(c) Agree to accept all trauma patients, regardless of ability to pay, on a functional space-available basis.

(4) A trauma center that fails to comply with any of the conditions listed in subsection (3) or the applicable rules of the department may ~~shall~~ not receive payments under this section for the period in which it was not in compliance.

Section 8. Section 395.4036, Florida Statutes, is amended to read:

395.4036 Trauma payments.—

(1) Recognizing the Legislature's stated intent to provide financial support to the current verified trauma centers and to provide incentives for the establishment of additional trauma centers as part of a system of state-sponsored trauma centers, the department shall utilize funds collected under s. 318.18 and deposited into the Emergency Medical Services Trust Fund of the department to ensure the availability and accessibility of trauma services throughout the state as provided in this subsection.

(a) Funds collected under s. 318.18(15) shall be distributed as follows:

1. Twenty percent of the total funds collected during the

state fiscal year shall be distributed to verified trauma centers that have a local funding contribution as of December 31. Distribution of funds under this subparagraph shall be based on trauma caseload volume for the most recent calendar year available.

2. Forty percent of the total funds collected shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of funds under this subparagraph shall be based on the agency hospital discharge data reported by each trauma center pursuant to s. 408.061 and meeting the criteria for classification as a trauma patient ~~department's Trauma Registry data~~.

3. Forty percent of the total funds collected shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of funds under this subparagraph shall be based on the department's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by the department by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by the department by rule.

(b) Funds collected under s. 318.18(5)(c) and (20) shall be distributed as follows:

1. Thirty percent of the total funds collected shall be distributed to Level II trauma centers operated by a public

hospital governed by an elected board of directors as of December 31, 2008.

2. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of funds under this subparagraph shall be based on the hospital discharge data reported by each trauma center pursuant to s. 408.061 and meeting the criteria for classification as a trauma patient ~~department's Trauma Registry data~~.

3. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of funds under this subparagraph shall be based on the department's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by the department by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by the department by rule.

(2) Funds deposited in the department's Emergency Medical Services Trust Fund for verified trauma centers may be used to maximize the receipt of federal funds that may be available for such trauma centers. Notwithstanding this section and s. 318.14, distributions to trauma centers may be adjusted in a manner to ensure that total payments to trauma centers represent the same proportional allocation as set forth in this section and s.

318.14. For purposes of this section and s. 318.14, total funds distributed to trauma centers may include revenue from the Emergency Medical Services Trust Fund and federal funds for which revenue from the Administrative Trust Fund is used to meet state or local matching requirements. Funds collected under ss. 318.14 and 318.18 and deposited in the Emergency Medical Services Trust Fund of the department shall be distributed to trauma centers on a quarterly basis using the most recent calendar year data available. Such data shall not be used for more than four quarterly distributions unless there are extenuating circumstances as determined by the department, in which case the most recent calendar year data available shall continue to be used and appropriate adjustments shall be made as soon as the more recent data becomes available.

(3)(a) Any trauma center not subject to audit pursuant to s. 215.97 shall annually attest, under penalties of perjury, that such proceeds were used in compliance with law. The annual attestation shall be made in a form and format determined by the department. The annual attestation shall be submitted to the department for review within 9 months after the end of the organization's fiscal year.

(b) Any trauma center subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules adopted by the Auditor General.

(4) The department, working with the Agency for Health Care Administration, shall maximize resources for trauma services wherever possible.

Section 9. Section 395.404, Florida Statutes, is amended to read:


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395.404 Reporting ~~Review~~ of trauma ~~registry~~ data; report to National Trauma Data Bank ~~central registry; confidentiality and limited release~~.—

(1)~~(a)~~ Each trauma center shall participate in the National Trauma Data Bank, and the department shall solely use the National Trauma Data Bank for quality and assessment purposes.

(2) Each trauma center and acute care hospital shall report to the department all transfers of trauma patients and the outcomes of such patients ~~furnish, and, upon request of the department, all acute care hospitals shall furnish for department review trauma registry data as prescribed by rule of the department for the purpose of monitoring patient outcome and ensuring compliance with the standards of approval.~~

~~(b) Trauma registry data obtained pursuant to this subsection are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, the department may provide such trauma registry data to the person, trauma center, hospital, emergency medical service provider, local or regional trauma agency, medical examiner, or other entity from which the data were obtained. The department may also use or provide trauma registry data for purposes of research in accordance with the provisions of chapter 405~~.

(3)~~(2)~~ Each trauma center~~, pediatric trauma center,~~ and acute care hospital shall report to the department's brain and spinal cord injury central registry, consistent with the procedures and timeframes of s. 381.74, any person who has a moderate-to-severe brain or spinal cord injury, and shall include in the report the name, age, residence, and type of disability of the individual and any additional information that


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the department finds necessary.

Section 10. Paragraph (k) of subsection (1) of section 395.401, Florida Statutes, is amended to read:

395.401 Trauma services system plans; approval of trauma centers and pediatric trauma centers; procedures; renewal.—

(1)

(k) It is unlawful for any hospital or other facility to hold itself out as a trauma center unless it has been so verified or designated pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

Section 11. If the provisions of this act relating to s. 395.4025(16), Florida Statutes, are held to be invalid or inoperative for any reason, the remaining provisions of this act shall be deemed to be void and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included.

Section 12. This act shall take effect July 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 1876
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Young
SUBJECT:	Trauma Services
DATE:	February 23, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Loe	Hansen	AP	**Fav/CS**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1876 amends various sections of law related to the selection and approval of trauma centers and the reporting of trauma center data. The bill:

- Eliminates outdated language related to a Department of Health (DOH) assessment of the trauma system and continuing annual reviews of the assignment of counties to trauma service areas (TSA).
- Eliminates TSA 19 and revises the county composition of certain TSAs.
- Restricts the DOH from designating a Level II trauma center as a pediatric or a Level I trauma center in a TSA that has a Level I or pediatric trauma center.
- Designates the number of trauma centers assigned to each TSA for a total of 35 trauma centers statewide and specifies that each TSA may have no more than five total Level I, Level II, Level II/pediatric, and stand-alone pediatric trauma centers, and no more than one standalone pediatric trauma center.
- Requires the DOH to establish the Florida Trauma System Advisory Council (FTSAC) by October 1, 2018. The bill specifies the composition of the FTSAC and allows the FTSAC to submit recommendations to the DOH on how to maximize existing resources to achieve an inclusive trauma system.
- Requires the DOH to prepare an analysis of the Florida trauma system every three years, beginning August 31, 2020, to include information on the population growth in each TSA, the caseload levels of high-risk patients for each trauma center and acute care hospital in the

TSA, and the percentage of minimum caseload levels established under the bill for each trauma center.
- Defines "high-risk patient" as a trauma patient with an International Classification Injury Severity Score (ICISS) of less than 0.85.
- Revises the procedure for the DOH to select and approve new trauma centers if there is statutory capacity within a TSA.
- Allows the DOH to approve new trauma centers that exceed the statutory limit in a TSA if there is a sufficient volume of high-risk patients.
- Provides grandfathering language for currently verified trauma centers and for certain provisionally approved trauma centers and provides that if any of the grandfathering provisions are found to be invalid, the entire act is invalid.
- Requires the DOH to designate any hospital as a Level II trauma center if the hospital receives a final recommended order from the Division of Administrative Hearings (DOAH) or a final determination from the DOH or a court that it was entitled to be a Level II trauma center and was provisionally approved and operating within specified dates.
- Eliminates the trauma registry under the DOH in favor of requiring trauma centers to participate in the National Trauma Data Bank. Trauma centers and acute care hospitals are still required to report all transfers and outcomes of trauma patients to the DOH.
- Replaces provisions requiring the use of data in the trauma registry with provisions requiring the use of data reported to the Agency for Health Care Administration (AHCA) pursuant to s. 408.061.

The DOH may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of the DOH.

The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of OPPAGA.

The bill takes effect upon becoming a law.

II. Present Situation:

The regulation of trauma centers in Florida is established under part II of ch. 395, F.S. Trauma centers treat individuals who have incurred single or multiple injuries because of blunt or penetrating means or burns, and who require immediate medical intervention or treatment. Currently, there are 36 verified and provisional trauma centers in the state.[1]

Trauma centers in Florida are divided into three categories including Level I, Level II, and Pediatric trauma centers.
- A Level I trauma center is defined as a trauma center that:
  - Has formal research and education programs for the enhancement of trauma care; is verified by the DOH to be in substantial compliance with Level I trauma center and pediatric trauma center standards; and has been approved by the DOH to operate as a Level I trauma center;

[1] Department of Health, *Senate Bill 1876 Analysis* (January 17, 2018) (on file with the Senate Committee on Health Policy).

  - Serves as a resource facility to Level II trauma centers, pediatric trauma centers, and general hospitals through shared outreach, education, and quality improvement activities; and
  - Participates in an inclusive system of trauma care, including providing leadership, system evaluation, and quality improvement activities.[2]
- A Level II trauma center is defined as a trauma center that:
  - Is verified by the DOH to be in substantial compliance with Level II trauma center standards and has been approved by the DOH to operate as a Level II trauma center or is designated pursuant to s. 395.4025(14), F.S.;
  - Serves as a resource facility to general hospitals through shared outreach, education, and quality improvement activities; and
  - Participates in an inclusive system of trauma care.[3]
- A Pediatric trauma center is defined as a hospital that is verified by the DOH to be in substantial compliance with pediatric trauma center standards and has been approved by the DOH to operate as a pediatric trauma center.[4,5]

Trauma Center Apportionment

Pursuant to s. 395.402, F.S., Florida is divided into 19 trauma service areas (TSA). A TSA is determined based on population density and an ability to respond to a specified number of patients in a trauma center environment. For purposes of medical response time, the trauma service area should have at least one Level I or Level II trauma center, and the DOH is required to allocate, by rule, the number of trauma centers for each trauma service area. There cannot be more than 44 trauma centers in the state.

Administrative Rule Litigation

Since 2011, the DOH has been involved in litigation involving its annual assessment of need for trauma centers. The majority of this litigation is based on the state's TSA allocation methodology, which imposes limitations on hospitals seeking trauma center verification. Protests have been levied regarding the validity of the DOH's allocation of new trauma centers in specific geographic areas. Despite prevailing in an administrative rule challenge in June 2014 that validated the DOH's allocation methodology, the DOH has been unable to promulgate the required annual rule change since 2014 due to litigation.[6]

In 2016, the DOH attempted to promulgate an apportionment rule that interpreted need to mean the "minimum" number of trauma centers in a TSA. Several hospitals subsequently challenged

[2] Section 395.4001(6), F.S.
[3] Section 395.4001(7), F.S.
[4] Section 395.4001(9), F.S.
[5] For Level I, Level II, and pediatric trauma center standards *see* http://www.floridahealth.gov/licensing-and-regulation/trauma-system/_documents/traumacntrstandpamphlet150-9-2009rev1-14-10.pdf, (last visited on Jan. 19, 2018).
[6] Shands Teaching Hospital and Clinics, Inc., d/b/a UF Shands Hospital v. Dep't of Health and Osceola Regional Hospital, Inc., d/b/a Osceola Regional Medical Center, DOAH Case No. 14-1022RP (June 20, 2014). This order also resolved the rule challenges filed by The Public Health Trust of Miami-Dade County (DOAH Case No. 14-1027RP); St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (DOAH Case No. 14-1028RP); Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 14-1034RP); and Bayfront HMA Medical Center, LLC, d/b/a Bayfront Medical Center (DOAH Case No. 14-1035RP).

the proposed rule.[7] The DOAH issued an order that invalidated the proposed rule in March 2017.[8] The administrative law judge recognized the challenges faced by the DOH and Florida's trauma system in his final order by stating, "[a]fter considering all of the evidence and testimony, the undersigned is of the opinion that it would be impossible to draft a set of rules that would satisfy the concerns/interests of all the relevant stakeholders."[9] The case was appealed to the First District Court of Appeals (DCA) and is awaiting final disposition.[10] Since the invalidation of the rule, the DOH has been unable to promulgate a new rule.

In 2016, an administrative law judge outlined in a recommended order that the DOH must grant provisional trauma center status to all applicants that demonstrate compliance with the critical elements of the trauma center standards, regardless if there is an allocated slot in the TSA.[11] In addition, he indicated the DOH's determination of need happens at the point in which a trauma center is granted verification.[12] On appeal, the First DCA stated that a hospital may apply over multiple years without jeopardizing the previous application.[13] In a separate case, the First DCA addressed the issue of need and concurred that need is not addressed at the provisional licensure and is relevant only upon verification.[14]In combination, a hospital may essentially operate indefinitely as a provisional trauma center so long as they submit and receive approval of their provisional application annually.

The DOH has been unable to promulgate a valid allocation rule since July 2014.[15]

Trauma Center Approval

Section 395.4025, F.S., provides a scheduled application process and specific criteria for trauma center selection. Standards for verification and approval are based on national guidelines

[7] According to the DOAH's website, the challenges were filed by St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (Tampa) (DOAH Case No. 16-5841RP); Bayfront HMA Medical Center, LLC, d/b/a Bayfront Heath – St. Petersburg (DOAH Case No. 16- 5840RP); Lee Memorial Health System, d/b/a Lee Memorial Hospital (DOAH Case No. 16-5839RP); Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 16-5838RP); and Shands Jacksonville Medical Center, Inc., d/b/a U.F. Hospital Jacksonville (DOAH Case No. 16-5837RP). Intervenors included JFK Medical Center Limited Partnership, d/b/a JFK Medical Center (Atlantis); The Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson South Community Hospital; and Orange Park Medical Center, Inc., d/b/a Orange Park Medical Center.

[8] Shands Jacksonville Medical Center, Inc., d/b/a UF Health Jacksonville v. Dep't of Health, DOAH Case No. 16-5837RP (March 28, 2017). This order also resolved the rule challenges filed by Florida Health Science Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 16-5838RP); Lee Memorial Health System, d/b/a Lee Memorial Hospital (DOAH Case No. 16-5839RP); Bayfront HMA Medical Center, LLC, d/b/a Bayfront Health – St. Petersburg (DOAH Case No. 16-5840RP); and St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (DOAH Case No. 16-5841RP).

[9] Id.

[10] Dep't of Health, et al. v. Shands Jacksonville Medical Center, Inc., et al., Case No. 1D17-1713.

[11] The Public Health Trust of Miami-Dade County, Florida d/b/a Jackson South Community Hospital v. Dep't of Health and Kendall Healthcare Group, Ltd., d/b/a Kendall Regional Medical Center, DOAH Case No. 15-3171)

[12] Id. *See also* Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson Medical Center and Jackson South Community Hospital v. Dep't of Health et al., DOAH Case No. 16-3370, 16-3372 ("Order Granting Motion to Partially Dismiss Petition for Administrative Hearing," pg. 4).

[13] The Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson South Community Hospital v. Dep't of Health and Kendall Healthcare Group, Ltd., d/b/a Kendall Regional Medical Center, Case No. 1D16-3244.

[14] State of Florida, Department of Health v. Bayfront HMA Medical Center, LLC, d/b/a Bayfront Health-St. Petersburg, Case No. 1D17-2174 (consolidated with Galencare, Inc., d/b/a Northside Hospital v. Bayfront HMA. Medical Center, LLC, d/b/a Bayfront Health-St. Petersburg, Case No. 1D17-2229).

[15] Supra note 1

established by the American College of Surgeons.[16] Standards for verification and approval as a pediatric trauma center are developed in conjunction with the DOH's Division of Children's Medical Services.

Acute care hospitals that submit a Letter of Intent to the DOH by October 1 are eligible to submit a trauma center application by April 1.[17] Once an applicant hospital receives the DOH's notification letter of provisional status designation, the hospital may begin operation as a provisional trauma center. During the provisional phase, the DOH conducts an in-depth review of the hospital's application. An onsite visit is conducted by an out-of-state survey team to verify compliance with the *Trauma Center Standards, DH Pamphlet 150-9*.[18] Based on the recommendations from the out-of-state survey team, the DOH makes the decision to approve or deny the hospital to operate as a verified trauma center.[19]

Hospitals verified by the DOH receive a seven-year certificate. A verified trauma center that intends to renew its verification must submit a renewal application form to the DOH at least 14 months prior to the expiration of the certificate. All renewing verified trauma centers receive an onsite visit by an out-of-state survey team after the DOH's receipt of the completed renewal form. Hospitals that have been verified by the DOH to comply with the requirements of s. 395.4025, F.S., are approved to operate as a verified trauma center.[20]

Florida's current trauma center verification process has experienced a number of challenges. Section 395.4025(7), F.S., allows any hospital in the state to protest verification decisions by the DOH. Hypothetically, under this subsection, a 25-bed acute care hospital in northwest Florida can protest the verification of a trauma center in Miami-Dade County. In actual application, the DOH has been involved in litigation numerous times where one or more parties operating a trauma center in one geographic area of the state have challenged trauma center verification in another area of the state.[21]

Florida Trauma Registry

The DOH has maintained a trauma registry since at least 2000. Currently, only a small number of states nationwide do not have a state trauma registry. In 2014, the DOH upgraded the trauma registry to receive patient data from every verified trauma center in the state. Changes made to the registry in 2016, based on feedback received from trauma stakeholders, allow a Florida trauma center to submit the same data elements as those required by the National Trauma Data Bank (NTDB).

The trauma registry serves two critical functions. First, the DOH is able to perform local, regional, and statewide data analysis much faster than the NTDB. The NTDB does not perform

[16] The American College of Surgeons requirements for Level I, Level II, and pediatric trauma centers are available at: http://www.facs.org/trauma/verifivisitoutcomes.html, (last visited on Jan. 19, 2018).
[17] The required criteria included in the application package is outlined in the DOH's *Trauma Center Standards, DH Pamphlet 150-9*, in accordance with s. 395.401(2), F.S., and is incorporated by reference in Rule 64J-2.011, F.A.C.
[18] Section 395.4025(5), F.S.
[19] Section 395.4025(6), F.S.
[20] Id.
[21] Supra note 1. A list of current litigation is on file with Senate Health Policy Committee staff.

local and regional analysis and due to the reporting requirements of the NTDB, data analysis is not available for 18 months after the initial reporting period and is limited to standardized reports provided to all participants. In contrast, the DOH is able to provide information as quickly as six months after the end of the reporting period. The DOH is also able to create customized, analytical reports not currently available from the NTDB. Second, s. 305.4036, F.S., requires that patient volumes from the Florida Trauma Registry be used as part of the formula to calculate the distribution of traffic fine revenues.[22]

International Classification Injury Severity Score (ICISS)

The ICISS is a score that indicates the likelihood of survival and is calculated from the set of injury-related diagnostic codes available in the patient's medical record. The ICISS ranges from 0 to 1, and a patient who has a score of .85 or less is considered a severely injured patient. The score is based on the International Classification of Diseases, 9th revision, with conversion tables in place to allow the use of the International Classification of Diseases, 10th revision.[23]

Health Care Data Submitted to the AHCA

Section 408.061, F.S., requires health care facilities to submit data to the AHCA including:

- Case-mix data;
- Patient admission and discharge data;
- Hospital emergency department data which includes the number of patients treated in the emergency department reported by patient acuity level;
- Data on hospital-acquired infections as specified by rule;
- Data on complications as specified by rule:
- Data on readmissions as specified by rule, with patient and provider-specific identifiers included;
- Actual charge data by diagnostic groups or other bundled groupings as specified by rule;
- Financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, and depreciation expenses based on the expected useful life of the property and equipment involved; and
- Demographic data.

Additionally, s. 408.05, F.S., creates the Florida Center for Health Information and Transparency (Center) within the AHCA to collect, compile, coordinate, analyze, index, and disseminate health-related data and statistics. Among its other duties, the Center is required to promote data sharing through dissemination of state-collected health data by making such data available, transferable, and readily usable[24] and to develop written agreements with local, state, and federal agencies to facilitate the sharing of data related to health care.[25]

[22] Supra note 1.
[23] Email from Steve A. McCoy, Emergency Services Administrator for the DOH, Feb. 22, 2018, on file with Senate Health Policy Committee staff.
[24] Section 408.05(3)(b), F.S.
[25] Section 408.05(3)(d), F.S.

III. Effect of Proposed Changes:

Sections 1 through 4 and 8 amend ss. 318.14, 318.18, 318.21, 395.4001, and 395.4036, F.S., respectively, to replace provisions requiring the use of data in the trauma registry with provisions requiring the use of data reported to the AHCA pursuant to s. 408.061, F.S.

Section 4 amends s. 395.4001, F.S., to define the term "high-risk patient" to mean a trauma patient with an ICISS of less than 0.85.

Section 5 amends s. 395.402, F.S., to:

- Delete language requiring Level I and Level II trauma centers to be capable of treating a minimum of 1,000 and 500 patients annually (or 1,000 in a county with 500,000 or more population) with an injury severity score (ISS) of 9 or greater, respectively.
- Delete outdated language requiring the DOH to conduct a one-time assessment of the trauma system.
- Delete a requirement that the DOH conduct annual assessments of the assignment of the counties in TSAs.
- Revise the composition of the TSAs as follows:
  - Eliminate TSA 19 and place Miami-Dade and Monroe counties into TSA 18;
  - Move Broward County from TSA 18 to TSA 17; and
  - Move Collier County from TSA 17 to TSA 15.
- Restrict the DOH from designating a Level II trauma center as a Level I or pediatric trauma center in a TSA that already has a Level I trauma center or pediatric trauma center.
- Delete the delegation of authority to the DOH to allocate the number of trauma centers by TSA and, instead, set by law the number of trauma centers allowed in each TSA for a total of 35, as follows:
  - TSAs 2, 3, 4, 6, 7, 11, 12, 14, and 15 are allocated one trauma center;
  - TSAs 10, 13, and 16 are allocated two trauma centers;
  - TSAs 1, 5, 8, 9, and 17 are allocated three trauma centers; and
  - TSA 18 is allocated five trauma centers.
- Specify that no TSA may have more than five total Level I, Level II, Level II with a pediatric, jointly certified pediatric, and stand-alone pediatric trauma centers, and more than one stand-alone pediatric trauma center.
- Require the DOH to establish the FTSAC by October 1, 2018. The FSTAC will consist of the following 11 members appointed by the Governor:
  - The State Trauma Medical Director;
  - A standing member of the Emergency Medical Services Advisory Council;
  - A representative of a local or regional trauma agency;
  - A trauma program manager or trauma medical director actively working in a trauma center who represents an investor-owned hospital with a trauma center;
  - A trauma program manager or trauma medical director actively working in a trauma center who represents a nonprofit or public hospital with a trauma center;
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level II trauma center who represents an investor-owned hospital with a trauma center;
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine who represents a nonprofit or public hospital with a trauma center;

  - A representative of the American College of Surgeons Committee on Trauma;
  - A representative of the Safety Net Hospital Alliance of Florida;
  - A representative of the Florida Hospital Association;
  - A Florida-licensed, board-certified emergency medicine physician who is not affiliated with a trauma center; and
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level I trauma center.
- Specify that the DOH must use existing and available resources to administer and support the activities of the FTSAC.
- Specify that members of the FTSAC serve without compensation and are not entitled to reimbursement for per diem and travel expenses.
- Require members of the FTSAC to be appointed for staggered terms and no two members may be employed by the same health care facility.
- Require the FTSAC to conduct its first meeting no later than January 5, 2019 and quarterly thereafter.
- Allow the FTSAC to submit recommendations to the DOH on how to maximize existing trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.

Section 6 amends s. 395.4025, F.S., to:

- Require the DOH to prepare an analysis of the Florida trauma system every three years, beginning in August 31, 2020. The DOH must use discharge data collected by the AHCA pursuant to s. 408.061, F.S., and the most current five years of population data for Florida available from the American Community Survey Five-Year Estimates by the United States Census Bureau. The DOH must make available all data, formulas, methodologies, calculations, and risk adjustment tools used to prepare the report. The report must include the following:
  - The population growth for each trauma service area and for the state of Florida;
  - The number of high-risk patients treated at each trauma center within each trauma service area, including pediatric trauma centers;
  - The total number of high-risk patients treated at all acute care hospitals inclusive of non-trauma centers in the trauma service area; and
  - The percentage of each trauma center's sufficient volume of trauma patients, as described in subparagraph (3)(d)2., in accordance with the Injury Severity Score for the trauma center's designation, inclusive of the additional caseload volume required for those trauma centers with graduate medical education programs.
- Rework how the DOH selects and licenses trauma centers.[26] The process under the bill will proceed under the following steps:

Letter of Intent

The bill requires the DOH to notify hospitals that the DOH is accepting letters of intent from applicants when there is statutory capacity for an additional trauma center based on the limits established in **Section 5** of the bill, the analysis prepared by the DOH as detailed above, and the

[26] Note: Some of the information presented in this section is current law. However, for the sake of providing a timeline for how the process will work after changes are made by SB 1876, the portions that are current law are integrated into the changes made by the bill.

exception to the statutory capacity limits established in s. 395.4025(3)(d), F.S. The DOH may not accept a letter of intent from a hospital if there is not statutory capacity, in accordance with the limits established in **Section 5** of the bill, the DOH's report, and exceptions to the statutory capacity limits provided in the bill.

Letters of Intent must be postmarked by October 1 of year one. [27]

Application

By October 15 of year one, the DOH must send each hospital that provided a letter of intent an application package. Completed applications must be received by the DOH by April 1 [of year two].[28] Between April 1 and May 1 [of year two], the DOH will conduct an initial review of each application package it received to determine if each application shows that the hospital will be capable of attaining and operating with specified criteria by April 30 of year three. The operating criteria include:

- Equipment and physical facilities necessary to provide trauma services.
- Personnel in sufficient numbers and with proper qualifications to provide trauma services.
- An effective quality assurance process.

The bill specifies that the DOH may not approve an application for a trauma center if the approval would exceed the limits on the number of trauma centers established in **Section 5** of the bill. However, the DOH may approve an application that will exceed the limits if the applicant demonstrates, using the analysis of the Florida trauma system prepared by the DOH, and the DOH determines that:

- Each existing trauma centers' caseload volume of high-risk patients in that TSA is double the minimum volume requirement for Level I and Level II trauma centers and more than triple the minimum volume requirements for stand-alone pediatric trauma centers and the population growth for the trauma service area exceeds the statewide population growth by more than 15 percent based on the American Community Survey Five-Year Estimates by the United States census data for the five-year period before the date the applicant files its letter of intent; and
- A sufficient volume of potential trauma patients exists within the trauma service area to ensure that existing trauma centers' volumes are at the following levels:[29]

Level I trauma center; In a TSA with a population > 1.5 million.	1,200 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[30]

[27] The timeframes in the bill use dates over multiple years. In order to simplify the timeline, the timeframes will be referred to as happening in year one, year two, or year three.
[28] The actual year that this takes place is not specified in the bill; however for the purposes of the timeline in this analysis the year will be assumed to be year two.
[29] Calculations of patient caseloads must be based on the most recent available hospital discharge data collected by the AHCA pursuant to s. 408.061, F.S.
[30] These additional patients apply if the hospital has a trauma or critical care residency or fellowship program.

Level I trauma center; In a TSA with a population < 1.5 million.	1,000 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[31]
Level II or Level II/Pediatric trauma center; In a TSA with a population > 1.25 million.	1,000 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[32]
Level II or Level II/Pediatric trauma center; In a TSA with a population < 1.25 million.	500 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[33]
All pediatric stand-alone trauma centers.	500 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.[34]

- The bill specifies that ICISS calculations and caseload volumes must be calculated using the most recent available hospital discharge data collected by the AHCA from all acute care hospitals.
- The AHCA, in consultation with the DOH, must adopt rules for the submission of data from trauma centers and acute care hospitals as required to allow the DOH to perform its duties under ch. 395, F.S.

By May 1 [of year two],[35] the DOH must select one or more hospitals that meet the operating criteria detailed above, up to the statutory capacity designated in s. 395.402, F.S., or allowed by the exception detail above for each TSA. If the DOH receives more applications than available capacity, the DOH must select one or more applicants, as necessary, that the DOH determines will provide the highest quality patient care using the most recent technological, medical, and staffing resources and which is the farthest away from an existing trauma center in the applicant's TSA. At this point, the applicant may begin preparing to operate, but the bill restricts an applicant from operating until the DOH completes its initial and in-depth review and approves the applicant to operate as a provisional trauma center. A hospital that is not ready to operate by April 30 of year three may not be designated as a trauma center.

In-Depth Evaluation

Following the initial review, the DOH must conduct an in-depth evaluation of each application against the criteria enumerated in the application packages. An applicant may not operate as a provisional trauma center until the DOH completes and approves the applicant through the initial and in-depth review stages. Within the year after the hospital begins operating as a provisional trauma center, the DOH must assemble a review team of out-of-state experts to make onsite

[31] Supra note 30.
[32] Supra note 30.
[33] Supra note 30.
[34] Supra note 30.
[35] Supra note 28.

visits to all existing trauma centers. The bill maintains current law regarding the survey instrument that the out-of-state experts must use.

Designation as a Trauma Center

Based on the recommendations from the out-of-state review team, the DOH must designate a trauma center that complies with trauma center standards, as established by the DOH in rule, and the requirements in s. 395.4025, F.S. A trauma center is designated for a seven-year approval period after which it must apply for renewal of its designation.

The bill also restricts protests against any decision made by the DOH regarding approval of an application or whether need has been established for a new trauma center unless the protest is made by an applicant or a hospital with an existing trauma center in the same or contiguous TSA.

Grandfathering

Notwithstanding any other provision of the act including statutory capacity limits and the limits placed on protests of DOH decisions, the bill deems certain currently operational trauma centers to be compliant with trauma center application and operational standards as follows:

- A trauma center that was verified by the DOH before December 15, 2017, is deemed to have met the trauma center application and operational requirements of this section and must be verified and designated as a trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, but that was provisionally approved by the DOH to be in substantial compliance with Level II trauma standards before January 1, 2017, and is operating as a Level II trauma center is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level II trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, as a Level I trauma center but that was provisionally approved by the DOH as a Level I trauma center before January 1, 2017, and is operating as a Level I trauma center is deemed to have met the application and operational requirements for a Level I trauma center and must be verified and designated as a Level I trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, as a pediatric trauma center but that was provisionally approved by the DOH to be in substantial compliance with the pediatric trauma standards established by rule before January 1, 2018, and is operating as a pediatric trauma center is deemed to have met the application and operational requirements of this section for a pediatric trauma center and, upon successful completion of the in-depth and site review process, must be verified and designated as a pediatric trauma center. The bill prohibits protests of the in-depth review, site survey, and verification decisions made by the DOH regarding an applicant that meets the requirements of this paragraph.

Notwithstanding the statutory capacity limits established in s. 395.402(1), F.S., or any other provisions of the act, a hospital operating as a Level II after January 1, 2017, must be designated and verified if all of the following apply:

- The hospital was provisionally approved after January 1, 2017, to operate as a Level II trauma center, and was in operation on or before June 1, 2017;

- The department's decision to approve the hospital to operate a provisional Level II trauma center was in litigation on or before January 1, 2018;
- The hospital receives a recommended order from the Division of Administrative Hearings, a final order from the department, or an order from a court of competent jurisdiction that it was entitled to be designated and verified as a Level II trauma center; and
- The department determines that the hospital is in substantial compliance with the Level II trauma center standards, including the in-depth and site reviews.

A provisional trauma center operating under this provision may not be required to cease operations unless a court of competent jurisdiction or the DOH determines that is has failed to meet the trauma center standards established by the DOH in rule.

The bill specifies that, notwithstanding the statutory capacity limits established in s. 395.402(1), F.S., or any other provision of this act, a joint pediatric trauma center involving a Level II trauma center and a specialty licensed children's hospital which was verified by the DOH before December 15, 2017, is deemed to have met the application and operational requirements of this section for a pediatric trauma center and shall be verified and designated as a pediatric trauma center even if the joint program is dissolved upon the expiration of the existing certificate and the pediatric trauma center continues operations independently through the specialty licensed children's hospital, provided that the pediatric trauma center meets all requirements for verification by the DOH.

The bill specifies that nothing in the grandfathering provisions limits the DOH's authority to review and approve trauma center applications.

Section 9 amends s. 395.404, F.S., to eliminate the trauma registry under the DOH in favor of requiring trauma centers to participate in the National Trauma Data Bank. The bill requires the DOH to solely use the National Trauma Data Bank for quality and assessment purposes. Trauma centers and acute care hospitals are still required to report all transfers and outcomes of trauma patients to the DOH.

The bill also eliminates a public records exemption for the DOH's trauma registry and eliminates the requirement that pediatric trauma centers report certain data to the DOH's brain and spinal cord injury central registry.

Section 13 creates an undesignated section of Florida law to require that the DOH and the Office of Program Policy Analysis and Government Accountability (OPPAGA) study the DOH's licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services and compare them to the licensure requirements, rules, regulations, standards, and guidelines for verification of pediatric trauma services by the American College of Surgeons. The OPPAGA must submit a report to the Governor, the Legislature, and the FTSAC by December 31, 2018. The bill specifies that this section expires on January 31, 2019.

Section 14 creates an undesignated section of Florida law to specify that if any provision in the act relating to the grandfathering provisions established in s. 395.4025(16), F.S., is found to be invalid or inoperative for any reason, the remaining provisions of the act shall be deemed void

and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included.

Sections 7, 10, 11, and 12 amend ss. 395.403, 395.401, 408.036, and 409.975, F.S., respectively, to make conforming and cross-reference changes.

Section 15 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.

D. Other Constitutional Issues

When establishing the grandfathering provisions in s. 395.4025(16), F.S., the bill provides that "notwithstanding the provisions of subsection (8), no existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located may protest the in-depth review, site survey, or verification decision of the department regarding an applicant that meets the requirements of this paragraph." Additionally, the provisions of s. 395.4025(8), F.S., restrict any party from brining protests of DOH decisions related to application approval and need determination unless the party is the applicant or a hospital with a trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located. These provisions together may provide an unconstitutional restriction on access to the courts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate positive fiscal impact on hospitals that are not currently verified as trauma centers but that become designated as a trauma center due to changes made by the bill.

Hospitals that are currently verified trauma centers in TSAs where new trauma centers are designated under the provisions of the bill may experience a loss in volume of trauma patients and other economic impacts of competition.

C. Government Sector Impact:

The DOH may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of the DOH.

OPPAGA may experience additional workload and costs associated with the report required in Section 13. The costs will be absorbed within existing workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH may need to adopt rules or amend existing rules to implement the bill. Rule authority exists for the DOH in s. 395.405, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 318.14, 318.18, 318.21, 395.4001, 395.401, 395.402, 395.4025, 395.403, 395.4036, 395.404, 408.036, and 409.975.

The bill creates two 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/CS by Appropriations on February 22, 2018:
The committee substitute:

- Adds references to AHCA discharge data collected pursuant to s. 408.061, F.S., to replace data reported to the DOH's Trauma Registry in multiple sections of the Florida Statutes.
- Corrects additional cross-references related to the elimination of the Trauma Registry.
- Defines the term "high risk" to mean a trauma patient with an International Classification Injury Severity Score less than .85 and uses this term in place of referencing "severely injured patients."
- When referencing types of trauma centers throughout the bill, clarifies the list to include a "Level II with a pediatric trauma center" and a "jointly certified pediatric trauma center."

- Specifies that no TSA may have more than five total Level I, Level II, Level II/pediatric, jointly certified pediatric trauma centers, and stand-alone pediatric trauma centers and no more than one stand-alone pediatric trauma center.
- Revises the make-up and duties of the Florida Trauma System Advisory Council (FTSAC).
  - Eliminates the requirement that the Council determine the need for additional trauma centers and the adequacy of the existing trauma system.
  - Eliminates the requirement to submit a biennial report to the Governor and the Legislature on whether to recommend an increase in the number of trauma centers within each service area.
  - Allows the Council to submit recommendations to the DOH on how to maximize existing trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.
  - Eliminates the following members of the Council: The State Surgeon General, a representative from the AHCA; a trauma program manager recommended by the Florida Teaching Hospital Council of Florida; a trauma surgeon recommended by the Florida Teaching Hospital Council of Florida, a representative of the Associated Industries of Florida, and a trauma program manager or medical director representing a public hospital.
  - Adds the state Trauma Medical Director and a trauma surgeon board-certified in critical care actively practicing medicine in a Level I trauma center to the council.
  - Adds a Florida-licensed, board-certified emergency medicine physician who is not affiliated with a trauma center.
  - Clarifies that the representative from an EMS organization must be a standing member of the Emergency Medical Services Advisory Council.
  - Requires the Council to meet quarterly.
- Specifies that the DOH must use existing resources to administer and support the activities of the FTSAC and the FTSAC members serve without compensation or reimbursement for travel or per diem expenses.
- Requires the DOH to prepare an analysis of the Florida trauma system by August 31, 2020, and every three years thereafter.
- Requires the analysis to use AHCA discharge data and the Florida population data from the American Community Survey Five-Year Estimates by the United States Census Bureau and must include:
  - The population growth for each TSA and for the state of Florida;
  - The number of high-risk patients at each trauma center within each TSA;
  - The total number of high-risk patients at all acute care hospitals, including non-trauma centers in each TSA; and
  - The percentage of each trauma center's sufficient volume of trauma patients as established in the bill.
- Specifies that the DOH must make calculations, data, formulas, methodologies, and risk adjustment tools used in preparing the analysis available.
- Allows the DOH accept a letter of intent and to approve an application for a new trauma center in a TSA that is already at its statutory maximum if each existing trauma centers' case load volume of high-risk patients is double the minimum volume

requirement for Level I and Level II trauma centers and more than triple the minimum volume requirements for stand-alone pediatric trauma centers.
    - Specifies that, when demonstrating a need for an additional trauma center in a particular TSA over the statutory caps, the applicant must use the analysis prepared by the DOH.
    - Specifies that the determination for the required population growth must be based on the American Community Survey Five-Year Estimates by the United States Census Bureau for the five-year period before the date the applicant files its letter of intent.
    - Specifies that additional caseload volumes for certain residents and fellows apply to hospitals with a trauma or critical care residency or fellowship program.
- The minimum caseload volumes established in the bill are as follows:
    - Level I trauma center in a TSA with a population > 1.5 million: 1,200 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
    - Level I trauma center in a TSA with a population < 1.5 million: 1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
    - Level II or Level II/Pediatric trauma center in a TSA with a population > 1.25 million: 1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
    - Level II or Level II/Pediatric trauma center in a TSA with a population < 1.25 million: 500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
    - All pediatric stand-alone trauma centers: 500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
- Requires the AHCA, in consultation with the DOH, to develop rules to ensure that hospitals and trauma centers are submitting data required by the DOH to perform its duties under ch. 395, F.S.
- Specifies that, when selecting from a pool of applicants, the DOH must select the highest quality applicant that is farthest away from an existing trauma center in the TSA.
- Allows an applicant to operate as a provisional trauma center after the DOH has completed the initial and in-depth review processes.
- Requires the out-of-state review team to perform an onsite visit within the year after the trauma center has begun provisionally operating.
- Requires (rather than allows) the DOH to designate a trauma center that is in compliance with trauma center standards based on the recommendation from the review team.
- Allows the applicant, as well as hospitals with trauma centers in the same or contiguous TSAs, to protest decisions made by the DOH regarding application approval and determination of need.

- Restricts such protests for the designation of a pediatric trauma center that is grandfathered in.
- Specifies that certain provisional trauma centers must be allowed to continue operations until a court or the DOH determines that they have failed to meet the Florida trauma standards.
- Specifies that none of the grandfathering provisions limit the DOH's authority to review and approve trauma center applications.
- Specifies that if the grandfathering provisions of the act are found to be invalid or inoperative, the entire act becomes invalid.
- Requires the DOH and OPPAGA to study the DOH's licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services to compare them with the American College of Surgeon's requirements. The OPPAGA must submit a report to the Governor and the Legislature by December 31, 2018. The section expires on January 31, 2019.
- Makes other technical and conforming changes.

CS by Health Policy on January 23, 2018:
The CS replaces grandfathering language related to Level II trauma centers in ongoing court proceedings to clarify that it is the DOH, and not a court, that must determine that the trauma center has met application and operational requirements; specifies the required court actions that qualify a trauma center under the paragraph; and conforms the title of the bill to changes made by the amendment.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Young

588-02384-18 20181876c1

A bill to be entitled

An act relating to trauma services; amending s. 395.402, F.S.; revising the trauma service areas and provisions relating to the number and location of trauma centers; prohibiting the Department of Health from designating an additional Level I trauma center in a trauma service area where a Level I trauma center currently exists, from designating an existing Level II trauma center as a pediatric trauma center, and from designating an existing Level II trauma center as a Level I trauma center; reducing the total number of trauma centers authorized in this state; apportioning trauma centers within each trauma service area; requiring the department to establish the Florida Trauma System Advisory Council by a specified date; requiring the council to review specified materials; authorizing the council to submit certain recommendations to the department; providing membership of the council; requiring the council to meet no later than a specified date and to meet annually; requiring the council to submit by a specified date, and biennially thereafter, a report to the Legislature and the Governor which must assess whether an increase in the number of trauma centers within each trauma service area is recommended based on certain factors; requiring the report to include specified information; amending s. 395.4025, F.S.; conforming provisions to changes made by the act; requiring the department to select and designate

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certain hospitals as trauma centers based on statutory capacity; prohibiting the department from accepting a letter of intent or designating a trauma center unless a specified number of patients have been served by an existing Level I trauma center in the same or in a contiguous trauma service area; revising the department's review process for hospitals seeking designation as a trauma center; providing that a proposed trauma center must be ready to operate by a specified date; requiring the department to select one or more hospitals for approval to prepare to operate as a trauma center; providing selection requirements; prohibiting the applicant from operating as a trauma center until a final evaluation has been completed by the department; requiring a specified review team to make onsite visits to all existing trauma centers within a certain timeframe; authorizing the department to designate a trauma center that is in compliance with specified requirements; deleting a provision authorizing an applicant to request an extension of its provisional status; deleting the date by which the department must select trauma centers; prohibiting an applicant from operating as a trauma center unless it has been designated and certain requirements are met; providing that only certain hospitals may protest a decision made by the department; providing that certain trauma centers that were verified by the department or determined by the department to be in substantial compliance with specified standards are

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

deemed to have met application and operational requirements; providing that certain currently operating trauma centers are eligible to be designated as trauma centers by the department if certain criteria are met; amending s. 395.404, F.S.; requiring trauma centers to participate in the National Trauma Data Bank; requiring trauma centers and acute care hospitals to report trauma patient transfer and outcome data to the department; deleting provisions relating to the department review of trauma registry data; providing an effective date.

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

Section 1. Section 395.402, Florida Statutes, is amended to read:

395.402 Trauma service areas; number and location of trauma centers.—

(1) The Legislature recognizes the need for a statewide, cohesive, uniform, and integrated trauma system. ~~Within the trauma service areas, Level I and Level II trauma centers shall each be capable of annually treating a minimum of 1,000 and 500 patients, respectively, with an injury severity score (ISS) of 9 or greater. Level II trauma centers in counties with a population of more than 500,000 shall have the capacity to care for 1,000 patients per year.~~

~~(2) Trauma service areas as defined in this section are to be utilized until the Department of Health completes an assessment of the trauma system and reports its finding to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the substantive legislative committees. The report shall be submitted by February 1, 2005. The department shall review the existing trauma system and determine whether it is effective in providing trauma care uniformly throughout the state. The assessment shall:~~

~~(a) Consider aligning trauma service areas within the trauma region boundaries as established in July 2004.~~

~~(b) Review the number and level of trauma centers needed for each trauma service area to provide a statewide integrated trauma system.~~

~~(c) Establish criteria for determining the number and level of trauma centers needed to serve the population in a defined trauma service area or region.~~

~~(d) Consider including criteria within trauma center approval standards based upon the number of trauma victims served within a service area.~~

~~(e) Review the Regional Domestic Security Task Force structure and determine whether integrating the trauma system planning with interagency regional emergency and disaster planning efforts is feasible and identify any duplication of efforts between the two entities.~~

~~(f) Make recommendations regarding a continued revenue source which shall include a local participation requirement.~~

~~(g) Make recommendations regarding a formula for the distribution of funds identified for trauma centers which shall address incentives for new centers where needed and the need to maintain effective trauma care in areas served by existing centers, with consideration for the volume of trauma patients~~

~~served, and the amount of charity care provided.~~

~~(3) In conducting such assessment and subsequent annual reviews, the department shall consider:~~

~~(a) The recommendations made as part of the regional trauma system plans submitted by regional trauma agencies.~~

~~(b) Stakeholder recommendations.~~

~~(c) The geographical composition of an area to ensure rapid access to trauma care by patients.~~

~~(d) Historical patterns of patient referral and transfer in an area.~~

~~(e) Inventories of available trauma care resources, including professional medical staff.~~

~~(f) Population growth characteristics.~~

~~(g) Transportation capabilities, including ground and air transport.~~

~~(h) Medically appropriate ground and air travel times.~~

~~(i) Recommendations of the Regional Domestic Security Task Force.~~

~~(j) The actual number of trauma victims currently being served by each trauma center.~~

~~(k) Other appropriate criteria.~~

~~(4) Annually thereafter, the department shall review the assignment of the 67 counties to trauma service areas, in addition to the requirements of paragraphs (2)(b)-(g) and subsection (3). County assignments are made for the purpose of developing a system of trauma centers. Revisions made by the department shall take into consideration the recommendations made as part of the regional trauma system plans approved by the department and the recommendations made as part of the state~~

~~trauma system plan. In cases where a trauma service area is located within the boundaries of more than one trauma region, the trauma service area's needs, response capability, and system requirements shall be considered by each trauma region served by that trauma service area in its regional system plan. Until the department completes the February 2005 assessment, the assignment of counties shall remain as established in this section.~~

(a) The following trauma service areas are ~~hereby~~ established:

1. Trauma service area 1 shall consist of Escambia, Okaloosa, Santa Rosa, and Walton Counties.

2. Trauma service area 2 shall consist of Bay, Gulf, Holmes, and Washington Counties.

3. Trauma service area 3 shall consist of Calhoun, Franklin, Gadsden, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.

4. Trauma service area 4 shall consist of Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.

5. Trauma service area 5 shall consist of Baker, Clay, Duval, Nassau, and St. Johns Counties.

6. Trauma service area 6 shall consist of Citrus, Hernando, and Marion Counties.

7. Trauma service area 7 shall consist of Flagler and Volusia Counties.

8. Trauma service area 8 shall consist of Lake, Orange, Osceola, Seminole, and Sumter Counties.

9. Trauma service area 9 shall consist of Pasco and

Pinellas Counties.

10. Trauma service area 10 shall consist of Hillsborough County.

11. Trauma service area 11 shall consist of Hardee, Highlands, and Polk Counties.

12. Trauma service area 12 shall consist of Brevard and Indian River Counties.

13. Trauma service area 13 shall consist of Charlotte, DeSoto, Manatee, and Sarasota Counties.

14. Trauma service area 14 shall consist of Martin, Okeechobee, and St. Lucie Counties.

15. Trauma service area 15 shall consist of Collier ~~Charlotte~~, Glades, Hendry, and Lee Counties.

16. Trauma service area 16 shall consist of Palm Beach County.

17. Trauma service area 17 shall consist of Broward ~~Collier~~ County.

18. Trauma service area 18 shall consist of ~~Broward County.~~

~~19. Trauma service area 19 shall consist of~~ Miami-Dade and Monroe Counties.

(b) Each trauma service area must ~~should~~ have at least one Level I or Level II trauma center. The department may not designate an additional Level I trauma center in a trauma service area in which a Level I trauma center currently exists. The department may not designate an existing Level II trauma center as a pediatric trauma center. The department may not designate an existing Level II trauma center as a Level I trauma center ~~The department shall allocate, by rule, the number of trauma centers needed for each trauma service area~~.

(c) The total number of trauma centers in this state may not exceed 35. Trauma centers shall be apportioned as follows:

1. Trauma service area 1 shall have three trauma centers.

2. Trauma service area 2 shall have one trauma center.

3. Trauma service area 3 shall have one trauma center.

4. Trauma service area 4 shall have one trauma center.

5. Trauma service area 5 shall have three trauma centers.

6. Trauma service area 6 shall have one trauma center.

7. Trauma service area 7 shall have one trauma center.

8. Trauma service area 8 shall have three trauma centers.

9. Trauma service area 9 shall have three trauma centers.

10. Trauma service area 10 shall have two trauma centers.

11. Trauma service area 11 shall have one trauma center.

12. Trauma service area 12 shall have one trauma center.

13. Trauma service area 13 shall have two trauma centers.

14. Trauma service area 14 shall have one trauma center.

15. Trauma service area 15 shall have one trauma center.

16. Trauma service area 16 shall have two trauma centers.

17. Trauma service area 17 shall have three trauma centers.

18. Trauma service area 18 shall have five trauma centers.

~~There shall be no more than a total of 44 trauma centers in the state.~~

(2)(a) By October 1, 2018, the department shall establish the Florida Trauma System Advisory Council to determine the need for additional trauma centers. The advisory council shall review and consider materials submitted by the department and stakeholders, materials published by the American College of Surgeons Committee on Trauma, and other relevant materials as the council deems appropriate before issuing a recommendation.

The advisory council may submit recommendations to the department on the adequacy and continuing development of the state's trauma system, including the demand for new trauma centers.

(b)1. The advisory council shall consist of 15 representatives appointed by the Governor, including:

a. The State Surgeon General;

b. A representative from the Agency for Health Care Administration;

c. A representative from an emergency medical services organization;

d. A representative of a local or regional trauma agency;

e. A trauma program manager or trauma medical director representing an investor-owned hospital with a trauma center;

f. A trauma program manager recommended by the Teaching Hospital Council of Florida;

g. A representative of the Florida Hospital Association;

h. A trauma program manager or trauma medical director representing a public hospital;

i. A trauma program manager or trauma medical director representing a nonprofit hospital with a trauma center;

j. A trauma surgeon representing an investor-owned hospital with a trauma center;

k. A trauma surgeon recommended by the Teaching Hospital Council of Florida;

l. A trauma surgeon representing a not-for-profit hospital with a trauma center;

m. A representative of the American College of Surgeons Committee on Trauma;

n. A representative of Associated Industries of Florida; and

o. A representative of the Safety Net Hospital Alliance of Florida.

2. No two representatives may be employed by the same health care facility.

3. Each representative of the council shall be appointed to a 3-year term; however, for the purpose of providing staggered terms, of the initial appointments, 5 representatives shall be appointed to 1-year terms, 5 representatives shall be appointed to 2-year terms, and 5 representatives shall be appointed to 3-year terms.

(3) The advisory council shall convene its first meeting no later than January 5, 2019, and shall meet at least annually.

(4)(a) By January 5, 2020, and at least every 2 years thereafter, the advisory council shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which assesses whether an increase in the number of trauma centers within each trauma service area is recommended based on all of the following factors:

1. Population changes within a trauma service area;

2. The impact of tourism on a trauma service area;

3. The number of patients with an injury severity score of less than 0.9 who are treated in hospitals that are not trauma centers;

4. Ground and air transport times to a trauma center within each service area;

5. The number of patients treated in existing trauma centers;

6. The capacity of existing trauma centers to treat additional trauma patients;

7. The potential financial impact on existing trauma centers of the designation of additional trauma centers;

8. The financial impact on commercial and government payors of health care insurance and on Florida taxpayers caused by the designation of additional trauma centers;

9. A cost comparison of the charges of existing trauma centers as contrasted with the charges of any prospective trauma centers;

10. Any impacts on graduate medical education programs and resident training for trauma and surgical specialties in the state;

11. The negative impacts, if any, of the designation of new trauma centers on the ability of existing centers to meet standards established by the American College of Surgeons Committee on Trauma;

12. A survey of literature relating to trauma center allocation, including peer-reviewed and academic publications; and

13. Any other factor the advisory council deems appropriate.

(b) The report must state whether each Level I trauma center within the trauma service areas is capable of annually treating at least 1,000 patients with an injury severity score of 9 or greater and whether each Level II trauma center is capable of annually treating 500 patients with an injury severity score of 9 or greater. The report must state whether each Level II trauma center located in a county with a

population greater than 500,000 has the capacity to care for at least 1,000 patients per year.

Section 2. Subsections (1) through (7) of section 395.4025, Florida Statutes, are amended, and subsection (15) is added to that section, to read:

395.4025 Trauma centers; selection; quality assurance; records.—

(1) For purposes of developing a system of trauma centers, the department shall use the 18 ~~19~~ trauma service areas established in s. 395.402. ~~Within each service area and based on the state trauma system plan, the local or regional trauma services system plan, and recommendations of the local or regional trauma agency, the department shall establish the approximate number of trauma centers needed to ensure reasonable access to high-quality trauma services.~~ The department shall select those hospitals that are to be recognized as trauma centers.

(2)(a) If there is statutory capacity for an additional trauma center in accordance with s. 395.402(1), the department shall ~~annually~~ notify each acute care general hospital and each local and each regional trauma agency in the state that the department is accepting letters of intent from hospitals that are interested in becoming trauma centers. The department may not accept a letter of intent from an applicant and may not designate an applicant a trauma center if the applicant has applied to locate the trauma center in a trauma service area where the number of patients served by an existing Level I trauma center in that area or in a contiguous trauma service area fails to exceed 1,000 patients annually. In order to be

considered by the department, a hospital that operates within the geographic area of a local or regional trauma agency must certify that its intent to operate as a trauma center is consistent with the trauma services plan of the local or regional trauma agency, as approved by the department, if such agency exists. The department may accept a letter of intent only if there is statutory capacity for an additional trauma center in accordance with s. 395.402(1). Letters of intent must be postmarked no later than midnight October 1.

(b) By October 15, the department shall send to all hospitals that submitted a letter of intent an application package that will provide the hospitals with instructions for submitting information to the department for selection as a trauma center. The standards for trauma centers provided for in s. 395.401(2), as adopted by rule of the department, shall serve as the basis for these instructions.

(c) In order to be considered by the department, applications from those hospitals seeking selection as trauma centers, including those current verified trauma centers that seek a change or redesignation in approval status as a trauma center, must be received by the department no later than the close of business on April 1. The department shall conduct an initial ~~a provisional~~ review of each application for the purpose of determining that the hospital's application is complete and that the hospital is capable of constructing and operating a trauma center that includes ~~has~~ the critical elements required for a trauma center. This critical review must ~~will~~ be based on trauma center standards and must ~~shall~~ include, but need not be limited to, a review as to ~~of~~ whether the hospital is prepared

to attain and operate with all of the following components before April 30 of the following year ~~has~~:

1. Equipment and physical facilities necessary to provide trauma services.

2. Personnel in sufficient numbers and with proper qualifications to provide trauma services.

3. An effective quality assurance process.

4. A submitted written confirmation by the local or regional trauma agency that the hospital applying to become a trauma center is consistent with the plan of the local or regional trauma agency, as approved by the department, if such agency exists.

(d)~~1.~~ If the department determines that the hospital is capable of attaining and operating with the components required in paragraph (c), the applicant must be ready to operate no later than April 30 of the following year. A hospital that fails to comply with this subsection may not be designated as a trauma center ~~Notwithstanding other provisions in this section, the department may grant up to an additional 18 months to a hospital applicant that is unable to meet all requirements as provided in paragraph (c) at the time of application if the number of applicants in the service area in which the applicant is located is equal to or less than the service area allocation, as provided by rule of the department. An applicant that is granted additional time pursuant to this paragraph shall submit a plan for departmental approval which includes timelines and activities that the applicant proposes to complete in order to meet application requirements. Any applicant that demonstrates an ongoing effort to complete the activities within the~~

~~timelines outlined in the plan shall be included in the number of trauma centers at such time that the department has conducted a provisional review of the application and has determined that the application is complete and that the hospital has the critical elements required for a trauma center.~~

~~2. Timeframes provided in subsections (1)-(8) shall be stayed until the department determines that the application is complete and that the hospital has the critical elements required for a trauma center~~.

(3) After April 30, the department shall select one or more hospitals ~~any hospital~~ that submitted an application found acceptable by the department based on initial ~~provisional~~ review for approval to prepare ~~shall be eligible~~ to operate with the components required in paragraph (2)(c). The number of applicants selected is limited to available statutory capacity in the specified trauma service area, as designated in s. 395.402(1). If the department receives more applications than may be approved under the statutory capacity in the specified trauma service area, the department must select the best applicant or applicants from the available pool based on the department's determination of the capability of an applicant to provide the highest quality patient care using the most recent technological, medical, and staffing resources available, as well as any other criteria as determined by the department by rule. The applicant may not operate as a ~~provisional~~ trauma center until the final evaluation has been completed by the department.

(4) Between May 1 and April 30 ~~October 1~~ of the following ~~each~~ year, the department shall conduct an in-depth evaluation

of all applications found acceptable in the initial ~~provisional~~ review. The applications shall be evaluated against criteria enumerated in the application packages as provided to the hospitals by the department.

(5) Between May 1 and April 30 ~~Beginning October 1 of each year and ending no later than June 1~~ of the following year, a review team of out-of-state experts assembled by the department shall make onsite visits to all existing ~~provisional~~ trauma centers. The department shall develop a survey instrument to be used by the expert team of reviewers. The instrument must ~~shall~~ include objective criteria and guidelines for reviewers based on existing trauma center standards such that all trauma centers are assessed equally. The survey instrument must ~~shall~~ also include a uniform rating system that ~~will be used by~~ reviewers must use to indicate the degree of compliance of each trauma center with specific standards, and to indicate the quality of care provided by each trauma center as determined through an audit of patient charts. In addition, hospitals being considered as proposed ~~provisional~~ trauma centers must ~~shall~~ meet all the requirements of a trauma center and must ~~shall~~ be located in a trauma service area that has a need for such a trauma center.

(6) Based on recommendations from the review team, the department may designate a trauma center that is in compliance with trauma center standards and with this section ~~shall select trauma centers by July 1~~. An applicant may not operate as a trauma center unless it has been designated as a trauma center and maintains compliance with the operating requirements listed in paragraph (2)(c) ~~An applicant for designation as a trauma center may request an extension of its provisional status if it~~

~~submits a corrective action plan to the department. The corrective action plan must demonstrate the ability of the applicant to correct deficiencies noted during the applicant's onsite review conducted by the department between the previous October 1 and June 1. The department may extend the provisional status of an applicant for designation as a trauma center through December 31 if the applicant provides a corrective action plan acceptable to the department. The department or a team of out-of-state experts assembled by the department shall conduct an onsite visit on or before November 1 to confirm that the deficiencies have been corrected. The provisional trauma center is responsible for all costs associated with the onsite visit in a manner prescribed by rule of the department. By January 1, the department must approve or deny the application of any provisional applicant granted an extension~~. Each trauma center shall be granted a 7-year approval period during which time it must continue to maintain trauma center standards and acceptable patient outcomes as determined by department rule. An approval, unless sooner suspended or revoked, automatically expires 7 years after the date of issuance and is renewable upon application for renewal as prescribed by rule of the department.

(7) Only a ~~Any~~ hospital in the same trauma service area or in a trauma service area contiguous ~~that wishes~~ to the trauma service area where the applicant has applied to locate a trauma center may protest a decision made by the department ~~based on the department's preliminary or in-depth review of applications or on the recommendations of the site visit review team pursuant to this section shall proceed as provided in chapter 120~~. Hearings held under this subsection shall be conducted in the

same manner as provided in ss. 120.569 and 120.57. Cases filed under chapter 120 may combine all disputes between parties.

(15)(a) A trauma center that was verified by the department before December 15, 2017, is deemed to have met the trauma center application and operational requirements of this section.

(b) A trauma center that was not verified by the department before December 15, 2017, but that was provisionally approved by the department to be in substantial compliance with Level II trauma standards before January 1, 2017, and is operating as a Level II trauma center is deemed to have met the application and operational requirements of this section for a trauma center.

(c) A trauma center that was not verified by the department before December 15, 2017, as a Level I trauma center but that was provisionally approved by the department as a Level I trauma center in calendar year 2016 is deemed to have met the application and operational requirements for a Level I trauma center, if the trauma center complies with the American College of Surgeons Committee on Trauma standards for adult Level I trauma centers and does not treat pediatric trauma patients.

(d) A trauma center that was not verified by the department before December 15, 2017, as a pediatric trauma center but that was provisionally approved by the department to be in substantial compliance with the pediatric trauma standards established by rule before January 1, 2018, and is operating as a pediatric trauma center is deemed to have met the application and operational requirements of this section for a pediatric trauma center.

(e) Notwithstanding the statutory capacity limits established in s. 395.402(1), a trauma center is eligible for

designation if all of the following apply:

1. The trauma center was not verified by the department before December 15, 2017;

2. The department initially provisionally approved the trauma center to begin operations in May 2017;

3. The trauma center is currently operating as a provisional Level II trauma center;

4. The department determines that the trauma center has met the application and operational requirements of this section for a Level II trauma center; and

5. The department's decision to provisionally approve the trauma center is:

a. Supported by a recommended order from the Division of Administrative Hearings and, if the order is appealed, the department's decision is upheld on appeal; or

b. Not supported by a recommended order from the Division of Administrative Hearings, but the department's decision is upheld on appeal.

Section 3. Section 395.404, Florida Statutes, is amended to read:

395.404 Review of trauma ~~registry~~ data; report to central registry~~; confidentiality and limited release~~.—

(1)~~(a)~~ Each trauma center shall participate in the National Trauma Data Bank.

(2) Each trauma center and acute care hospital shall report to the department all transfers of trauma patients and the outcomes of such patients ~~furnish, and, upon request of the department, all acute care hospitals shall furnish for department review trauma registry data as prescribed by rule of~~

~~the department for the purpose of monitoring patient outcome and ensuring compliance with the standards of approval.~~

~~(b) Trauma registry data obtained pursuant to this subsection are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, the department may provide such trauma registry data to the person, trauma center, hospital, emergency medical service provider, local or regional trauma agency, medical examiner, or other entity from which the data were obtained. The department may also use or provide trauma registry data for purposes of research in accordance with the provisions of chapter 405~~.

(3)~~(2)~~ Each trauma center~~, pediatric trauma center,~~ and acute care hospital shall report to the department's brain and spinal cord injury central registry, consistent with the procedures and timeframes of s. 381.74, any person who has a moderate-to-severe brain or spinal cord injury, and shall include in the report the name, age, residence, and type of disability of the individual and any additional information that the department finds necessary.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12 Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

February 14, 2018

Senator Rob Bradley, Chair
Senate Appropriations Committee
201 The Capitol
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Bradley,

My Senate Bill 1876 regarding Trauma Services has been referred to your committee. I respectfully request that this bill be placed on your next available agenda.

If you have any questions, please do not hesitate to reach out to me.

Sincerely,

Dana Young
State Senator – 18th District

cc: Mike Hansen, Staff Director – Senate Appropriations Committee

REPLY TO:
❒ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
❒ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/2018
Meeting Date

1876
Bill Number (if applicable)

Strike All
Amendment Barcode (if applicable)

917002

Topic Trauma

Name Mark Delegal

Job Title General Counsel

Address 315 S. Calhoun #600
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 224-7000

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Safety Net Hospital Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/2018
Meeting Date

CS/SB 1876
Bill Number (if applicable)

917002
Amendment Barcode (if applicable)

Topic Trauma Services

Name Ellen N. Anderson

Job Title Director of Govt Relations

Address 106 E. College Ave. Suite 1650
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850.228.7959

Email ellen_anderson@chs.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Community Health Systems

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1876
Bill Number (if applicable)

Topic Trauma

Amendment Barcode (if applicable)

Name Mark McKenney

Job Title Trauma Med. Director

Address 6575 Allison Rd
Street
Miami Beach, FL 33141
City *State* *Zip*

Phone 786 417 4080

Email mark.mckenney@HCAHealthcare.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing ~~HCA~~, Kendall Regional / Med Center

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

February 22, 2018
Meeting Date

1876
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Trauma

Name Dr. Keith Meyer

Job Title Medical Director

Address 3100 SW 62nd Avenue
Street

Phone 305.720.5365

Miami FL 33155
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Children's Critical Care Specialists

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

February 22, 2018
Meeting Date

1876
Bill Number (if applicable)

Topic Trauma

Amendment Barcode (if applicable)

Name Cristina Martinez

Job Title

Address 10900 SW 129th Street
Street

Phone 305.907.4418

Miami FL 33176
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1876
Bill Number (if applicable)

Topic Trauma

Amendment Barcode (if applicable)

Name Tom Panza

Job Title

Address 201 East Park Avenue, Suite 200
Street

Phone 850-681-6980

Tallahassee FL 32301
City *State* *Zip*

Email tpanza@panzamaurer.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Jackson Memorial Hospital - Ryder Trauma Center

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

CS/SB 1876
Bill Number (if applicable)

Topic Trauma

Amendment Barcode (if applicable)

Name Steve Echeja

Job Title Attorney

Address P.O. Box 551
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 850-681-6788

Email Steve@reuphlaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing HCA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 1884 (259984)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senator Broxson
SUBJECT:	Military and Veterans Affairs
DATE:	February 21, 2018 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1884 eases professional licensing fees and requirements for certain military members, veterans, and their spouses, including:

- For boards of examiners or other qualification boards regulated under general law, permitting a servicemember within 6 months after his or her release from active duty to request that the board accept periods of training and practical experience in the Florida National Guard or the U.S. Armed Forces Reserves in place of the interrupted or delayed periods of training, study, apprenticeship, or practical experience, if the board finds the work or training to be substantially the same as the standard and type required under Florida law.
- For the Department of Health (DOH) professional licensees, granting current DOH fee waivers for dentists and providing an affirmative defense in certain unlicensed activity actions.
- For the Department of Business and Professional Regulation professional licensees, expanding license renewal fee waivers.
- For the Department of Agriculture and Consumer Services professional licensees, expanding current initial licensing fee waivers and creating renewal fee waivers.
- For the Office of Financial Regulation mortgage loan originators licensees and associated persons registrants, creating an initial licensing/registration and renewal fee waiver.
- For the Department of Financial Services professional licensees, expanding initial licensure fee waivers.

- For the Department of Financial Services firefighter certificates, extends renewal periods and provides for waiver of all living and incidental expenses, excluding expenses for meal plans and bunker gear rentals, associated with attending the Florida State Fire College to obtain a Certificate of Compliance or a Firesafety Inspector I certification.
- For the Department of Education (DOE) licensees, creating certain initial fee waivers, granting a temporary certificate in education, and establishing a pathway for veteran officers for certification as school principals.

The bill allows members of the Veterans Florida board of directors to serve two four-year terms and makes changes to Veterans Florida's training grant program and entrepreneurship program.

The bill specifies that laws and rules regulating apprenticeships and approved apprenticeship agreements do not invalidate any special provisions for veterans, minority persons, or women concerning apprenticeship programs, and requires the DOE to lead and coordinate outreach efforts to educate veterans about apprenticeship and career opportunities.

The bill allows Junior Reserve Officer Training instructors to participate in the Florida Teachers Classroom Supply Assistance Program.

The bill gives students who are children of an active duty member who is not stationed in this state, but whose home of record or state of legal residence is Florida, priority for attendance in the Florida Virtual School.

Lastly, the bill designates March 25 every year as "Medal of Honor Day" and allows classroom instruction related to the values of the recipients of the Congressional Medal of Honor to meet certain instructional requirements on character development and the contributions of veterans to our country.

The fiscal impact to state revenues and expenditures is indeterminate because it is unknown how many individuals will take advantage of the provisions of the bill. For the Department of Business and Professional Regulation, the Department of Financial Services (including the State Fire Marshal), and the Department of Education the impacts of the bill are indeterminate. The Department of Health only stated that it would incur costs to update its rules, but those could be absorbed within existing resources. The Department of Agriculture and Consumer Services expects reductions of $206,568 in Fiscal Year 2018-2019, $216,896 in Fiscal Year 2019-2020, and $227,741 in Fiscal Year 2020-2021. The Office of Financial Regulation expects a reduction of $412,030 annually.

The bill takes effect July 1, 2018.

II. Present Situation:

For ease of reference, the Present Situation for each section of the bill is addressed in the Effect of Proposed Changes portion of this bill analysis.

III. Effect of Proposed Changes:

Licensure Interruption for Active Duty Military Personnel

Present Situation:

There is no broad mandate that applies to all professional licenses that requires relevant military experience gained during a period of active duty service in the Florida National Guard or U.S. Armed Forces Reserves that interrupted an applicant's period of training for a professional license to be considered during a licensure determination.

Some individual practice acts, such as the construction contracting practice act, require the licensing entity to consider such experience for licensure requirements.[1]

Effect of Proposed Changes:

Section 1 creates s. 250.483, F.S., to require boards of examiners or other qualification boards regulated under general law to accept periods of training and practical experience in the Florida National Guard or the U.S. Armed Forces Reserves in place of the interrupted or delayed periods of training, study, apprenticeship, or practical experience if the board finds the standard and type of work or training performed in the Florida National Guard or the U.S. Armed Forces Reserves to be substantially the same as the standard and type required under Florida law. To be eligible for the above process, a servicemember must request the application of these provisions within 6 months after his or her release from active duty with the Florida National Guard or the U.S. Armed Forces.

Veterans Florida

Present Situation

Veterans Florida[2] is a non-profit corporation established within the Florida Department of Veterans' Affairs to promote Florida as a veteran-friendly state, encourage retired and recently separated military personnel to keep or make Florida their permanent residence, help equip veterans for employment opportunities, and promote the hiring of veterans.[3]

Veterans Florida is governed by a nine-member board of directors. The Governor, the President of the Senate, and the Speaker of the House of Representatives each appoint three members to the board. In making appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives must consider representation of military-related persons.[4] Each member of the board is appointed for a term of 4 years. Currently, a member is ineligible for reappointment to the board except that a member appointed to a term of 2 years or less may be reappointed for an additional term of 4 years.[5]

[1] Section 489.1131, F.S.
[2] In 2015, the Florida is For Veterans, Inc., Board of Directors approved the fictitious name "Veterans Florida."
[3] Section 295.21, F.S.
[4] Section 295.21(4)(a), F.S.
[5] Section 295.21(4)(c), F.S.

Veterans Florida is responsible for administering the Veterans Employment and Training Services (VETS) program, a program established by the Legislature to help veterans meet their professional goals and receive the training or education necessary to meet those goals.[6] The VETS program consists of two main components – a grant program for businesses to train veterans to meet a business's workforce-skill needs and a veteran-specific entrepreneurship initiative program.

Veterans Training Grant Program

Veterans Florida's training grant program provides funding for specialized training specific to a particular business seeking to hire veterans.[7] Grant funds may be allocated to any training provider selected by the business, including a career center, a Florida College System institution, a state university, or an in-house training provider of the business. If grant funds are used to provide a technical certificate, licensure, or degree, funds may be allocated only upon a review that includes documentation of accreditation and licensure. Instruction funded through the program terminates when participants demonstrate competence at the level specified in the request, but may not exceed 48 months.[8]

Grants are limited to $8,000 per veteran trainee. Eligible costs and expenditures include:[9]

- Tuition and fees;
- Curriculum development;
- Books and classroom materials;
- Rental fees for facilities at public colleges and universities, including virtual training labs; and
- Overhead or indirect costs not to exceed 5 percent of the grant amount.

Before funds are allocated for a grant, Veterans Florida must prepare a grant agreement that, at a minimum, includes:[10]

- Identification of the personnel necessary to conduct the instructional program and certain related information;
- Identification of the match provided by the business equal to at least 50 percent of the total grant amount (including cash or in-kind contribution);
- Identification of the estimated duration of the instructional program;
- Identification of all direct, training-related costs;
- Identification of special program requirements; and
- Permission to access aggregate information specific to the wages and performance of participants upon the completion of instruction for evaluation purposes.

[6] Section 295.22, F.S.
[7] Section 295.22(3)(d), F.S.
[8] Section. 295.22(3)(d)1., F.S.
[9] Section 295.22(3)(d)2., F.S.
[10] Section 295.22(3)(d)3., F.S.

Veterans Entrepreneurship Initiative Program

Veterans Florida's entrepreneur initiative program seeks to connect business leaders in the state with veterans seeking to become entrepreneurs.[11] Veterans Florida is required to contract with one more public or private universities to administer the program. An eligible university must:

- Demonstrate the ability to implement the program and the commitment of university resources, including financial resources, to such programs;
- Have a military and veteran resource center;
- Have a regional small business development center in the Florida Small Business Development Center Network; and
- Have been nationally recognized for commitment to the military and veterans.

Each university participant must provide performance metrics, including a focus on employment and business creation, and must coordinate with any entrepreneurship center located at the university. The entrepreneurship program may include activities and assistance such as peer-to-peer learning sessions, mentoring, technical assistance, business roundtables, networking opportunities, support of student organizations, speaker series, or other tools within a virtual environment.[12]

Effect of Proposed Changes

Section 2 amends s. 295.21, F.S., to allow a member of the Veterans Florida board of directors to be reappointed to the board and serve two terms of four years.

Section 3 amends s. 295.22, F.S., to alter the requirements of Veterans Florida's training grant program and entrepreneur initiative program.

Pertaining to the training grant program, the bill specifies that the program is for businesses seeking to hire, *promote, or generally improve specialized skills of* veterans. Instead of providing grant funds directly to a training provider selected by the business, the bill requires a business receiving a grant to train a permanent, full-time employee to cover the entire cost of training before receiving a 50 percent reimbursement of the training costs. The bill makes conforming amendments to the statute related to this change, including requiring a business to describe the instructional program and any related vendors to be used in training in their contract with Veterans Florida; and removing curriculum and overhead costs from eligibility for reimbursement. The bill further amends the training grant program to reduce the maximum time the training program may last from 48 to 12 months.

Pertaining to the entrepreneurship initiative program, the bill expands the program to allow Veterans Florida to contract not only with universities, but with any entity that meets the specified requirements to administer an entrepreneurship program. The bill makes conforming amendments to the statute related to this change, including requiring an administering entity to have demonstrated experience working with veteran entrepreneurs and be recognized for its ability to help Florida entrepreneurs launch successful businesses.

[11] Section 295.22(3)(e), F.S.
[12] Section 295.22(3)2.,F.S.

Department of Business and Professional Regulation

Present Situation:

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professionals in Florida.[13]

The DBPR has authority over the following professional boards and programs:
- Board of Architecture and Interior Design;
- Board of Auctioneers;
- Barbers' Board;
- Building Code Administrators and Inspectors Board;
- Construction Industry Licensing Board;
- Board of Cosmetology;
- Electrical Contractors' Licensing Board;
- Board of Employee Leasing Companies;
- Board of Landscape Architecture;
- Board of Pilot Commissioners;
- Board of Professional Geologists;
- Board of Veterinary Medicine;
- Home inspection services licensing program;
- Mold-related services licensing program;
- Florida Board of Professional Engineers;
- Board of Accountancy;
- Florida Real Estate Commission; and
- Florida Real Estate Appraisal Board.[14]

The DBPR licenses and regulates each of the above professions in accordance with that profession's practice act. Generally, to act as a regulated professional, a person must hold an appropriate license. Applicants for licensure for each profession must meet specific statutory requirements, including education and/or experience requirements, and must pay all applicable licensing and application fees.[15] A licensee who wishes to renew his or her license must pay a license renewal fee[16] and may be subject to continuing education requirements[17] and other conditions in the various practice acts.

Fee Waivers for Military Members and Certain Spouses

Currently, the initial licensing fee is waived for any of the professional licenses listed above if the applicant is:
- A member, including a veteran, of the U.S. Armed Forces who has served on active duty;
- The spouse of a member of the U.S. Armed Forces who was married to the member during a period of active duty;

[13] Section 20.165, F.S.
[14] *Id*.
[15] Section 455.201, F.S.
[16] Section 455.203, F.S.
[17] Section 455.2123, F.S.

- The surviving spouse of a member of the U.S. Armed Forces who at the time of death was serving on active duty;[18]
- Any honorably discharged military veteran for 60 months post discharge; or
- A spouse of such a veteran for 60 months post discharge.[19]

Military servicemembers who hold a DBPR professional license prior to active duty service will be kept in "good standing" for the duration of the member's active duty and for two years afterward. Keeping the license in "good standing" means that the member does not have to register, pay dues or fees, or perform any other act to prevent his or her license from becoming delinquent. Currently, this allowance only applies as long as the member does not practice his or her profession in the private sector for profit during his or her active duty and for two years thereafter.[20]

An active duty member's spouse or surviving spouse who holds a DBPR license will also have his or her license kept in good standing, but only if he or she is absent from the state related to the member's active duty service. This allowance terminates at the end of the member's active duty service. A spouse is not required to refrain from practicing his or her profession in the private sector for profit in order to keep his or her license in good standing.[21]

Currently, renewal fee waivers do not apply to DBPR-licensed spouses or surviving spouses of active duty members who are present in Florida.

Effect of Proposed Changes:

Section 6 amends s. 455.02, F.S., to grant a license renewal fee waiver to a DBPR licensee who is:

- An active duty military servicemember, during active duty service and for the 2 years following active duty discharge, regardless if he or she is engaged in his or her DBPR licensed profession in the private sector for profit in this state. Such member must complete all other license renewal requirements if he or she is actively engaged in the profession.
- The spouse of an active duty military servicemember who is present in this state because of such member's active duty; and
- A surviving spouse of a military servicemember, if such member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's renewal due date.

[18] Section 455.219(7)(a), F.S.
[19] Section 455.213(12), F.S.
[20] Section 455.02(1), F.S.
[21] Section 455.02(2), F.S.

Department of Health

Present Situation:

Licensure of Health Care Practitioners

The Division of Medical Quality Assurance (MQA) within the Department of Health (DOH) has general regulatory authority over health care practitioners in Florida.[22] The MQA works in conjunction with 22 boards and four councils to license and regulate seven types of health care facilities and more than 200 licenses in over 40 health care professions.[23] Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA.

Military Spouses

Florida offers expedited licensing and fee waivers to the spouse of a person serving on active duty[24] with the U.S. Armed Forces[25] who holds an active license to practice a health care profession in another state or jurisdiction.[26] To qualify for expedited licensure and fee waivers, the military spouse must:[27]

- Submit a complete application;[28]
- Submit evidence of training or experience substantially equivalent to the requirements for licensure in this state for that health care profession and evidence that he or she has obtained a passing score on an appropriate licensing examination, if required for licensure in this state;
- Attest that he or she is not, at the time of application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the U.S. Department of Defense for a reason related to the practice of the profession for which he or she is applying;
- Have actively practiced the profession for which he or she is applying for the 3 years preceding the date of application; and
- Submits to a background screening, if required for the profession for which he or she is applying, and does not have any disqualifying offenses.

Under current law, military spouses who are dentists are not eligible for expedited licensing and fee waivers. No other health care profession is excluded.

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[22] Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

[23] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2016-2017*, 3, available at http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1617.pdf (last visited Feb. 9, 2018).

[24] Full-time duty in the active military service of the United States. 10 U.S.C. 101(d)(1).

[25] Includes the United States Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. 101(a)(4).

[26] Section 456.024(3), F.S. The application fee, licensure fee, and unlicensed activity fee is waived for such applicants.

[27] Section 456.024(3)(b), F.S.

[28] DOH operates the Veterans Application for Licensure Online Response System (VALOR) to provide expedited licensing for active duty military members, honorably discharged veterans, and spouses of active duty military members with an active license in another state. *See* the DOH website, available at http://www.flhealthsource.gov/valor (last visited Jan. 31, 2018).

The regulatory boards (or the DOH if there is no board) are also authorized to issue a temporary license to the spouse of a member of the U.S. Armed Forces to practice his or her health care profession in Florida.[29] A temporary license is valid for one year and is not renewable.[30] To be eligible for a temporary license, a military spouse must:[31]

- Submit a completed application and application fee;[32]
- Provide proof that he or she is married to a member of the U.S. Armed Forces serving on active duty in this state pursuant to official military orders;
- Provide proof of a valid license from another state or jurisdiction to practice the health profession for which he or she is applying and that such license is not subject to any disciplinary proceeding;
- Provide proof that he or she would otherwise be entitled to full licensure and is eligible to take the respective licensure examination as required in this state; and
- Pass a criminal background screening.

A military spouse who holds a temporary license to practice dentistry must practice under the indirect supervision[33] of a dentist who holds an active license to practice in this state.[34] This requirement does not apply to any other profession.

Unlicensed Practice of a Health Care Profession

Florida law prohibits an individual from practicing a regulated health care profession without a license. An individual must meet minimum education and training requirements to become licensed and practice a health care profession.[35] Licensure is available by examination or, in many instances, by endorsement if the practitioner is licensed in another jurisdiction.

An individual practicing, attempting to practice or offering to practice, a health care profession without an active, valid Florida license is subject to criminal, administrative, and civil penalties.[36] The DOH may issue a cease and desist letter to such a person and impose, by citation, an administrative penalty of up to $5,000 per offense.[37] DOH may also seek a civil penalty of up to $5,000 for each offense through the circuit court, in addition to or in lieu of the administrative penalty.[38]

Each state enacts laws to determine who may engage in a particular profession within that state, including minimum requirements for practicing an occupation, as well as whether a license is required. Similarly, some activities may be regulated under one profession on one state in a different profession in another state. An individual licensed in another state who moves to

[29] Section 456.024(4), F.S.
[30] Section 456.024(4)(f), F.S.
[31] Section 456.024(4)(a)-(d), F.S.
[32] Pursuant to Rule 64B-4.007, F.A.C., the application fee is $65.
[33] Section 466.003(9), F.S., defines indirect supervision as supervision whereby a Florida-licensed dentist authorizes the procedure and a Florida-licensed dentist is on the premises while the procedures are performed.
[34] Section 456.024(4)(j), F.S.
[35] Section 456.065(1), F.S.
[36] Section 456.065, F.S.
[37] Section 456.065, F.S. Each day that the unlicensed practice continues after issuance of a notice to cease and desist constitutes a separate offense.
[38] Section 456.065(2)(c), F.S.

Florida may find that the activities they legally engaged in under a license in that other state is governed by a different professional license in Florida and continuing to engage in the activity in Florida would constitute unlicensed practice.

Effect of Proposed Changes:

Section 7 amends s. 456.024, F.S., to expand the expedited licensure application process to include the spouse of an active duty military member who holds an active license to practice dentistry in another state or jurisdiction and waives the application, licensure, and unlicensed activity fees.

The bill also repeals a provision that requires the spouse of a member of the U.S. Armed Forces serving on active duty in this state who holds a temporary license to practice dentistry to practice under the supervision of a Florida-licensed dentist.

These provisions allow dentistry to be treated in the same manner as all other health professions for which a military spouse may pursue licensure in this state.

The bill also creates an affirmative defense to administrative, civil, and criminal causes of action for the unlicensed practice of a health care profession. The affirmative defense is available to a spouse of an individual serving on active duty with the U.S. Armed Forces if:

- The spouse is licensed in another state or jurisdiction to provide health care services for which there is no equivalent in this state;
- The spouse is providing health care services within the scope of the out-of-state license; and
- The training or experience required for the out-of-state license is substantially similar to the licensure requirements for a similar health care profession in this state.

A person who successfully claims this affirmative defense would not be subject to any of the administrative, civil, and criminal penalties that exist for the unlicensed practice of a health profession.

Department of Agriculture and Consumer Services

Present Situation

In addition to regulating agriculture in Florida, the Department of Agriculture and Consumer Services (DACS) also protects consumers from unfair and deceptive business practices and provides consumer information.[39]

The DACS achieves this, in part, through licensing and registering various professionals, including:

- Professional Surveyors and Mappers (ch. 472, F.S.);
- Private Investigative, Private Security, and Repossession Services (ch. 493, F.S.);
- Health Studios (ch. 501, pt. I, F.S.);
- Telemarketing Services (ch. 501, pt. IV, F.S.);
- Intrastate Movers and Brokers (ch. 507, F.S.);

[39] Section 20.14(2), F.S.

- Sellers of Liquefied Petroleum Gas (ch. 527, F.S.);
- Pawnbroking (ch. 539, F.S.);
- Motor Vehicle Repair Shops (ch. 559, pt. IX, F.S.); and
- Sellers of Travel (ch. 559, pt. XI, F.S.).

The DACS licenses and regulates each of the above professionals in accordance with that profession's practice act. Generally, applicants must meet specific statutory requirements and must pay all applicable fees.

Initial Application Fee Waivers

Currently, initial applicants for the abovementioned licenses and registrations receive an application fee waiver if the applicant is:

- An honorably discharged veteran who was discharged within 60 months of the application date;
- The spouse of such a veteran; or
- A business entity that is majority owned by such a veteran or spouse.[40]

Applicants seeking this fee waiver must provide DACS with specific documentation proving appropriate military service, marriage, and/or business ownership.

Licensure Renewal Fee Waivers

Generally, active duty military servicemembers and their spouses and surviving spouses do not receive renewal fee allowances or waivers for the DACS professional licenses or registrations listed above. However, there are allowances made for such members and spouses who are licensed under the Board of Professional Surveyors and Mappers (BPSM).

Military servicemembers who hold a license from the BPSM prior to active duty service are kept in "good standing" for the duration of the member's active duty and for six months afterward. Keeping the license in "good standing" means that the member does not have to register, pay dues or fees, or perform any other act to prevent the license from becoming delinquent. This allowance only applies as long as the member does not practice as a surveyor or mapper in the private sector for profit during his or her active duty and for two years thereafter.[41]

An active duty member's spouse who holds a license from BPSM will also have his or her license kept in good standing, but only if he or she is absent from the state related to the member's active duty service. This allowance terminates at the end of the member's active duty service. A spouse is not required to refrain from practicing surveying and mapping in order to keep his or her license in good standing.[42]

Currently, renewal fee waivers do not apply to BPSM-licensed spouses of active duty members who are present in Florida or for any surviving spouses of such members.

[40] Section 472.015, 493.6105, 501.015, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, and 559.928, F.S.
[41] Section 472.016(1), F.S.
[42] Section 472.016(2), F.S.

Effect of Proposed Changes:

Sections 8, 10, 11, 30-32, 34, 36-39 amend ss. 472.015, 493.6105, 493.6107, 501.015, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, and 559.928, F.S., respectively, to expand the initial licensing or registration fee waiver for all of the abovementioned DACS professions to:

- A surviving spouse of an honorably discharged veteran,
- A current member of the U.S. Armed Forces who has served on active duty,
- The spouse of such a member, and
- The surviving spouse of such a member if the member dies while serving on active duty.

Sections 9, 12, 30, 33, 34, 36-39 amend ss. 472.016, 493.6113, 501.015, 501.609, 507.03, 527.02, 539.001, 559.904, and 559.928, F.S., respectively, to grant a renewal fee waiver for all of the abovementioned DACS professions to the following licensees or registrants:

- A current active duty member of the U.S. Armed Forces;
- Such a member's spouse;
- A current or former member of the U.S. Armed Forces who served on active duty within the 2 years preceding the renewal due date. A licensee who served on active duty within the 2 years preceding the renewal due date and is no longer a member of the U.S. Armed Forces must have received an honorable discharge upon separation or discharge; and
- A surviving spouse of a member of the U.S. Armed Forces if such a member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's renewal due date.

In **Section 9**, amending s. 472.016, F.S., the bill also refines the process for renewal fee waivers for BPSM licensees by:

- Extending the time that an active duty member's BPSM license remains in good standing after discharge from active duty from six months to 2 years; and
- Clarifying that if an active duty U.S. Armed Forces member wishes to engage in surveying or mapping in the private sector for profit in this state for the 2 years following active duty discharge, such member must complete all other license renewal requirements except remitting the license renewal fee.

In addition, the bill mandates that those seeking such initial or renewal fee waivers must apply in a format prescribed by the DACS, including the applicant's signature, under penalty of perjury, and supporting documentation.

The bill removes the initial fee waiver time limitations.

Office of Financial Regulation

Present Situation:

The Florida Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[43]

[43] Section 20.121(3)(a)2., F.S.

Mortgage Loan Originators and Brokers

Under ch. 494, F.S., the OFR licenses and regulates the following individuals and businesses engaged in the mortgage business outside of a depository financial institution:

- Loan originator[44] – An individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.
- Mortgage broker[45] – A person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.
- Mortgage lender[46] – A person making a mortgage loan or servicing a mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor. A mortgage lender may act as a mortgage broker.[47]

In order to obtain licensure as a mortgage loan originator under ch. 494, F.S., an individual must meet certain requirements, including paying a nonrefundable application fee of $195 plus a $20 nonrefundable fee for the Mortgage Guaranty Trust Fund.[48]

A mortgage loan originator license must be renewed annually by December 31.[49] As part of renewing such license, an individual must submit a renewal form and a nonrefundable renewal fee of $150 plus a $20 nonrefundable fee for the Mortgage Guaranty Trust Fund.[50]

Associated Persons

In ch. 517, the OFR regulates the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms. "Associated persons" are required to be registered with the OFR to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state.[51] Associated persons include:[52]

- With respect to a dealer or investment adviser, any of the following:
  - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions.
  - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial.

[44] Section 494.001(17), F.S.
[45] Section 494.001(22), F.S.
[46] Section 494.001(23), F.S.
[47] Section 494.0073, F.S.
[48] Section 494.00312, F.S.
[49] Sections 494.00312(7) and 494.00313(3), F.S.
[50] Section 494.00313(1)(a) and (b), F.S.
[51] Section 517.12(1), F.S.
[52] Section 517.021(2)(a), F.S.

  - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser.
- With respect to a federal covered adviser, any person who is an investment adviser representative and who has a place of business in this state.

In order to register as an associated person of a securities dealer or an investment adviser, an individual must meet certain requirements, including paying an assessment fee of $50.[53]

The registration of an associated person expires December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. A registration renewal is subject to a $50 assessment fee.[54]

Effect of Proposed Changes:

Sections 13 and 35 amend ss. 494.00312 and 517.12, F.S., respectively, to require the OFR to waive the $195 initial application fee and $20 fee for the Mortgage Guaranty Trust Fund for a mortgage loan originator and the $50 associated person initial assessment fee for an applicant who:

- Is or was an active duty member of the U.S. Armed Forces. A former servicemember must have received an honorable discharge upon separation or discharge from the military.
- Is married to a current or former member of the U.S. Armed Forces and is or was married to the member during any period of active duty.
- Is the surviving spouse of a member of the U.S. Armed Forces if the member was serving on active duty at the time of death.

Sections 14 and 35 amend 494.00313 and 517.12, F.S., respectively, to require the OFR to waive the $150 renewal fee and $20 fee for the Mortgage Guaranty Trust Fund for a mortgage loan originator and the $50 assessment fee for an associated person renewing his or her registration who:

- Is an active duty member of the U.S. Armed Forces or the spouse of such member.
- Is or was a member of the U.S. Armed Forces and served on active duty within the 2 years preceding the expiration date of the license. A former servicemember who served on active duty within the 2 years preceding the expiration date of the license/registration must have received an honorable discharge upon separation or discharge from the military.
- Is the surviving spouse of a member of the U.S. Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's license/registration expiration date.

An individual seeking such fee waiver must submit proof, in a form prescribed by rule of the Financial Services Commission, that the individual meets one of the above fee waiver qualifications.

[53] Section 517.12(10), F.S.
[54] Section 517.12(11), F.S.

Department of Financial Services

Present Situation:

The Department of Financial Services (DFS) is the state agency responsible for regulation and licensure of professions related to insurance, fire safety, and funeral and cemetery services.[55] There are a number of allowances in statute for veterans and their spouses regarding many types of insurance licenses, but not for licenses for bail bonds, fire safety, and funeral and cemetery services.

The existing allowances administered by DFS are:

- Waiver of application fees[56] – Application fees are waived for applicants seeking licensure as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary for military members and their spouses and recent military retirees (within 24 months of retirement).
- Temporary licensure[57] – A temporary general lines agent license may be issued to an employee, a family member, a business associate, or a personal representative of a licensed general lines agent for the purpose of continuing or winding up the business affairs of the agent or agency in the event the licensed agent has become unable to perform his or her duties because of military service.
- Exception to additional license examination requirement[58] – Reexamination of the agent is required if they have not received an appointment within 48 months of licensure. The DFS may waive this requirement if the circumstance is due to military service (limited to circumstances where the veteran's service did not exceed 3 years and the exception does not apply if 6 years have passed from his or her licensure date).
- Relief from continuing education requirements[59] – Licensees who are unable to comply with the continuing education requirements due to active duty in the military may submit a written request for a waiver to the DFS.
- Licensing and appointment of a non-resident[60] – A natural person, not a resident of this state, may be licensed and appointed to represent an authorized life insurer domiciled in this state or an authorized foreign life insurer which maintains a regional home office in this state, provided such person represents such insurer exclusively at a U.S. military installation located in a foreign country.
- Reappointment after military service[61] – The DFS may, without requiring a further written examination, issue an appointment as an adjuster to a formerly licensed and appointed adjuster of this state who held a current adjuster's appointment at the time of entering service in the U.S. Armed Forces, subject to certain conditions (limited to circumstances where the veteran's service did not exceed 3 years, the application and fee is filed within 12 months of honorable discharge, and the new appointment is of the same type and class).

[55] Chapters 497 (funeral and cemetery), 626 (insurance), 633 (fire), and 648 (bail bonds), F.S.
[56] Section 626.171(6), F.S.
[57] Section 626.175(1)(b) and 626.9271(1), F.S.
[58] Section 626.181(2) and 626.8427(1)(b), F.S.
[59] Section 626.2815(2), F.S.
[60] Section 626.322, F.S.
[61] Section 626.871, F.S.

Effect of Proposed Changes:

Funeral and Cemetery Services

Sections 15-24 and 26-29 amend ss. 497.140, 497.141, 497.281, 497.368, 497.369, 497.370, 497.371, 497.373, 497.374, 497.375, 497.453, 497.466, 497.554, and 497.602, F.S., respectively, to waive initial application fees,[62] provisional licensing fees, and temporary licensing fees, where applicable, including the $5 per license special unlicensed activity fee paid with each license,[63] for members of the U.S. Armed Forces and their spouses and honorably discharged veterans (within 24 months of discharge) for licensure as:

- Embalmer, including Temporary Embalmer, Embalmer Intern, and Embalmer Apprentice;
- Funeral Director, including Temporary Funeral Director and Funeral Director Intern;
- Preneed Sales, including Preneed Sales Agent;
- Burial Rights Broker;
- Direct Disposer; and
- Monument Establishment Sales Agent.

Section 25 creates s. 497.393, F.S., and **Section 29** amends s. 497.602, F.S., to require the Board of Funeral, Cemetery, and Consumer Services or the DFS Division of Funeral, Cemetery, and Consumer Services to recognize applicable military-issued credentials for purposes of licensure as an embalmer or funeral director or as a direct disposer.[64] The applicant must submit a certification that the military-issued credential reflects knowledge, training, and experience substantially similar to the licensing requirements. The board or the division may investigate such information. The board or the division must adopt rules specifying the forms and procedures for use by applicants under these sections.

Insurance

Section 40 amends s. 626.171, F.S., to expand the application fee waiver for insurance profession licenses to include veterans who have "separated" from the military within 2 years before application. Currently, the waiver applies to veterans who "retired" within 2 years. The change will allows veterans who have less than 20 years of military service to receive the allowance.

Sections 41-45 amend ss. 626.732, 626.7851, 626.8311, 626.8417, 626.927, F.S., respectively, to eliminate pre-licensure course requirements for insurance profession licenses for honorably discharged veterans and their spouses.[65]

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[62] Chapter 497, F.S., limits the amount of application fees. Such fees shall not exceed: $200 for an embalmer, temporary embalmer, embalmer intern, embalmer apprentice, funeral director, temporary funeral director, funeral director intern, monument establishment sales agent; $500 for a preneed sales and direct disposer; $300 for a preneed sales agent; and $250 for a burial rights broker.

[63] The fee is $5 per license. s. 497.140, F.S.

[64] Military Occupational Code 92M, Mortuary Affairs Specialist, within the U.S. Army Quartermaster Corps, describes the following functions: performs or supervises duties relating to deceased personnel to include recovery, collection, evacuation, establishment of tentative identification, escort, and temporary burial. They also inventory, safeguard, and evacuate personal effects of deceased personnel. Army.com, *Military Occupational Specialties (MOS)*, available at http://army.com/info/mos/all (last visited Feb. 9, 2018).

[65] Honorably discharged veterans and their spouses must also pass any required licensure exam.

Fire Prevention and Control

Section 46 amends s. 633.414, F.S., to allow the DFS to extend the 4-year period in which a certified firefighter must meet specified conditions to retain certification. The bill allows the DFS to extend the firefighter certification period of a veteran or a veteran's spouse to 12 months after the veteran's honorable discharge from the military.

Section 47 amends s. 633.444, F.S., to waive all living and incidental expenses, excluding expenses for meal plans and bunker gear rentals, associated with attending the Florida State Fire College to obtain a Certificate of Compliance or a Firesafety Inspector I certification for:

- An active duty member of the U.S. Armed Forces;
- An honorably discharged veteran of the U.S. Armed Forces;
- The spouse or surviving spouse of an honorably discharged veteran of the U.S. Armed Forces; and
- The surviving spouse of a member of the U.S. Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's attendance at the college.

Department of Education

Present Situation:

Medal of Honor Day

The Medal of Honor is the "highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States. The Medal is generally presented to recipients by the President of the United States."[66]

Section 1003.42(2), F.S. establishes components of required instruction for public school students. Instructional staff must teach, among other things:

- A character-development program in kindergarten through grade 12;[67] and
- In order to encourage patriotism, the sacrifices that veterans have made in serving our country and protecting democratic values worldwide.[68]

The law encourages the State Board of Education to "adopt standards and pursue assessment of the requirements" of s. 1003.42(2), F.S.

Each district school board is required to develop or adopt a curriculum for the character-development program and submit it to the Department of Education (DOE) for approval. The character-development curriculum must stress the qualities of patriotism; responsibility; citizenship; kindness; respect for authority, life, liberty, and personal property; honesty; charity; self-control; racial, ethnic and religious tolerance; and cooperation. The instruction related to veterans must occur on or before Veteran's day and Memorial Day. Members of the instructional staff are also encouraged to use the assistance of local veterans when practicable.

[66] Congressional Medal of Honor Foundation, *History*, available at http://themedalofhonor.com/cmoh-foundation/history (last visited Feb. 9, 2018).
[67] Section 1003.42(2)(s), F.S.
[68] Section 1003.42(2)(t), F.S.

There are various resources available to educate students about the Medal of Honor and the significance it can play in character development programs.[69]

Effect of Proposed Changes:

Section 48 creates s. 683.147, F.S., to allow the Governor to issue a proclamation designating March 25th as "Medal of Honor Day" and encourages public officials, schools, private organizations, and all residents of the state to commemorate Medal of Honor Day and honor any Floridian who, while serving as a member of the Armed Services, distinguished himself or herself while engaged in action against an enemy of the United States.

Section 50 amends s. 1003.42, F.S., to state that a character development program that incorporates the values of the Congressional Medal of Honor and that is offered as part of a social studies, English Language arts, or other school wide character building and veteran awareness initiative meets the instructional requirements related to character development and veterans. The bill also amends the requirements for the instruction on veterans to include Medal of Honor Recipients; to occur on or before Medal of Honor Day; and encourage the use of the assistance of Medal of Honor recipients when practicable.

Present Situation:

Florida Virtual School

Florida Virtual School (FLVS) was established by law to provide students in kindergarten through grade 12 with technology-based educational opportunities to gain knowledge and skills necessary to succeed.[70]

Enrollment in FLVS is free for Florida residents, and non-residents may enroll but must pay tuition. Currently, children of military personnel who are not stationed in Florida but have a home of record or legal residence certificate stating their residence is in Florida are considered non-residents for purposes of FLVS enrollment, and the students must pay tuition to participate.

Currently, FLVS is required to give priority for enrollment to:

- Students who need expanded access to courses to meet their educational goals, such as home education students and students in inner-city and rural high schools that do not have access to higher level courses; and
- Students seeking accelerated access to obtain a high school diploma at least one semester early.[71]

Effect of Proposed Changes:

Section 49 amends s. 1002.37, F.S., to give priority for enrollment to students who are children of military personnel not stationed in Florida whose home of record or state of legal residence certificate is Florida. This change allows such students to enroll in FLVS without paying tuition.

[69] Congressional Medal of Honor Foundation, *Character Development*, http://themedalofhonor.com/character-development (last visited Feb. 9, 2018).
[70] Section 1002.37(1), F.S.
[71] Section 1012.37(1)(b), F.S.

Present Situation:

Florida Teacher's Classroom Supply Assistance Program

The Florida Teachers Classroom Supply Assistance Program is a fund for classroom teachers employed by a public school district or a public charter school to purchase, on behalf of the school district or charter school, classroom materials and supplies for the public school students assigned to them. For purposes of the program, "classroom teacher" means a certified teacher employed by a public school district or a public charter school in that district on or before September 1 of each year whose full-time or job-share responsibility is the classroom instruction of students in prekindergarten through grade 12, including full-time media specialists and certified school counselors serving students in prekindergarten through grade 12, who are funded through the Florida Education Finance Program.[72]

Instructors of junior reserve officer training (JROTC) may currently be ineligible for the program because they do not meet the definition of "classroom teacher." This is because JROTC instructors are not required to hold an educator certificate.[73]

Effect of Proposed Changes:

Section 51 amends s. 1012.55(4), F.S., to allow JROTC instructors to be eligible to receive funding through the Florida Teachers Classroom Supply Assistance program.

Present Situation:

Educational Leadership Certification

The State Board of Education is required to establish certification requirements for all school-based personnel.[74] In Florida, aspiring school administrators[75] must complete a state-approved school leader preparation program and attain certification as an educational leader.[76]

The State Board of Education has established two classes of certification for school administrators – educational leadership and school principal. Certification in educational leadership qualifies an individual for any position falling under the classification "school administrator."[77]

There are two types of school leader preparation programs:[78]

- Level I programs are offered by school districts and postsecondary institutions and lead to initial certification in educational leadership for the purpose of preparing individuals to serve as school administrators.
- Level II programs are offered by school districts, build upon Level I training, and lead to certification as a school principal.

[72] Section 1012.71 F.S.
[73] Sections 1012.71(1) and 1012.55(4), F.S.
[74] Section 1012.55(1)(b), F.S.
[75] School administrators include school principals, school directors, and assistant principals. *See* s. 1012.01(3)(c), F.S.
[76] *See* s. 1012.55(1)(b), F.S.
[77] *See* s. 1012.562, F.S.
[78] Section 1012.55, F.S.

To receive a Level II certification as a school principal, the individual must:
- Hold an educational leadership certificate.[79]
- Hold a valid professional certificate covering educational leadership, administration, or administration and supervision; and
- Document successful performance of the duties of the school principalship in a DOE approved district school principal certification program.[80]

The State Board of Education must adopt rules to allow an individual who meets the following criteria to be eligible for a temporary certificate in educational leadership:[81]
- Earned a passing score on the Florida Educational Leadership Examination;
- Documented three years of successful experience in an executive management or leadership position; and
- Documented receipt of a bachelor's degree or higher from an accredited institution of higher learning.

An individual operating under a temporary certificate must be under the mentorship of a state-certified school administrator during the term of the temporary certificate.[82]

Effect of Proposed Changes:

Section 51 amends s.1012.55, F.S., to create a pathway for veterans who have served either as commissioned officers or noncommissioned officers to become school principals. The bill requires the DOE to issue a 3-year temporary certificate in educational leadership to an individual whose application indicates that he or she:
- Has earned a passing score on the Florida Educational Leadership Examination;
- Served as a commissioned or noncommissioned military officer in the U.S. Armed Forces for at least 3 years;
- Has been honorably discharged or has retired from the U.S. Armed forces; and
- Is presently employed fulltime in a position for which a Florida educator certificate is required in a Florida school (public or nonpublic) that has a Level II program.

The bill also requires that a Level II program must admit applicants who hold such a temporary certificate and requires the DOE to issue a permanent school principal certificate to an individual who holds the temporary certificate and successfully completes the Level II program.

Present Situation:

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 DOE.[83] Persons seeking employment at a public school as a school supervisor, school principal, teacher,

[79] Rule 6A-4.0083, F.A.C.
[80] Rule 6A-4.0083, F.A.C.
[81] Section 1012.55(1)(d), F.S. *See* Rule 6A-4.004(5), F.A.C.
[82] *Id*.
[83] Sections 1012.55(1) and 1002.33(12)(f), F.S.

library media specialist, school counselor, athletic coach, or in another instructional capacity must also be certified.[84] 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."[85]

The DOE issues a professional certificate and a temporary certificate. The professional certificate is Florida's highest type of full-time educator certification and is valid for five years and is renewable.[86] The temporary certificate covers employment in full-time positions for which educator certification is required, is valid for three years, and is nonrenewable.[87]

A person seeking an educator certificate must meet certain requirements, submit an application to the DOE, and remit the required fee.[88]

An applicant seeking a professional certificate must:
- Meet the basic eligibility requirements for certification;[89]
- Demonstrate mastery of general knowledge;[90]
- Demonstrate mastery of subject area knowledge;[91] and
- Demonstrate mastery of professional preparation and education competence.[92]

A three-year nonrenewable temporary certificate[93] may be issued to an applicant who does not qualify for the professional certificate, but:
- Meets the basic eligibility requirements for certification;
- 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;[94] and
- Demonstrates mastery of subject area knowledge.

An educator who is employed under a temporary certificate must demonstrate mastery of general knowledge within one calendar year after employment in order to remain employed in a position that requires a certificate.[95] The State Board of Education is required to adopt rules to allow the DOE to extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate, not including the mastery of general knowledge requirement, were not completed due to serious illness or injury of the applicant or other extenuating circumstances.[96]

[84] Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S.
[85] Section 1012.54, F.S.
[86] Section 1012.56(7)(a), F.S.
[87] Section 1012.56(7)(b), F.S.
[88] Section 1012.56(1), F.S.
[89] Section 1012.56(2)(a)-(f), F.S.
[90] Section 1012.56(2)(g), F.S.
[91] Section 1012.56(2)(h), F.S.
[92] Section 1012.56(2)(i), F.S.
[93] Section 1012.56 (7)(b), F.S.
[94] Section 1012.56(1)(b), F.S.
[95] Section 1012.56(7), F.S.
[96] *Id.*

Effect of Proposed Changes:

Section 52 amends s. 1012.56, F.S., to add military service of an applicant's spouse as a circumstance for which the validity of a temporary certificate may be extended by the DOE, as adopted by State Board of Education by rule.

Present Situation:

Educator Certification Fees

The State Board of Education must establish, by rule, fees for applications, examinations, certification, certification renewal, late renewal, record making, and recordkeeping.[97] Fees for taking the Florida Teacher Certification Examination for the first time are as follows:[98]

FTCE Test	Fee
General Knowledge Test	$130
Subject Area Test	$200
Professional Education Test	$150

It is a $75 fee to apply for an initial educator certificate and for renewal of a professional certificate.[99]

Effect of Proposed Changes:

Section 53 amends s. 1012.59, F.S., to require the State Board of Education to waive initial general knowledge, professional education, and subject area examination fees and initial certification fees for the following individuals:

- A member of the U.S. Armed Forces or a reserve component thereof who is serving or has served on active duty;
- The spouse of a member of the U.S. Armed Forces or a reserve component thereof who is serving or has served on active duty;
- The surviving spouse of a member of the U.S. Armed Forces or a reserve component thereof who was serving on active duty at the time of death;
- An honorably discharged veteran of the U.S. Armed Forces or a veteran of a reserve component thereof who served on active duty; and
- The spouse or surviving spouse of an honorably discharged veteran of the U.S. Armed Forces or a veteran of a reserve component thereof who served on active duty.

Present Situation:

Apprenticeship Programs

The DOE is responsible for the development of the apprenticeship and preapprenticeship standards for trades and assisting district school boards and community college district boards of trustees in developing preapprenticeship programs.[100]

[97] Section 1012.59(1), F.S.
[98] Rule 6A-4.0021(4), F.A.C.
[99] *See* Rule 6A-4.0012(1)(a)1., F.A.C.
[100] Section 446.011(2), F.S.

An apprenticeship program is an organized course of instruction that is registered and approved by the DOE and must address all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.[101] The length of an apprenticeship program varies from 1 to 5 years depending on the occupation's training requirements.

An apprenticeship may be offered only in occupations that:

- Are customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training;
- Are commonly recognized throughout the industry or recognized with a positive view toward changing technology;
- Involve manual, mechanical, or technical skills and knowledge that require a minimum of 2,000 hours of work and training, excluding the time spent in related instruction;
- Require related instruction to supplement on-the-job training; and
- Involve the development of skills sufficiently broad to be applicable in like occupations throughout an industry, rather than skills that are of restricted application to the products or services of any one company.[102]

The following categories of occupations may not create an apprenticeship program: selling, retailing, or similar occupations in the distributive field; managerial occupations; and professional and scientific vocations for which entrance requirements customarily require an academic degree.[103]

Effect of Proposed Changes:

Section 4 amends s. 446.041, F.S., to require the DOE to lead and coordinate outreach efforts to educate veterans about apprenticeship and career opportunities.

Section 5 amends s. 446.081, F.S., to specify that laws and rules regulating apprenticeships and approved apprenticeship agreements do not invalidate any special provisions for veterans, minority persons, or women concerning apprenticeship programs.

Effect of Proposed Changes:

Section 54 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[101] Section 446.021(6), F.S.
[102] Section 446.092, F.S.
[103] Section 446.092(6), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill will reduce professional licensing fee revenues to the affected agencies, but the amount is indeterminate. The impact will depend on the number of individuals who take advantage of the new fee waivers.

B. Private Sector Impact:

The bill establishes new fee waivers and expands eligibility for existing fee waivers for a number of Florida professional licenses and registrations for military servicemembers, veterans, and their spouses or surviving spouses.

Pre-licensing education providers may experience a decrease in revenues.

Children of military personnel not stationed in Florida whose home of record or state of legal residence certificate is Florida will be eligible and given priority for FLVS.

Veterans Florida may contract with private entities to administer the veterans' entrepreneurship initiative program. For the training grant program, businesses will be reimbursed for 50 percent of the costs of the training.

C. Government Sector Impact:

The DOH expects to incur non-recurring costs for rulemaking, but the costs can be absorbed within the current budget authority.[104]

The DBPR indicated that a fiscal impact to license revenues is indeterminate at this time, but noted that there are currently 440 licensees under DBPR that are identified as military personnel. Additionally, the modifications necessary to update DBPR's information technology systems can be made within existing resources (196 hours).[105]

The DACS expects reductions of $206,568 in Fiscal Year 2018-2019, $216,896 in Fiscal Year 2019-2020, and $227,741 in Fiscal Year 2020-2021, as a result of the fee waivers authorized in the bill.[106]

The OFR expects a reduction of $412,030 annually in licensing/registration fees as a result of the fee waivers established in the bill.[107] In addition, the OFR states that it will

[104] DOH, *2018 Agency Legislative Bill Analysis: SB 1884* (Jan. 9, 2018).
[105] DBPR, *2018 Agency Legislative Bill Analysis: HB 29* (Jan. 18, 2018).
[106] DACS, *SB 1884 Agency Analysis* (Jan. 29, 2018).
[107] Email from staff of the OFR to staff of the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Re: SB 1884 Cost Information…* (Feb. 13, 2018).

need to manually receive, review, and process reimbursements of the fees waived in the bill. The OFR plans to use OPS as an interim solution to reviewing and processing refunds, and will monitor the actual number of refund requests received and request additional positions for the 2019 Regular Session.

The DFS expects an indeterminate reduction in revenues for the Division of Funeral, Cemetery, and Consumer Services related to the fee waivers, and an indeterminate increase in expenditures to administer the requirements of the bill. For the Division of State Fire Marshal, the DFS expects a significant but indeterminate reduction in revenues – the largest impact of which is the waiver of tuition, housing, and other costs for honorably discharged veterans and their spouses attending the State Fire College (estimated to be about $8,244 per student, excluding expenses for meal plans and bunker gear).[108]

The DFS anticipates it will incur costs to update its computer systems (240 total hours). Other costs to implement and administer the provisions of the bill are indeterminate at this time.[109]

A fiscal impact from the DOE was not available as of the date of this analysis. The impacts of the bill are expected to be minimal; with the exception of the waiver of application and renewal fees – the impact of those provisions it indeterminate. Additionally, the Florida Teacher's Classroom Supply Assistance program receives an annual appropriation which is provided proportionately to eligible teachers; expansion of eligibility only changes the amount each teacher may receive but does not increase the amount of funds appropriated to the program.

A DOE analysis for a similar bill expanding the FLVS program states that the administrative costs of the program would increase but were indeterminate.[110]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 11 amends s. 493.6107, F.S., to waive the initial application fee for the surviving spouse of a member of the U.S. Armed Forces who served on active duty *who died within the 2 years preceding the application*. This is the only provision related to the initial application fee for a surviving spouse that contains this qualification.

The OFR states that the fees in connection with applying for or renewing loan originator licenses are paid via the Nationwide Mortgage Licensing System and Registry or the Central Registration

[108] DFS, *SB 1884 Agency Analysis* (Jan. 18, 2018). Email from DFS staff to staff of the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security, *Re: 1884* (February 12, 2018).
[109] *Id*.
[110] DOE, *2018 Agency Legislative Bill Analysis: SB 1090* (Jan. 25, 2018).

Depository. Because these are not federal systems, the systems will likely not be able to accommodate the fee waivers provided in the bill.[111]
The bill requires the Board of Funeral, Cemetery, and Consumer Services or the DFS Division of Funeral, Cemetery, and Consumer Services to adopt rules specifying the forms and procedures for use by an applicant as an embalmer, funeral director, or direct disposer to submit a certification that the military-issued credential reflects knowledge, training, and experience substantially similar to the licensing requirements.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 295.21, 295.22, 446.041, 446.081, 455.02, 456.024, 472.015, 472.016, 493.6105, 493.6107, 493.6113, 494.00312, 494.00313, 497.140, 497.141, 497.281, 497.368, 497.369, 497.370, 497.371, 497.373, 497.374, 497.375, 497.453, 497.466, 497.554, 497.602, 501.015, 501.605, 501.607, 501.609, 507.03, 517.12, 527.02, 539.001, 559.904, 559.928, 626.171, 626.732, 626.7851, 626.8311, 626.8417, 626.927, 633.414, 633.444, 1002.37, 1003.42, 1012.55, 1012.56, and 1012.59.

This bill creates the following sections of the Florida Statutes: 250.483, 497.393, and 683.147.

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 the Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 14, 2018:
The committee substitute:

- Allows members of the Veterans Florida board of directors to serve two four-year terms.
- Makes changes to Veterans Florida's training grant program and veteran entrepreneurship initiative program;
- Deletes provisions waiving fingerprinting requirements for certain veterans applying for funeral and cemetery, insurance, or fire safety-related licenses;
- Revises the waiver of prelicensure coursework requirements for insurance license applicants to include current members of the U.S. Armed Forces and their spouses;
- Removes the waiver of prelicensure coursework requirements in those instances where the coursework is the only knowledge acquisition/demonstration element prior to receiving an insurance license;
- Deletes the proposed extension of time prior to reexamination for two fire safety-related licenses for licensees eligible for an "inactive" status;
- Provides a method for a servicemember or veteran to certify their knowledge, training, and experience to gain credit in licensing for funeral directing, embalming, and direct disposing.

[111] OFR, *2018 Agency Legislative Bill Analysis: SB 1884* (Jan. 19, 2018).

- Clarifies provision relating to firefighter certification retention for veterans and their spouses;
- Clarifies the living and incidental fees that may be waived for servicemembers, veterans, and their spouses attending the Florida Fire College; and
- Removes the proposed waiver of teacher certification renewal fees.

B. Amendments:

None.

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 military and veterans affairs; creating s. 250.483, F.S.; providing requirements relating to licensure or qualification of persons ordered into active duty or state active duty; amending s. 295.21, F.S.; providing that a member of the board of directors for Florida is for Veterans, Inc., is eligible for reappointment under certain circumstances; amending s. 295.22, F.S.; revising provisions relating to receiving training grants from Florida is for Veterans, Inc.; amending s. 446.041, F.S.; providing duties of the Department of Education; amending s. 446.081, F.S.; providing construction; amending s. 455.02, F.S.; requiring the Department of Business and Professional Regulation to waive certain fees; amending s. 456.024, F.S.; revising licensure eligibility requirements; providing an exemption from certain penalties; amending ss. 472.015, 472.016, 493.6105, 493.6107, and 493.6113, F.S.; requiring the Department of Agriculture and Consumer Services to waive certain fees; amending ss. 494.00312 and 494.00313, F.S.; requiring the Office of Financial Regulation to waive certain fees; amending s. 497.140, F.S.; providing an exemption from a certain fee; amending s. 497.141, F.S.; providing an exemption from a certain fee; amending ss. 497.281, 497.368, 497.369,

497.370, 497.371, 497.373, 497.374, and 497.375, F.S.; providing exemptions from certain fees; creating s. 497.393, F.S.; authorizing the licensing authority to recognize certain military-issued credentials for purposes of licensure; amending ss. 497.453, 497.466, and 497.554, F.S.; providing exemptions from certain fees; amending s. 497.602, F.S.; providing an exemption from an application fee; authorizing the licensing authority to recognize certain military-issued credentials for purposes of licensure; amending s. 501.015, F.S.; requiring the Department of Agriculture and Consumer Services to waive a registration fee; amending ss. 501.605, 501.607, 501.609, and 507.03, F.S.; requiring the Department of Agriculture and Consumer Services to waive certain fees for certain licensees; amending s. 517.12, F.S.; requiring the Office of Financial Regulation to waive certain fees; amending ss. 527.02 and 539.001, F.S.; waiving certain licensing fees; amending ss. 559.904 and 559.928, F.S.; requiring the Department of Agriculture and Consumer Services to waive certain registration fees; amending s. 626.171, F.S.; revising fee waiver qualification requirements for certain applicants; amending ss. 626.732, 626.7851, 626.8311, 626.8417, and 626.927, F.S.; revising prelicensure course requirements for certain applicants; amending s. 633.414, F.S.; authorizing an extension for firefighter certification renewal for certain persons; amending s. 633.444, F.S.; requiring the Division of


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State Fire Marshal to waive certain expenses associated with attending the Florida State Fire College; creating s. 683.147, F.S.; designating March 25 of each year as "Medal of Honor Day"; amending s. 1002.37, F.S.; revising the order of priority given to students seeking enrollment in the Florida Virtual School; amending s. 1003.42, F.S.; providing for a character development program that incorporates the values of the Congressional Medal of Honor; amending s. 1012.55, F.S.; requiring the State Board of Education to issue a temporary certificate in educational leadership to certain persons; revising certain exemptions from requirements for teacher certification for certain individuals; amending s. 1012.56, F.S.; requiring the State Board of Education to adopt certain rules; amending s. 1012.59, F.S.; requiring the State Board of Education to waive certain fees; providing an effective date.

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

Section 1. Section 250.483, Florida Statutes, is created to read:

250.483 Active duty; licensure or qualification.—

(1) If a member of the Florida National Guard or the United States Armed Forces Reserves seeking licensure or qualification for a trade, occupation, or profession is ordered into state active duty or into active duty as defined in this chapter, and his or her period of training, study, apprenticeship, or


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practical experience is interrupted or the start thereof is delayed, he or she is entitled to licensure or qualification under the laws covering his or her licensure or qualification at the time of entrance into active duty pursuant to subsection (2).

(2) A board of examiners or other qualification board regulated under general law shall accept periods of training and practical experience in the Florida National Guard or the United States Armed Forces Reserves in place of the interrupted or delayed periods of training, study, apprenticeship, or practical experience if the board finds the standard and type of work or training performed in the Florida National Guard or the United States Armed Forces Reserves to be substantially the same as the standard and type required under the laws of this state.

(3) A member of the National Guard or the United States Armed Forces Reserves must request licensure or qualification pursuant to this section by the respective board of examiners or other qualification board within 6 months after release from active duty with the Florida National Guard or the United States Armed Forces Reserves.

Section 2. Paragraph (c) of subsection (4) of section 295.21, Florida Statutes, is amended to read:

295.21 Florida Is For Veterans, Inc.—

(4) GOVERNANCE.—

(c) Each member of the board of directors shall be appointed for a term of 4 years, except that, to achieve staggered terms, the initial appointees of the Governor shall serve terms of 2 years. A member is eligible ~~ineligible~~ for reappointment to the board ~~except that a member appointed to a~~

~~term of 2 years or less may be reappointed~~ for one ~~an~~ additional term of 4 years. ~~The initial appointments to the board must be made by July 15, 2014.~~ Vacancies on the board shall be filled in the same manner as the original appointment. A vacancy that occurs before the scheduled expiration of the term of the member shall be filled for the remainder of the unexpired term.

Section 3. Paragraphs (d) and (e) of subsection (3) of section 295.22, Florida Statutes, are amended to read:

295.22 Veterans Employment and Training Services Program.—

(3) ADMINISTRATION.—Florida Is For Veterans, Inc., shall administer the Veterans Employment and Training Services Program and perform all of the following functions:

(d) Create a grant program to provide funding to assist veterans in meeting the workforce-skill needs of businesses seeking to hire, promote, or generally improve specialized skills of veterans, establish criteria for approval of requests for funding, and maximize the use of funding for this program. Grant funds may be used only in the absence of available veteran-specific federally funded programs. Grants may fund specialized training specific to a particular business.

1. ~~Grant funds may be allocated to any training provider selected by the business, including a career center, a Florida College System institution, a state university, or an in-house training provider of the business.~~ If grant funds are used to provide a technical certificate, a licensure, or a degree, funds may be allocated only upon a review that includes, but is not limited to, documentation of accreditation and licensure. Instruction funded through the program terminates when participants demonstrate competence at the level specified in

the request but may not exceed 12 ~~48~~ months. Preference shall be given to target industry businesses, as defined in s. 288.106, and to businesses in the defense supply, cloud virtualization, or commercial aviation manufacturing industries.

2. ~~Costs and expenditures for the grant program must be documented and separated from those incurred by the training provider.~~ Costs and expenditures shall be limited to $8,000 per veteran trainee. Qualified businesses must cover the entire cost for all of the training provided before receiving reimbursement from the corporation equal to 50 percent of the cost to train a veteran who is a permanent, full-time employee. Eligible costs and expenditures include:

a. Tuition and fees.

~~b. Curriculum development.~~

b.~~c.~~ Books and classroom materials.

c.~~d.~~ Rental fees for facilities ~~at public colleges and universities, including virtual training labs~~.

~~e. Overhead or indirect costs not to exceed 5 percent of the grant amount.~~

3. Before funds are allocated for a request pursuant to this section, the corporation shall prepare a grant agreement between the business requesting funds~~, the educational institution or training provider receiving funding through the program,~~ and the corporation. Such agreement must include, but need not be limited to:

a. Identification of the personnel necessary to conduct the instructional program, instructional program description, and any vendors used to conduct the instructional program ~~the qualifications of such personnel, and the respective~~

~~responsibilities of the parties for paying costs associated with the employment of such personnel~~.

~~b. Identification of the match provided by the business, including cash and in-kind contributions, equal to at least 50 percent of the total grant amount.~~

b.~~c.~~ Identification of the estimated duration of the instructional program.

c.~~d.~~ Identification of all direct, training-related costs.

d.~~e.~~ Identification of special program requirements that are not otherwise addressed in the agreement.

e.~~f.~~ Permission to access aggregate information specific to the wages and performance of participants upon the completion of instruction for evaluation purposes. The agreement must specify that any evaluation published subsequent to the instruction may not identify the employer or any individual participant.

4. A business may receive a grant under the Quick-Response Training Program created under s. 288.047 and a grant under this section for the same veteran trainee. If a business receives funds under both programs, one grant agreement may be entered into with CareerSource Florida, Inc., as the grant administrator.

(e) Contract with one or more entities to administer an entrepreneur initiative program for veterans in this state which connects business leaders in the state with veterans seeking to become entrepreneurs.

1. The corporation shall award each contract in accordance with the competitive bidding requirements in s. 287.057 to one or more public or private entities ~~universities~~ that:

a. Demonstrate the ability to implement the program and the

commitment of ~~university~~ resources, including financial resources, to such programs.

b. Have a demonstrated experience working with ~~military and~~ veteran entrepreneurs ~~resource center~~.

~~c. Have a regional small business development center in the Florida Small Business Development Center Network.~~

c.~~d.~~ As determined by the corporation, have been ~~nationally~~ recognized for their performance in assisting entrepreneurs to launch successful businesses in the state ~~commitment to the military and veterans~~.

2. Each contract must include performance metrics, including a focus on employment and business creation. ~~Each university must coordinate with any entrepreneurship center located at the university.~~ The entity ~~university~~ may also work with a university or college ~~an entity~~ offering related programs to refer veterans or to provide services. The entrepreneur initiative program may include activities and assistance such as peer-to-peer learning sessions, mentoring, technical assistance, business roundtables, networking opportunities, support of student organizations, speaker series, or other tools within a virtual environment.

Section 4. Subsections (7) through (12) of section 446.041, Florida Statutes, are renumbered as subsections (8) through (13), respectively, and a new subsection (7) is added to that section, to read:

446.041 Apprenticeship program, duties of the department.—The department shall:

(7) Lead and coordinate outreach efforts to educate veterans about apprenticeship and career opportunities.

Section 5. Subsection (4) is added to section 446.081, Florida Statutes, to read:

446.081 Limitation.—

(4) Nothing in ss. 446.011-446.092 or in any rules adopted or contained in any approved apprentice agreement under such sections invalidates any special provision for veterans, minority persons, or women in the standards, qualifications, or operation of the apprenticeship program which is not otherwise prohibited by any applicable general law, rule, or regulation.

Section 6. Subsections (1) and (2) of section 455.02, Florida Statutes, are amended to read:

455.02 Licensure of members of the Armed Forces in good standing and their spouses or surviving spouses with administrative boards or programs.—

(1) Any member of the United States Armed Forces ~~of the United States~~ now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any of the boards or programs listed in s. 20.165 and was entitled to practice or engage in his or her profession or occupation ~~vocation~~ in the state shall be kept in good standing by the applicable board or program, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the United States Armed Forces ~~of the United States~~ on active duty and for a period of 2 years after discharge from active duty ~~as a member of the Armed Forces of the United States, if he or she is not engaged in his or her licensed profession or vocation in the private sector for profit~~. A member, during active duty and for a period of 2 years after discharge from active duty, engaged in

his or her licensed profession or occupation in the private sector for profit in this state must complete all license renewal provisions except remitting the license renewal fee, which shall be waived by the department.

(2) A spouse of a member of the ~~Armed Services of the~~ United States Armed Forces who is married to a member during a period of active duty, or a surviving spouse of a member who at the time of death was serving on active duty, who is in good standing with any of the boards or programs listed in s. 20.165 shall be kept in good standing by the applicable board or program as described in subsection (1) and shall be exempt from licensure renewal provisions, but only in cases of his or her absence from the state because of his or her spouse's duties with the United States Armed Forces. The department or the appropriate board or program shall waive any license renewal fee for such spouse when he or she is present in this state because of such member's active duty and for a surviving spouse of a member who at the time of death was serving on active duty and died within the 2 years preceding the date of renewal.

Section 7. Paragraphs (a) and (b) of subsection (3) and paragraph (j) of subsection (4) of section 456.024, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

456.024 Members of Armed Forces in good standing with administrative boards or the department; spouses; licensure.—

(3)(a) A person is eligible for licensure as a health care practitioner in this state if he or she:

1. Serves or has served as a health care practitioner in the United States Armed Forces, the United States Reserve

Forces, or the National Guard;

2. Serves or has served on active duty with the United States Armed Forces as a health care practitioner in the United States Public Health Service; or

3. Is a health care practitioner~~, other than a dentist,~~ in another state, the District of Columbia, or a possession or territory of the United States and is the spouse of a person serving on active duty with the United States Armed Forces.

The department shall develop an application form, and each board, or the department if there is no board, shall waive the application fee, licensure fee, and unlicensed activity fee for such applicants. For purposes of this subsection, "health care practitioner" means a health care practitioner as defined in s. 456.001 and a person licensed under part III of chapter 401 or part IV of chapter 468.

(b) The board, or the department if there is no board, shall issue a license to practice in this state to a person who:

1. Submits a complete application.

2. If he or she is a member of the United States Armed Forces, the United States Reserve Forces, or the National Guard, submits proof that he or she has received an honorable discharge within 6 months before, or will receive an honorable discharge within 6 months after, the date of submission of the application.

3.a. Holds an active, unencumbered license issued by another state, the District of Columbia, or a possession or territory of the United States and who has not had disciplinary action taken against him or her in the 5 years preceding the

date of submission of the application;

b. Is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required to practice in the United States Armed Forces, if he or she submits to the department evidence of military training or experience substantially equivalent to the requirements for licensure in this state in that profession and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state; or

c. Is the spouse of a person serving on active duty in the United States Armed Forces and is a health care practitioner in a profession~~, excluding dentistry,~~ for which licensure in another state or jurisdiction is not required, if he or she submits to the department evidence of training or experience substantially equivalent to the requirements for licensure in this state in that profession and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state.

4. Attests that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.

5. Actively practiced the profession for which he or she is applying for the 3 years preceding the date of submission of the application.

6. Submits a set of fingerprints for a background screening

pursuant to s. 456.0135, if required for the profession for which he or she is applying.

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank.

(4)

~~(j) An applicant who is issued a temporary professional license to practice as a dentist pursuant to this section must practice under the indirect supervision, as defined in s. 466.003, of a dentist licensed pursuant to chapter 466.~~

(5) The spouse of a person serving on active duty with the United States Armed Forces shall have a defense to any citation and related cause of action brought under s. 456.065 if the following conditions are met:

(a) The spouse holds an active, unencumbered license issued by another state or jurisdiction to provide health care services for which there is no equivalent license in this state.

(b) The spouse is providing health care services within the scope of practice of the out-of-state license.

(c) The training or experience required by the out-of-state license is substantially similar to the license requirements to practice a similar health care profession in this state.

Section 8. Paragraph (b) of subsection (3) of section 472.015, Florida Statutes, is amended to read:

472.015 Licensure.—

(3)

(b) The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed

Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty or the spouse of such a member, the surviving spouse of a member of the United States Armed Forces who died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application~~,~~ in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if

applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 9. Section 472.016, Florida Statutes, is amended to read:

472.016 Members of Armed Forces in good standing with the board.—

(1) Any member of the United States Armed Forces ~~of the United States~~ who is now or in the future on active duty and who, at the time of becoming such a member of the United States Armed Forces, was in good standing with the board and entitled to practice or engage in surveying and mapping in the state shall be kept in good standing by the board, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the United States Armed Forces ~~of the United States~~ on active duty and for a period of 2 years ~~6 months~~ after discharge from active duty~~, provided that he or she is not engaged in the practice of surveying or mapping in the private sector for profit~~. A member, during active duty and for a period of 2 years after discharge from active duty, engaged in the practice of surveying or mapping in the private sector for profit in this state must complete all licensure renewal provisions except remitting the license renewal fee, which shall be waived by the department.

(2) The board shall adopt rules exempting the spouses of members of the United States Armed Forces ~~of the United States~~ from licensure renewal provisions, but only in cases of absence from the state because of their spouses' duties with the United

States Armed Forces. The department or the appropriate board or program shall waive any license renewal fee for the spouse of a member of the United States Armed Forces when such member is present in this state because of the member's active duty with the United States Armed Forces, and for the surviving spouse of a member who at the time of death was serving on active duty and died within the 2 years preceding the date of renewal.

Section 10. Subsection (1) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(1) Each individual, partner, or principal officer in a corporation, shall file with the department a complete application accompanied by an application fee not to exceed $60, except that an ~~the~~ applicant for a Class "D" or Class "G" license is not required to submit an application fee. An application fee is not required for an applicant who qualifies for the fee waiver in s. 493.6107(6). The application fee is not refundable.

(a) The application submitted by any individual, partner, or corporate officer must be approved by the department before the individual, partner, or corporate officer assumes his or her duties.

(b) Individuals who invest in the ownership of a licensed agency but do not participate in, direct, or control the operations of the agency are not required to file an application.

~~(c) The initial application fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class "C," Class "CC," Class "DI," Class "E," Class "EE," Class "K,"~~

~~Class "M," Class "MA," Class "MB," Class "MR," or Class "RI" license within 24 months after being discharged from a branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs with his or her application in order to obtain a waiver.~~

Section 11. Subsection (6) of section 493.6107, Florida Statutes, is amended to read:

493.6107 Fees.—

(6) The initial application ~~license~~ fee for a veteran, as defined in s. 1.01, the spouse or surviving spouse of such veteran, a member of the United States Armed Forces who has served on active duty, or the spouse or surviving spouse of such member who at the time of death was serving on active duty and died within the 2 years preceding the initial application, shall be waived if he or she applies for a Class "C," Class "CC," Class "DI," Class "E," Class "EE," Class "K," Class "M," Class "MA," Class "MB," Class "MR," or Class "RI" license in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation ~~Class "M" or Class "K" license within 24 months after being discharged from any branch of the United States Armed Forces~~. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs with his or her application in order to obtain a waiver. A licensee seeking such waiver must apply in a format prescribed

by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 12. Subsection (7) is added to section 493.6113, Florida Statutes, to read:

493.6113 Renewal application for licensure.—

(7) The department shall waive the respective fees for a licensee who:

(a) Is an active duty member of the United States Armed Forces or the spouse of such member;

(b) Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the license. A licensee who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the application must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

(c) Is the surviving spouse of a member of the United States Armed Forces who was serving on active duty at the time of death and died within the 2 years preceding the expiration date of the license.

A licensee seeking such waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 13. Subsection (8) is added to section 494.00312, Florida Statutes, to read:

494.00312 Loan originator license.—

(8) The office shall waive the fees required by paragraph (2)(e) for an applicant who:

(a) Is or was an active duty member of the United States Armed Forces. To qualify for the fee waiver, an applicant who is a former member of the United States Armed Forces must have received an honorable discharge upon separation or discharge from the United States Armed Forces;

(b) Is married to a current or former member of the United States Armed Forces and is or was married to the member during any period of active duty; or

(c) Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death.

An applicant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the applicant meets one of the qualifications in this subsection.

Section 14. Subsection (4) is added to section 494.00313, Florida Statutes, to read:

494.00313 Loan originator license renewal.—

(4) The office shall waive the fees required by paragraph (1)(b) for a loan originator who:

(a) Is an active duty member of the United States Armed Forces or the spouse of such member;

(b) Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the license pursuant to s. 494.00312(7). To qualify for the fee waiver, a loan originator who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the license must have received an honorable discharge upon

separation or discharge from the United States Armed Forces; or

(c) Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's license expiration date pursuant to s. 494.00312(7).

A loan originator seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the loan originator meets one of the qualifications in this subsection.

Section 15. Paragraph (a) of subsection (6) of section 497.140, Florida Statutes, is amended to read:

497.140 Fees.—

(6)(a)1. The department shall impose, upon initial licensure and each renewal thereof, a special unlicensed activity fee of $5 per licensee, in addition to all other fees provided for in this chapter. Such fee shall be used by the department to fund efforts to identify and combat unlicensed activity which violates this chapter. Such fee shall be in addition to all other fees collected from each licensee and shall be deposited in a separate account of the Regulatory Trust Fund; however, the department is not limited to the funds in such an account for combating improper unlicensed activity in violation of this chapter.

2. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within 2 years preceding the application for licensure are exempt from the special unlicensed activity fee associated with initial licensure. To qualify for

the fee exemption under this subparagraph, a licensee must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 16. Subsection (4) of section 497.141, Florida Statutes, is amended to read:

497.141 Licensing; general application procedures.—

(4) Before the issuance of any license, the department shall collect such initial fee as specified by this chapter or, where authorized, by rule of the board, unless an applicant is exempted as specified by this chapter. Upon receipt of a completed application and the appropriate fee, and certification by the board that the applicant meets the applicable requirements of law and rules, the department shall issue the license applied for. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination.

Section 17. Subsection (1) of section 497.281, Florida Statutes, is amended to read:

497.281 Licensure of brokers of burial rights.—

(1)(a) No person shall receive compensation to act as a third party to the sale or transfer of three or more burial rights in a 12-month period unless the person pays a license fee as determined by licensing authority rule but not to exceed $250 and is licensed with the department as a burial rights broker in accordance with this section.

(b) A member of the United States Armed Forces, such

member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial license fee. To qualify for the initial license fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 18. Paragraph (a) of subsection (1) and subsection (3) of section 497.368, Florida Statutes, are amended to read:

497.368 Embalmers; licensure as an embalmer by examination; provisional license.—

(1) Any person desiring to be licensed as an embalmer shall apply to the licensing authority to take the licensure examination. The licensing authority shall examine each applicant who has remitted an examination fee set by rule of the licensing authority not to exceed $200 plus the actual per applicant cost to the licensing authority for portions of the examination and who has:

(a) Completed the application form and remitted a nonrefundable application fee set by the licensing authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure, are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military

personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(3) Any applicant who has completed the required 1-year internship and has been approved for examination as an embalmer may qualify for a provisional license to work in a licensed funeral establishment, under the direct supervision of a licensed embalmer for a limited period of 6 months as provided by rule of the licensing authority. The fee for provisional licensure shall be set by rule of the licensing authority, but may not exceed $200, and shall be nonrefundable and in addition to the fee required in subsection (1). This provisional license may be renewed no more than one time. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial provisional licensure fee. To qualify for the initial provisional licensure fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 19. Paragraph (a) of subsection (1) and subsection (5) of section 497.369, Florida Statutes, are amended to read:

497.369 Embalmers; licensure as an embalmer by endorsement; licensure of a temporary embalmer.—

(1) The licensing authority shall issue a license by endorsement to practice embalming to an applicant who has

remitted an examination fee set by rule of the licensing authority not to exceed $200 and who the licensing authority certifies:

(a) Has completed the application form and remitted a nonrefundable application fee set by rule of the licensing authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(5)(a) There may be adopted by the licensing authority rules authorizing an applicant who has met the requirements of paragraphs (1)(b) and (c) and who is awaiting an opportunity to take the examination required by subsection (4) to be licensed as a temporary licensed embalmer. A temporary licensed embalmer may work as an embalmer in a licensed funeral establishment under the general supervision of a licensed embalmer. Such temporary license shall expire 60 days after the date of the next available examination required under subsection (4); however, the temporary license may be renewed one time under the same conditions as initial issuance. The fee for issuance or renewal of an embalmer temporary license shall be set by rule of the licensing authority but may not exceed $200. The fee

required in this subsection shall be nonrefundable and in addition to the fee required in subsection (1).

(b) A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial issuance fee. To qualify for the initial issuance fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 20. Subsection (1) of section 497.370, Florida Statutes, is amended to read:

497.370 Embalmers; licensure of an embalmer intern.—

(1)(a) Any person desiring to become an embalmer intern shall make application to the licensing authority on forms specified by rule, together with a nonrefundable fee determined by rule of the licensing authority but not to exceed $200.

(b) A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption under this paragraph, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was

honorably discharged.

(c) The application shall indicate the name and address of the licensed embalmer under whose supervision the intern will receive training and the name of the licensed funeral establishment or centralized embalming facility where such training is to be conducted. The embalmer intern shall intern under the direct supervision of a licensed embalmer who has an active, valid license under s. 497.368 or s. 497.369.

Section 21. Section 497.371, Florida Statutes, is amended to read:

497.371 Embalmers; establishment of embalmer apprentice program.—

(1) The licensing authority adopts rules establishing an embalmer apprentice program. An embalmer apprentice may perform only those tasks, functions, and duties relating to embalming which are performed under the direct supervision of an embalmer who has an active, valid license under s. 497.368 or s. 497.369. An embalmer apprentice is eligible to serve in an apprentice capacity for a period not to exceed 3 years as may be determined by licensing authority rule or for a period not to exceed 5 years if the apprentice is enrolled in and attending a course in mortuary science or funeral service education at any mortuary college or funeral service education college or school. An embalmer apprentice shall be issued a license upon payment of a licensure fee as determined by licensing authority rule but not to exceed $200.

(2) A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding

application for licensure are exempt from the licensure fee. To qualify for the licensure fee exemption under this subsection, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(3) An applicant for the embalmer apprentice program may not be issued a license unless the licensing authority determines that the applicant is of good character and has not demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

Section 22. Paragraph (a) of subsection (1) and subsection (3) of section 497.373, Florida Statutes, are amended to read:

497.373 Funeral directing; licensure as a funeral director by examination; provisional license.—

(1) Any person desiring to be licensed as a funeral director shall apply to the licensing authority to take the licensure examination. The licensing authority shall examine each applicant who has remitted an examination fee set by rule of the licensing authority not to exceed $200 plus the actual per applicant cost to the licensing authority for portions of the examination and who the licensing authority certifies has:

(a) Completed the application form and remitted a nonrefundable application fee set by rule of the licensing authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2

years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(3) Any applicant who has completed the required 1-year internship and has been approved for examination as a funeral director may qualify for a provisional license to work in a licensed funeral establishment, under the direct supervision of a licensed funeral director for 6 months as provided by rule of the licensing authority. However, a provisional licensee may work under the general supervision of a licensed funeral director upon passage of the laws and rules examination required under paragraph (2)(b). The fee for provisional licensure shall be set by rule of the licensing authority but may not exceed $200. The fee required in this subsection shall be nonrefundable and in addition to the fee required by subsection (1). This provisional license may be renewed no more than one time. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial provisional licensure fee. To qualify for the initial provisional licensure fee exemption, a licensee must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge

paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 23. Paragraph (a) of subsection (1) and subsection (5) of section 497.374, Florida Statutes, are amended to read:

497.374 Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.—

(1) The licensing authority shall issue a license by endorsement to practice funeral directing to an applicant who has remitted a fee set by rule of the licensing authority not to exceed $200 and who:

(a) Has completed the application form and remitted a nonrefundable application fee set by rule of the licensing authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the nonrefundable application fee. To qualify for the exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(5) There may be adopted rules authorizing an applicant who has met the requirements of paragraphs (1)(b) and (c) and who is awaiting an opportunity to take the examination required by subsection (4) to obtain a license as a temporary funeral director. A licensed temporary funeral director may work as a funeral director in a licensed funeral establishment under the

general supervision of a funeral director licensed under subsection (1) or s. 497.373. Such license shall expire 60 days after the date of the next available examination required under subsection (4); however, the temporary license may be renewed one time under the same conditions as initial issuance. The fee for initial issuance or renewal of a temporary license under this subsection shall be set by rule of the licensing authority but may not exceed $200. The fee required in this subsection shall be nonrefundable and in addition to the fee required in subsection (1). A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial issuance fee. To qualify for the initial issuance fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 24. Paragraph (a) of subsection (1) of section 497.375, Florida Statutes, is amended to read:

497.375 Funeral directing; licensure of a funeral director intern.—

(1)(a) Any person desiring to become a funeral director intern must apply to the licensing authority on forms prescribed by rule of the licensing authority, together with a nonrefundable fee set by rule of the licensing authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces

who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 25. Section 497.393, Florida Statutes, is created to read:

497.393 Licensure; military-issued credentials for licensure.—The licensing authority shall recognize military-issued credentials relating to funeral and cemetery services for purposes of licensure as a funeral director or embalmer. A member of the United States Armed Forces and a veteran of the United States Armed Forces seeking licensure as a funeral director or embalmer under this section shall submit to the licensing authority a certification that the military-issued credential reflects knowledge, training, and experience substantially similar to the requirements of this chapter for licensure as a funeral director or embalmer. The licensing authority shall adopt rules specifying forms and procedures to be used by persons seeking licensure under this section. The licensing authority may conduct an investigation and further inquiry of any person regarding any military-issued credential sought to be recognized.

Section 26. Paragraph (n) of subsection (1) of section 497.453, Florida Statutes, is amended to read:

497.453 Application for preneed license, procedures and

criteria; renewal; reports.—

(1) PRENEED LICENSE APPLICATION PROCEDURES.—

(n) The application shall be accompanied by a nonrefundable fee as determined by licensing authority rule but not to exceed $500. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee when applying as an individual. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 27. Paragraph (h) of subsection (2) of section 497.466, Florida Statutes, is amended to read:

497.466 Preneed sales agents, license required; application procedures and criteria; appointment of agents; responsibility of preneed licensee.—

(2) PRENEED SALES AGENT LICENSE; APPLICATION PROCEDURES.—

(h) The application shall be accompanied by a nonrefundable fee of $150 if made through the department's online licensing system or $175 if made using paper forms. Payment of either fee shall entitle the applicant to one initial appointment without payment of further fees by the preneed sales agent or the appointing preneed licensee if a preneed sales agent license is issued. The licensing authority may from time to time increase such fees but not to exceed $300. A member of the United States

Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 28. Paragraph (e) of subsection (2) of section 497.554, Florida Statutes, is amended to read:

497.554 Monument establishment sales representatives.—

(2) APPLICATION PROCEDURES.—Licensure as a monument establishment sales agent shall be by submission of an application for licensure to the department on a form prescribed by rule.

(e) The monument establishment sales agent application shall be accompanied by a fee of $50. The licensing authority may from time to time increase the application fee by rule but not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good

standing or such veteran was honorably discharged.

Section 29. Paragraph (i) of subsection (2) and subsection (4) of section 497.602, Florida Statutes, are amended to read:

497.602 Direct disposers, license required; licensing procedures and criteria; regulation.—

(2) APPLICATION PROCEDURES.—

(i) The application shall be accompanied by a nonrefundable fee of $300. The licensing authority may from time to time increase the fee by rule but not to exceed more than $500. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(4) ISSUANCE OF LICENSE.—Upon approval of the application by the licensing authority, the license shall be issued. The licensing authority shall recognize military-issued credentials relating to funeral and cemetery services for purposes of licensure as a direct disposer. A member of the United States Armed Forces and a veteran of the United States Armed Forces seeking licensure as a direct disposer under this section shall submit to the licensing authority a certification that the military-issued credential reflects knowledge, training, and experience substantially similar to the requirements of this

chapter for licensure as a direct disposer. The licensing authority shall adopt rules specifying forms and procedures to be used by members and veterans of the United States Armed Forces seeking licensure under this section. The licensing authority may conduct investigation and further inquiry of any person regarding any military-issued credential sought to be recognized.

Section 30. Subsection (2) of section 501.015, Florida Statutes, is amended to read:

501.015 Health studios; registration requirements and fees.—Each health studio shall:

(2) Remit an annual registration fee of $300 to the department at the time of registration for each of the health studio's business locations.

(a) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his

or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(b) The department shall waive the registration renewal fee for a registrant who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon

separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the date of renewal.

A registrant seeking such waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 31. Paragraph (b) of subsection (5) of section 501.605, Florida Statutes, is amended to read:

501.605 Licensure of commercial telephone sellers and entities providing substance abuse marketing services.—

(5) An application filed pursuant to this part must be verified and accompanied by:

(b) A fee for licensing in the amount of $1,500. The fee shall be deposited into the General Inspection Trust Fund. The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if such member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting

documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 32. Paragraph (b) of subsection (2) of section 501.607, Florida Statutes, is amended to read:

501.607 Licensure of salespersons.—

(2) An application filed pursuant to this section must be verified and be accompanied by:

(b) A fee for licensing in the amount of $50 per

salesperson. The fee shall be deposited into the General Inspection Trust Fund. The fee for licensing may be paid after the application is filed, but must be paid within 14 days after the applicant begins work as a salesperson. The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 33. Subsection (5) is added to section 501.609, Florida Statutes, to read:

501.609 License renewal.—

(5) The department shall waive the annual fee to renew for a licensee who:

(a) Is an active duty member of the United States Armed Forces or the spouse of such member;

(b) Is or was a member of the United States Armed Forces, and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver, a licensee who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

(c) Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A licensee seeking such waiver must apply in a format prescribed

by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 34. Paragraph (b) of subsection (3) of section 507.03, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

507.03 Registration.—

(3)

(b) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department

of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(c) The department shall waive the biennial fee to renew for a registrant who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date. To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A registrant seeking such waiver must apply in a format

prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 35. Subsections (10) and (11) of section 517.12, Florida Statutes, are amended to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(10)(a) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprints to be processed by the office. Such fee shall be determined by rule of the commission. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(b) The office shall waive the $50 assessment fee for an associated person required by paragraph (a) for an applicant who:

1. Is or was an active duty member of the United States Armed Forces. To qualify for the fee waiver, an applicant who is a former member of the United States Armed Forces must have received an honorable discharge upon separation or discharge from the United States Armed Forces;

2. Is married to a current or former member of the United States Armed Forces and is or was married to the member during any period of active duty; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death.

An applicant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the applicant meets one of the qualifications in this paragraph.

(11)(a) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in paragraph (10)(a) ~~subsection (10)~~ for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in paragraph (10)(a) ~~subsection (10)~~ for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of

registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(b) The office shall waive the $50 assessment fee for an associated person required by paragraph (10)(a) for a registrant renewing his or her registration who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the registration pursuant to paragraph (a). To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's registration expiration date pursuant to paragraph (a).

A registrant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the registrant meets one of the qualifications in this paragraph.

Section 36. Paragraph (b) of subsection (3) of section 527.02, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

527.02 License; penalty; fees.—

(3)

(b) The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department

of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(c) The department shall waive license renewal fees for a licensee who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a licensee who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the annual renewal date must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if such member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's renewal.

A licensee seeking such waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 37. Paragraph (c) of subsection (3) of section 539.001, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

539.001 The Florida Pawnbroking Act.—

(3) LICENSE REQUIRED.—

(c) Each license is valid for a period of 1 year unless it is earlier relinquished, suspended, or revoked. Each license shall be renewed annually, and each licensee shall, initially and annually thereafter, pay to the agency a license fee of $300 for each license held. The agency shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the agency receives an application, in a format prescribed by the agency. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the agency a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the agency a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the

veteran at the time of discharge; or

3. A business entity must provide to the agency proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(g) The agency shall waive license renewal fee for a licensee who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces, and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a licensee who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the annual renewal date must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A licensee seeking such waiver must apply in a format prescribed by the agency, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 38. Paragraph (b) of subsection (3) of section 559.904, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

559.904 Motor vehicle repair shop registration; application; exemption.—

(3)

(b) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or

certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(c) The department shall waive registration renewal fees for a registrant who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the biennial renewal date must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A registrant seeking such waiver must apply in a format prescribed by the department, including the applicant's

signature, under penalty of perjury, and supporting documentation.

Section 39. Paragraph (c) of subsection (2) of section 559.928, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

559.928 Registration.—

(2)

(c) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department

of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(d) The department shall waive the registration renewal fee for a registrant who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the annual registration renewal date must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A registrant seeking such waiver must apply in a format

prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 40. Subsection (6) of section 626.171, Florida Statutes, is amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.—

(6) Members of the United States Armed Forces and their spouses, and veterans of the United States Armed Forces who have separated from service ~~retired~~ within 24 months before application for licensure, are exempt from the application filing fee prescribed in s. 624.501. Qualified individuals must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper~~, or separation document,~~ or ~~a~~ separation document that indicates such members ~~of the United States Armed Forces~~ are currently in good standing or such veterans were honorably discharged.

Section 41. Subsection (6) of section 626.732, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

626.732 Requirement as to knowledge, experience, or instruction.—

(6) Prelicensure coursework is not required for an applicant who is a member or veteran of the United States Armed Forces or the spouse of such a member or veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service

record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 42. Section 626.7851, Florida Statutes, is amended to read:

626.7851 Requirement as to knowledge, experience, or instruction.—An applicant for a license as a life agent, except for a chartered life underwriter (CLU), shall not be qualified or licensed unless within the 4 years immediately preceding the date the application for a license is filed with the department he or she has:

(1) Successfully completed 40 hours of coursework in life insurance, annuities, and variable contracts approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(2) Successfully completed a minimum of 60 hours of coursework in multiple areas of insurance, which included life insurance, annuities, and variable contracts, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(3) Earned or maintained an active designation as Chartered Financial Consultant (ChFC) from the American College of Financial Services; or Fellow, Life Management Institute (FLMI) from the Life Management Institute;

(4) Held an active license in life insurance in another state. This provision may not be used unless the other state

grants reciprocal treatment to licensees formerly licensed in the state; or

(5) Been employed by the department or office for at least 1 year, full time in life insurance regulatory matters and who was not terminated for cause, and application for examination is made within 4 years after the date of termination of his or her employment with the department or office.

Prelicensure coursework is not required for an applicant who is a member or veteran of the United States Armed Forces or the spouse of such a member or veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 43. Section 626.8311, Florida Statutes, is amended to read:

626.8311 Requirement as to knowledge, experience, or instruction.—An applicant for a license as a health agent, except for a chartered life underwriter (CLU), shall not be qualified or licensed unless within the 4 years immediately preceding the date the application for license is filed with the department he or she has:

(1) Successfully completed 40 hours of coursework in health insurance, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida

Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of health insurance by employers to their employees and the regulation thereof;

(2) Successfully completed a minimum of 60 hours of coursework in multiple areas of insurance, which included health insurance, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(3) Earned or maintained an active designation as a Registered Health Underwriter (RHU), Chartered Healthcare Consultant (ChHC), or Registered Employee Benefits Consultant (REBC) from the American College of Financial Services; Certified Employee Benefit Specialist (CEBS) from the Wharton School of the University of Pennsylvania; or Health Insurance Associate (HIA) from America's Health Insurance Plans;

(4) Held an active license in health insurance in another state. This provision may not be utilized unless the other state grants reciprocal treatment to licensees formerly licensed in Florida; or

(5) Been employed by the department or office for at least 1 year, full time in health insurance regulatory matters and who was not terminated for cause, and application for examination is made within 4 years after the date of termination of his or her employment with the department or office.

Prelicensure coursework is not required for an applicant who is a member or veteran of the United States Armed Forces or the

spouse of such a member or veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 44. Subsection (7) is added to section 626.8417, Florida Statutes, to read:

626.8417 Title insurance agent licensure; exemptions.—

(7) Prelicensure coursework is not required for an applicant who is a member or veteran of the United States Armed Forces or the spouse of such a member or veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 45. Subsection (7) is added to section 626.927, Florida Statutes, to read:

626.927 Licensing of surplus lines agent.—

(7) Prelicensure coursework is not required for an applicant who is a member or veteran of the United States Armed Forces or the spouse of such a member or veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably

discharged.

Section 46. Section 633.414, Florida Statutes, is amended to read:

633.414 Retention of firefighter and volunteer firefighter certifications.—

(1) In order for a firefighter to retain her or his Firefighter Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(a) Be active as a firefighter.

(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.

(c) Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule.

(d) Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

(2) In order for a volunteer firefighter to retain her or his Volunteer Firefighter Certificate of Completion, every 4 years he or she must:

(a) Be active as a volunteer firefighter; or

(b) Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule.

(3) Subsection (1) does not apply to state-certified

firefighters who are certified and employed full-time, as determined by the fire service provider, as firesafety inspectors or fire investigators, regardless of their employment status as firefighters or volunteer firefighters.

(4) For the purposes of this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter for a cumulative period of 6 months within a 4-year period.

(5) The 4-year period begins upon issuance of the certificate or separation from employment.

(6) A certificate for a firefighter or volunteer firefighter expires if he or she fails to meet the requirements of this section.

(7) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firefighter or volunteer firefighter if the State Fire Marshal finds that any of the following grounds exists:

(a) Any cause for which issuance of a certificate could have been denied if it had then existed and had been known to the division.

(b) A violation of any provision of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of a record relating to any certificate issued by the division.

(8) The 4-year period may, in the discretion of the department, be extended to 12 months after discharge from military service for an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran. A qualified individual must provide a copy of a military

identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 47. Subsection (3) is added to section 633.444, Florida Statutes, to read:

633.444 Division powers and duties; Florida State Fire College.—

(3) The division shall waive all living and incidental expenses, excluding expenses for meal plans and bunker gear rentals, associated with attending the Florida State Fire College to obtain a Certificate of Compliance or a Firesafety Inspector I certification for an active duty member of the United States Armed Forces, the surviving spouse of such a member who was serving on active duty at the time of his or her death and who died within the 2 years preceding his or her spouse's attendance at the college, an honorably discharged veteran of the United States Armed Forces, or the spouse or surviving spouse of such a veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 48. Section 683.147, Florida Statutes, is created to read:

683.147 Medal of Honor Day.—

(1) March 25 of each year is designated as "Medal of Honor

Day."

(2) The Governor may annually issue a proclamation designating March 25 as Medal of Honor Day and calling upon public officials, schools, private organizations, and all residents of the state to commemorate Medal of Honor Day and honor recipients of the Congressional Medal of Honor who distinguished themselves through their conspicuous bravery and gallantry during wartime, and at considerable risk to their own lives, while serving as members of the United States Armed Forces.

Section 49. Paragraph (b) of subsection (1) of section 1002.37, Florida Statutes, is amended to read:

1002.37 The Florida Virtual School.—

(1)

(b) The mission of the Florida Virtual School is to provide students with technology-based educational opportunities to gain the knowledge and skills necessary to succeed. The school shall serve any student in the state who meets the profile for success in this educational delivery context and shall give priority to:

1. Students who need expanded access to courses in order to meet their educational goals, such as home education students and students in inner-city and rural high schools who do not have access to higher-level courses.

2. Students seeking accelerated access in order to obtain a high school diploma at least one semester early.

3. Students who are children of an active duty member of the United States Armed Forces who is not stationed in this state whose home of record or state of legal residence is Florida.

The board of trustees of the Florida Virtual School shall identify appropriate performance measures and standards based on student achievement that reflect the school's statutory mission and priorities, and shall implement an accountability system for the school that includes assessment of its effectiveness and efficiency in providing quality services that encourage high student achievement, seamless articulation, and maximum access.

Section 50. Subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historical accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

(a) The history and content of the Declaration of Independence, including national sovereignty, natural law, self-evident truth, equality of all persons, limited government, popular sovereignty, and inalienable rights of life, liberty, and property, and how they form the philosophical foundation of our government.

(b) The history, meaning, significance, and effect of the provisions of the Constitution of the United States and amendments thereto, with emphasis on each of the 10 amendments that make up the Bill of Rights and how the constitution provides the structure of our government.

(c) The arguments in support of adopting our republican form of government, as they are embodied in the most important of the Federalist Papers.

(d) Flag education, including proper flag display and flag salute.

(e) The elements of civil government, including the primary functions of and interrelationships between the Federal Government, the state, and its counties, municipalities, school districts, and special districts.

(f) The history of the United States, including the period of discovery, early colonies, the War for Independence, the Civil War, the expansion of the United States to its present boundaries, the world wars, and the civil rights movement to the present. American history shall be viewed as factual, not as constructed, shall be viewed as knowable, teachable, and testable, and shall be defined as the creation of a new nation based largely on the universal principles stated in the Declaration of Independence.

(g) The history of the Holocaust (1933-1945), the systematic, planned annihilation of European Jews and other groups by Nazi Germany, a watershed event in the history of humanity, to be taught in a manner that leads to an investigation of human behavior, an understanding of the ramifications of prejudice, racism, and stereotyping, and an examination of what it means to be a responsible and respectful person, for the purposes of encouraging tolerance of diversity in a pluralistic society and for nurturing and protecting democratic values and institutions.

(h) The history of African Americans, including the history

of African peoples before the political conflicts that led to the development of slavery, the passage to America, the enslavement experience, abolition, and the contributions of African Americans to society. Instructional materials shall include the contributions of African Americans to American society.

(i) The elementary principles of agriculture.

(j) The true effects of all alcoholic and intoxicating liquors and beverages and narcotics upon the human body and mind.

(k) Kindness to animals.

(l) The history of the state.

(m) The conservation of natural resources.

(n) Comprehensive health education that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; nutrition; personal health; prevention and control of disease; and substance use and abuse. The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

(o) Such additional materials, subjects, courses, or fields

in such grades as are prescribed by law or by rules of the State Board of Education and the district school board in fulfilling the requirements of law.

(p) The study of Hispanic contributions to the United States.

(q) The study of women's contributions to the United States.

(r) The nature and importance of free enterprise to the United States economy.

(s) A character-development program in the elementary schools, similar to Character First or Character Counts, which is secular in nature. Beginning in school year 2004-2005, the character-development program shall be required in kindergarten through grade 12. Each district school board shall develop or adopt a curriculum for the character-development program that shall be submitted to the department for approval. The character-development curriculum shall stress the qualities of patriotism; responsibility; citizenship; kindness; respect for authority, life, liberty, and personal property; honesty; charity; self-control; racial, ethnic, and religious tolerance; and cooperation. The character-development curriculum for grades 9 through 12 shall, at a minimum, include instruction on developing leadership skills, interpersonal skills, organization skills, and research skills; creating a resume; developing and practicing the skills necessary for employment interviews; conflict resolution, workplace ethics, and workplace law; managing stress and expectations; and developing skills that enable students to become more resilient and self-motivated.

(t) In order to encourage patriotism, the sacrifices that

veterans and Medal of Honor recipients have made in serving our country and protecting democratic values worldwide. Such instruction must occur on or before Medal of Honor Day, Veterans' Day, and Memorial Day. Members of the instructional staff are encouraged to use the assistance of local veterans and Medal of Honor recipients when practicable.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection. A character development program that incorporates the values of the recipients of the Congressional Medal of Honor and that is offered as part of a social studies, English Language Arts, or other schoolwide character building and veteran awareness initiative meets the requirements of paragraphs (s) and (t).

Section 51. Subsection (4) of section 1012.55, Florida Statutes, is amended, and paragraph (e) is added to subsection (1) of that section, to read:

1012.55 Positions for which certificates required.—

(1)

(e)1. The department shall issue a 3-year temporary certificate in educational leadership under s. 1012.56(7) to an individual who:

a. Earned a passing score on the Florida Educational Leadership Examination.

b. Served as a commissioned or noncommissioned military officer in the United States Armed Forces for at least 3 years.

c. Was honorably discharged or has retired from the United States Armed Forces.

d. Is employed full time in a position for which an

educator certificate is required in a Florida public school, state-supported school, or nonpublic school that has a Level II program under s. 1012.562.

2. A Level II program under s. 1012.562 must accept an applicant who holds a temporary certificate under subparagraph 1. The department shall issue a permanent certification as a school principal to an individual who holds a temporary certificate under subparagraph 1. and successfully completes the Level II program.

(4) A commissioned or noncommissioned military officer who is an instructor of junior reserve officer training shall be exempt from requirements for teacher certification, except for the background screening pursuant to s. 1012.32, if he or she meets the following qualifications:

(a) Is retired from active military duty, pursuant to chapter 102 of Title 10 U.S.C.

(b) Satisfies criteria established by the appropriate military service for certification by the service as a junior reserve officer training instructor.

(c) Has an exemplary military record.

If such instructor is assigned instructional duties other than junior reserve officer training, he or she shall hold the certificate required by law and rules of the state board for the type of service rendered. An instructor of junior reserve officer training under this subsection may receive funding through the Florida Teachers Classroom Supply Assistance Program under s. 1012.71.

Section 52. Subsection (7) of section 1012.56, Florida

Statutes, is amended to read:

1012.56 Educator certification requirements.—

(7) TYPES AND TERMS OF CERTIFICATION.—

(a) The Department of Education shall issue a professional certificate for a period not to exceed 5 years to any applicant who fulfills one of the following:

1. Meets all the requirements outlined in subsection (2).

2. For a professional certificate covering grades 6 through 12:

a. Meets the requirements of paragraphs (2)(a)-(h).

b. Holds a master's or higher degree in the area of science, technology, engineering, or mathematics.

c. Teaches a high school course in the subject of the advanced degree.

d. Is rated highly effective as determined by the teacher's performance evaluation under s. 1012.34, based in part on student performance as measured by a statewide, standardized assessment or an Advanced Placement, Advanced International Certificate of Education, or International Baccalaureate examination.

e. Achieves a passing score on the Florida professional education competency examination required by state board rule.

3. Meets the requirements of paragraphs (2)(a)-(h) and completes a professional preparation and education competence program approved by the department pursuant to paragraph (8)(c). An applicant who completes the program and is rated highly effective as determined by his or her performance evaluation under s. 1012.34 is not required to take or achieve a passing score on the professional education competency examination in

order to be awarded a professional certificate.

(b) The department shall issue a temporary certificate to any applicant who completes the requirements outlined in paragraphs (2)(a)-(f) and completes the subject area content requirements specified in state board rule or demonstrates mastery of subject area knowledge pursuant to subsection (5) and holds an accredited degree or a degree approved by the Department of Education at the level required for the subject area specialization in state board rule.

(c) The department shall issue one nonrenewable 2-year temporary certificate and one nonrenewable 5-year professional certificate to a qualified applicant who holds a bachelor's degree in the area of speech-language impairment to allow for completion of a master's degree program in speech-language impairment.

Each temporary certificate is valid for 3 school fiscal years and is nonrenewable. However, the requirement in paragraph (2)(g) must be met within 1 calendar year of the date of employment under the temporary certificate. Individuals who are employed under contract at the end of the 1 calendar year time period may continue to be employed through the end of the school year in which they have been contracted. A school district shall not employ, or continue the employment of, an individual in a position for which a temporary certificate is required beyond this time period if the individual has not met the requirement of paragraph (2)(g). At least 1 year before an individual's temporary certificate is set to expire, the department shall electronically notify the individual of the date on which his or

her certificate will expire and provide a list of each method by which the qualifications for a professional certificate can be completed. The State Board of Education shall adopt rules to allow the department to extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate, not including the requirement in paragraph (2)(g), were not completed due to the serious illness or injury of the applicant, the military service of an applicant's spouse, or other extraordinary extenuating circumstances. The rules must authorize the department to extend the validity period of a temporary certificate ~~or~~ for 1 year if the ~~temporary~~ certificateholder is rated effective or highly effective based solely on a student learning growth formula approved by the Commissioner of Education pursuant to s. 1012.34(8). The department shall reissue the temporary certificate for 2 additional years upon approval by the Commissioner of Education. A written request for reissuance of the certificate shall be submitted by the district school superintendent, the governing authority of a university lab school, the governing authority of a state-supported school, or the governing authority of a private school.

Section 53. Subsection (3) is added to section 1012.59, Florida Statutes, to read:

1012.59 Certification fees.—

(3) The State Board of Education shall waive initial general knowledge, professional education, and subject area examination fees and certification fees for:

(a) A member of the United States Armed Forces or a reserve component thereof who is serving or has served on active duty or

the spouse of such a member.

(b) The surviving spouse of a member of the United States Armed Forces or a reserve component thereof who was serving on active duty at the time of death.

(c) An honorably discharged veteran of the United States Armed Forces or a veteran of a reserve component thereof who served on active duty and the spouse or surviving spouse of such a veteran.

Section 54. This act shall take effect July 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/SB 1884
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senators Broxson and Passidomo
SUBJECT:	Military and Veterans Affairs
DATE:	February 23, 2018 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1884 eases professional licensing fees and requirements for certain military members, veterans, and their spouses, including:

- For boards of examiners or other qualification boards regulated under general law, permitting a servicemember within 6 months after his or her release from active duty to request that the board accept periods of training and practical experience in the Florida National Guard or the U.S. Armed Forces Reserves in place of the interrupted or delayed periods of training, study, apprenticeship, or practical experience, if the board finds the work or training to be substantially the same as the standard and type required under Florida law.
- For the Department of Health (DOH) professional licensees, granting current DOH fee waivers for dentists and providing an affirmative defense in certain unlicensed activity actions.
- For the Department of Business and Professional Regulation professional licensees, expanding license renewal fee waivers.
- For the Department of Agriculture and Consumer Services professional licensees, expanding current initial licensing fee waivers and creating renewal fee waivers.
- For the Office of Financial Regulation mortgage loan originators licensees and associated persons registrants, creating an initial licensing/registration and renewal fee waiver.
- For the Department of Financial Services professional licensees, expanding initial licensure fee waivers.

- For the Department of Financial Services firefighter certificates, extends renewal periods and provides for waiver of all living and incidental expenses, excluding expenses for meal plans and bunker gear rentals, associated with attending the Florida State Fire College to obtain a Certificate of Compliance or a Firesafety Inspector I certification.
- For the Department of Education (DOE) licensees, creating certain initial fee waivers, granting a temporary certificate in education, and establishing a pathway for veteran officers for certification as school principals.

The bill allows members of the Veterans Florida board of directors to serve two four-year terms and makes changes to Veterans Florida's training grant program and entrepreneurship program.

The bill specifies that laws and rules regulating apprenticeships and approved apprenticeship agreements do not invalidate any special provisions for veterans, minority persons, or women concerning apprenticeship programs, and requires the DOE to lead and coordinate outreach efforts to educate veterans about apprenticeship and career opportunities.

The bill allows Junior Reserve Officer Training instructors to participate in the Florida Teachers Classroom Supply Assistance Program.

The bill gives students who are children of an active duty member who is not stationed in this state, but whose home of record or state of legal residence is Florida, priority for attendance in the Florida Virtual School.

Lastly, the bill designates March 25 every year as "Medal of Honor Day" and allows classroom instruction related to the values of the recipients of the Congressional Medal of Honor to meet certain instructional requirements on character development and the contributions of veterans to our country.

The fiscal impact to state revenues and expenditures is indeterminate because it is unknown how many individuals will take advantage of the provisions of the bill. For the Department of Business and Professional Regulation, the Department of Financial Services (including the State Fire Marshal), and the Department of Education the impacts of the bill are indeterminate. The Department of Health only stated that it would incur costs to update its rules, but those could be absorbed within existing resources. The Department of Agriculture and Consumer Services expects reductions of $206,568 in Fiscal Year 2018-2019, $216,896 in Fiscal Year 2019-2020, and $227,741 in Fiscal Year 2020-2021. The Office of Financial Regulation expects a reduction of $412,030 annually.

The bill takes effect July 1, 2018.

II. Present Situation:

For ease of reference, the Present Situation for each section of the bill is addressed in the Effect of Proposed Changes portion of this bill analysis.

III. Effect of Proposed Changes:

Licensure Interruption for Active Duty Military Personnel

Present Situation:

There is no broad mandate that applies to all professional licenses that requires relevant military experience gained during a period of active duty service in the Florida National Guard or U.S. Armed Forces Reserves that interrupted an applicant's period of training for a professional license to be considered during a licensure determination.

Some individual practice acts, such as the construction contracting practice act, require the licensing entity to consider such experience for licensure requirements.[1]

Effect of Proposed Changes:

Section 1 creates s. 250.483, F.S., to require boards of examiners or other qualification boards regulated under general law to accept periods of training and practical experience in the Florida National Guard or the U.S. Armed Forces Reserves in place of the interrupted or delayed periods of training, study, apprenticeship, or practical experience if the board finds the standard and type of work or training performed in the Florida National Guard or the U.S. Armed Forces Reserves to be substantially the same as the standard and type required under Florida law. To be eligible for the above process, a servicemember must request the application of these provisions within 6 months after his or her release from active duty with the Florida National Guard or the U.S. Armed Forces.

Veterans Florida

Present Situation

Veterans Florida[2] is a non-profit corporation established within the Florida Department of Veterans' Affairs to promote Florida as a veteran-friendly state, encourage retired and recently separated military personnel to keep or make Florida their permanent residence, help equip veterans for employment opportunities, and promote the hiring of veterans.[3]

Veterans Florida is governed by a nine-member board of directors. The Governor, the President of the Senate, and the Speaker of the House of Representatives each appoint three members to the board. In making appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives must consider representation of military-related persons.[4] Each member of the board is appointed for a term of 4 years. Currently, a member is ineligible for reappointment to the board except that a member appointed to a term of 2 years or less may be reappointed for an additional term of 4 years.[5]

[1] Section 489.1131, F.S.
[2] In 2015, the Florida is For Veterans, Inc., Board of Directors approved the fictitious name "Veterans Florida."
[3] Section 295.21, F.S.
[4] Section 295.21(4)(a), F.S.
[5] Section 295.21(4)(c), F.S.

Veterans Florida is responsible for administering the Veterans Employment and Training Services (VETS) program, a program established by the Legislature to help veterans meet their professional goals and receive the training or education necessary to meet those goals.[6] The VETS program consists of two main components – a grant program for businesses to train veterans to meet a business's workforce-skill needs and a veteran-specific entrepreneurship initiative program.

Veterans Training Grant Program

Veterans Florida's training grant program provides funding for specialized training specific to a particular business seeking to hire veterans.[7] Grant funds may be allocated to any training provider selected by the business, including a career center, a Florida College System institution, a state university, or an in-house training provider of the business. If grant funds are used to provide a technical certificate, licensure, or degree, funds may be allocated only upon a review that includes documentation of accreditation and licensure. Instruction funded through the program terminates when participants demonstrate competence at the level specified in the request, but may not exceed 48 months.[8]

Grants are limited to $8,000 per veteran trainee. Eligible costs and expenditures include:[9]

- Tuition and fees;
- Curriculum development;
- Books and classroom materials;
- Rental fees for facilities at public colleges and universities, including virtual training labs; and
- Overhead or indirect costs not to exceed 5 percent of the grant amount.

Before funds are allocated for a grant, Veterans Florida must prepare a grant agreement that, at a minimum, includes:[10]

- Identification of the personnel necessary to conduct the instructional program and certain related information;
- Identification of the match provided by the business equal to at least 50 percent of the total grant amount (including cash or in-kind contribution);
- Identification of the estimated duration of the instructional program;
- Identification of all direct, training-related costs;
- Identification of special program requirements; and
- Permission to access aggregate information specific to the wages and performance of participants upon the completion of instruction for evaluation purposes.

[6] Section 295.22, F.S.
[7] Section 295.22(3)(d), F.S.
[8] Section. 295.22(3)(d)1., F.S.
[9] Section 295.22(3)(d)2., F.S.
[10] Section 295.22(3)(d)3., F.S.

Veterans Entrepreneurship Initiative Program

Veterans Florida's entrepreneur initiative program seeks to connect business leaders in the state with veterans seeking to become entrepreneurs.[11] Veterans Florida is required to contract with one more public or private universities to administer the program. An eligible university must:

- Demonstrate the ability to implement the program and the commitment of university resources, including financial resources, to such programs;
- Have a military and veteran resource center;
- Have a regional small business development center in the Florida Small Business Development Center Network; and
- Have been nationally recognized for commitment to the military and veterans.

Each university participant must provide performance metrics, including a focus on employment and business creation, and must coordinate with any entrepreneurship center located at the university. The entrepreneurship program may include activities and assistance such as peer-to-peer learning sessions, mentoring, technical assistance, business roundtables, networking opportunities, support of student organizations, speaker series, or other tools within a virtual environment.[12]

Effect of Proposed Changes

Section 2 amends s. 295.21, F.S., to allow a member of the Veterans Florida board of directors to be reappointed to the board and serve two terms of four years.

Section 3 amends s. 295.22, F.S., to alter the requirements of Veterans Florida's training grant program and entrepreneur initiative program.

Pertaining to the training grant program, the bill specifies that the program is for businesses seeking to hire, *promote, or generally improve specialized skills of* veterans. Instead of providing grant funds directly to a training provider selected by the business, the bill requires a business receiving a grant to train a permanent, full-time employee to cover the entire cost of training before receiving a 50 percent reimbursement of the training costs. The bill makes conforming amendments to the statute related to this change, including requiring a business to describe the instructional program and any related vendors to be used in training in their contract with Veterans Florida; and removing curriculum and overhead costs from eligibility for reimbursement. The bill further amends the training grant program to reduce the maximum time the training program may last from 48 to 12 months.

Pertaining to the entrepreneurship initiative program, the bill expands the program to allow Veterans Florida to contract not only with universities, but with any entity that meets the specified requirements to administer an entrepreneurship program. The bill makes conforming amendments to the statute related to this change, including requiring an administering entity to have demonstrated experience working with veteran entrepreneurs and be recognized for its ability to help Florida entrepreneurs launch successful businesses.

[11] Section 295.22(3)(e), F.S.
[12] Section 295.22(3)2.,F.S.

Department of Business and Professional Regulation

Present Situation:

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professionals in Florida.[13]

The DBPR has authority over the following professional boards and programs:
- Board of Architecture and Interior Design;
- Board of Auctioneers;
- Barbers' Board;
- Building Code Administrators and Inspectors Board;
- Construction Industry Licensing Board;
- Board of Cosmetology;
- Electrical Contractors' Licensing Board;
- Board of Employee Leasing Companies;
- Board of Landscape Architecture;
- Board of Pilot Commissioners;
- Board of Professional Geologists;
- Board of Veterinary Medicine;
- Home inspection services licensing program;
- Mold-related services licensing program;
- Florida Board of Professional Engineers;
- Board of Accountancy;
- Florida Real Estate Commission; and
- Florida Real Estate Appraisal Board.[14]

The DBPR licenses and regulates each of the above professions in accordance with that profession's practice act. Generally, to act as a regulated professional, a person must hold an appropriate license. Applicants for licensure for each profession must meet specific statutory requirements, including education and/or experience requirements, and must pay all applicable licensing and application fees.[15] A licensee who wishes to renew his or her license must pay a license renewal fee[16] and may be subject to continuing education requirements[17] and other conditions in the various practice acts.

Fee Waivers for Military Members and Certain Spouses

Currently, the initial licensing fee is waived for any of the professional licenses listed above if the applicant is:
- A member, including a veteran, of the U.S. Armed Forces who has served on active duty;
- The spouse of a member of the U.S. Armed Forces who was married to the member during a period of active duty;

[13] Section 20.165, F.S.
[14] *Id*.
[15] Section 455.201, F.S.
[16] Section 455.203, F.S.
[17] Section 455.2123, F.S.

- The surviving spouse of a member of the U.S. Armed Forces who at the time of death was serving on active duty;[18]
- Any honorably discharged military veteran for 60 months post discharge; or
- A spouse of such a veteran for 60 months post discharge.[19]

Military servicemembers who hold a DBPR professional license prior to active duty service will be kept in "good standing" for the duration of the member's active duty and for two years afterward. Keeping the license in "good standing" means that the member does not have to register, pay dues or fees, or perform any other act to prevent his or her license from becoming delinquent. Currently, this allowance only applies as long as the member does not practice his or her profession in the private sector for profit during his or her active duty and for two years thereafter.[20]

An active duty member's spouse or surviving spouse who holds a DBPR license will also have his or her license kept in good standing, but only if he or she is absent from the state related to the member's active duty service. This allowance terminates at the end of the member's active duty service. A spouse is not required to refrain from practicing his or her profession in the private sector for profit in order to keep his or her license in good standing.[21]

Currently, renewal fee waivers do not apply to DBPR-licensed spouses or surviving spouses of active duty members who are present in Florida.

Effect of Proposed Changes:

Section 6 amends s. 455.02, F.S., to grant a license renewal fee waiver to a DBPR licensee who is:

- An active duty military servicemember, during active duty service and for the 2 years following active duty discharge, regardless if he or she is engaged in his or her DBPR licensed profession in the private sector for profit in this state. Such member must complete all other license renewal requirements if he or she is actively engaged in the profession.
- The spouse of an active duty military servicemember who is present in this state because of such member's active duty; and
- A surviving spouse of a military servicemember, if such member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's renewal due date.

[18] Section 455.219(7)(a), F.S.
[19] Section 455.213(12), F.S.
[20] Section 455.02(1), F.S.
[21] Section 455.02(2), F.S.

Department of Health

Present Situation:

Licensure of Health Care Practitioners

The Division of Medical Quality Assurance (MQA) within the Department of Health (DOH) has general regulatory authority over health care practitioners in Florida.[22] The MQA works in conjunction with 22 boards and four councils to license and regulate seven types of health care facilities and more than 200 licenses in over 40 health care professions.[23] Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA.

Military Spouses

Florida offers expedited licensing and fee waivers to the spouse of a person serving on active duty[24] with the U.S. Armed Forces[25] who holds an active license to practice a health care profession in another state or jurisdiction.[26] To qualify for expedited licensure and fee waivers, the military spouse must:[27]

- Submit a complete application;[28]
- Submit evidence of training or experience substantially equivalent to the requirements for licensure in this state for that health care profession and evidence that he or she has obtained a passing score on an appropriate licensing examination, if required for licensure in this state;
- Attest that he or she is not, at the time of application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the U.S. Department of Defense for a reason related to the practice of the profession for which he or she is applying;
- Have actively practiced the profession for which he or she is applying for the 3 years preceding the date of application; and
- Submits to a background screening, if required for the profession for which he or she is applying, and does not have any disqualifying offenses.

Under current law, military spouses who are dentists are not eligible for expedited licensing and fee waivers. No other health care profession is excluded.

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[22] Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

[23] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2016-2017*, 3, available at http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1617.pdf (last visited Feb. 9, 2018).

[24] Full-time duty in the active military service of the United States. 10 U.S.C. 101(d)(1).

[25] Includes the United States Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. 101(a)(4).

[26] Section 456.024(3), F.S. The application fee, licensure fee, and unlicensed activity fee is waived for such applicants.

[27] Section 456.024(3)(b), F.S.

[28] DOH operates the Veterans Application for Licensure Online Response System (VALOR) to provide expedited licensing for active duty military members, honorably discharged veterans, and spouses of active duty military members with an active license in another state. *See* the DOH website, available at http://www.flhealthsource.gov/valor (last visited Jan. 31, 2018).

The regulatory boards (or the DOH if there is no board) are also authorized to issue a temporary license to the spouse of a member of the U.S. Armed Forces to practice his or her health care profession in Florida.[29] A temporary license is valid for one year and is not renewable.[30] To be eligible for a temporary license, a military spouse must:[31]

- Submit a completed application and application fee;[32]
- Provide proof that he or she is married to a member of the U.S. Armed Forces serving on active duty in this state pursuant to official military orders;
- Provide proof of a valid license from another state or jurisdiction to practice the health profession for which he or she is applying and that such license is not subject to any disciplinary proceeding;
- Provide proof that he or she would otherwise be entitled to full licensure and is eligible to take the respective licensure examination as required in this state; and
- Pass a criminal background screening.

A military spouse who holds a temporary license to practice dentistry must practice under the indirect supervision[33] of a dentist who holds an active license to practice in this state.[34] This requirement does not apply to any other profession.

Unlicensed Practice of a Health Care Profession

Florida law prohibits an individual from practicing a regulated health care profession without a license. An individual must meet minimum education and training requirements to become licensed and practice a health care profession.[35] Licensure is available by examination or, in many instances, by endorsement if the practitioner is licensed in another jurisdiction.

An individual practicing, attempting to practice or offering to practice, a health care profession without an active, valid Florida license is subject to criminal, administrative, and civil penalties.[36] The DOH may issue a cease and desist letter to such a person and impose, by citation, an administrative penalty of up to $5,000 per offense.[37] DOH may also seek a civil penalty of up to $5,000 for each offense through the circuit court, in addition to or in lieu of the administrative penalty.[38]

Each state enacts laws to determine who may engage in a particular profession within that state, including minimum requirements for practicing an occupation, as well as whether a license is required. Similarly, some activities may be regulated under one profession on one state in a different profession in another state. An individual licensed in another state who moves to

[29] Section 456.024(4), F.S.
[30] Section 456.024(4)(f), F.S.
[31] Section 456.024(4)(a)-(d), F.S.
[32] Pursuant to Rule 64B-4.007, F.A.C., the application fee is $65.
[33] Section 466.003(9), F.S., defines indirect supervision as supervision whereby a Florida-licensed dentist authorizes the procedure and a Florida-licensed dentist is on the premises while the procedures are performed.
[34] Section 456.024(4)(j), F.S.
[35] Section 456.065(1), F.S.
[36] Section 456.065, F.S.
[37] Section 456.065, F.S. Each day that the unlicensed practice continues after issuance of a notice to cease and desist constitutes a separate offense.
[38] Section 456.065(2)(c), F.S.

Florida may find that the activities they legally engaged in under a license in that other state is governed by a different professional license in Florida and continuing to engage in the activity in Florida would constitute unlicensed practice.

Effect of Proposed Changes:

Section 7 amends s. 456.024, F.S., to expand the expedited licensure application process to include the spouse of an active duty military member who holds an active license to practice dentistry in another state or jurisdiction and waives the application, licensure, and unlicensed activity fees.

The bill also repeals a provision that requires the spouse of a member of the U.S. Armed Forces serving on active duty in this state who holds a temporary license to practice dentistry to practice under the supervision of a Florida-licensed dentist.

These provisions allow dentistry to be treated in the same manner as all other health professions for which a military spouse may pursue licensure in this state.

The bill also creates an affirmative defense to administrative, civil, and criminal causes of action for the unlicensed practice of a health care profession. The affirmative defense is available to a spouse of an individual serving on active duty with the U.S. Armed Forces if:

- The spouse is licensed in another state or jurisdiction to provide health care services for which there is no equivalent in this state;
- The spouse is providing health care services within the scope of the out-of-state license; and
- The training or experience required for the out-of-state license is substantially similar to the licensure requirements for a similar health care profession in this state.

A person who successfully claims this affirmative defense would not be subject to any of the administrative, civil, and criminal penalties that exist for the unlicensed practice of a health profession.

Department of Agriculture and Consumer Services

Present Situation

In addition to regulating agriculture in Florida, the Department of Agriculture and Consumer Services (DACS) also protects consumers from unfair and deceptive business practices and provides consumer information.[39]

The DACS achieves this, in part, through licensing and registering various professionals, including:

- Professional Surveyors and Mappers (ch. 472, F.S.);
- Private Investigative, Private Security, and Repossession Services (ch. 493, F.S.);
- Health Studios (ch. 501, pt. I, F.S.);
- Telemarketing Services (ch. 501, pt. IV, F.S.);
- Intrastate Movers and Brokers (ch. 507, F.S.);

[39] Section 20.14(2), F.S.

- Sellers of Liquefied Petroleum Gas (ch. 527, F.S.);
- Pawnbroking (ch. 539, F.S.);
- Motor Vehicle Repair Shops (ch. 559, pt. IX, F.S.); and
- Sellers of Travel (ch. 559, pt. XI, F.S.).

The DACS licenses and regulates each of the above professionals in accordance with that profession's practice act. Generally, applicants must meet specific statutory requirements and must pay all applicable fees.

Initial Application Fee Waivers

Currently, initial applicants for the abovementioned licenses and registrations receive an application fee waiver if the applicant is:

- An honorably discharged veteran who was discharged within 60 months of the application date;
- The spouse of such a veteran; or
- A business entity that is majority owned by such a veteran or spouse.[40]

Applicants seeking this fee waiver must provide DACS with specific documentation proving appropriate military service, marriage, and/or business ownership.

Licensure Renewal Fee Waivers

Generally, active duty military servicemembers and their spouses and surviving spouses do not receive renewal fee allowances or waivers for the DACS professional licenses or registrations listed above. However, there are allowances made for such members and spouses who are licensed under the Board of Professional Surveyors and Mappers (BPSM).

Military servicemembers who hold a license from the BPSM prior to active duty service are kept in "good standing" for the duration of the member's active duty and for six months afterward. Keeping the license in "good standing" means that the member does not have to register, pay dues or fees, or perform any other act to prevent the license from becoming delinquent. This allowance only applies as long as the member does not practice as a surveyor or mapper in the private sector for profit during his or her active duty and for two years thereafter.[41]

An active duty member's spouse who holds a license from BPSM will also have his or her license kept in good standing, but only if he or she is absent from the state related to the member's active duty service. This allowance terminates at the end of the member's active duty service. A spouse is not required to refrain from practicing surveying and mapping in order to keep his or her license in good standing.[42]

Currently, renewal fee waivers do not apply to BPSM-licensed spouses of active duty members who are present in Florida or for any surviving spouses of such members.

[40] Section 472.015, 493.6105, 501.015, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, and 559.928, F.S.
[41] Section 472.016(1), F.S.
[42] Section 472.016(2), F.S.

Effect of Proposed Changes:

Sections 8, 10, 11, 30-32, 34, 36-39 amend ss. 472.015, 493.6105, 493.6107, 501.015, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, and 559.928, F.S., respectively, to expand the initial licensing or registration fee waiver for all of the abovementioned DACS professions to:

- A surviving spouse of an honorably discharged veteran,
- A current member of the U.S. Armed Forces who has served on active duty,
- The spouse of such a member, and
- The surviving spouse of such a member if the member dies while serving on active duty.

Sections 9, 12, 30, 33, 34, 36-39 amend ss. 472.016, 493.6113, 501.015, 501.609, 507.03, 527.02, 539.001, 559.904, and 559.928, F.S., respectively, to grant a renewal fee waiver for all of the abovementioned DACS professions to the following licensees or registrants:

- A current active duty member of the U.S. Armed Forces;
- Such a member's spouse;
- A current or former member of the U.S. Armed Forces who served on active duty within the 2 years preceding the renewal due date. A licensee who served on active duty within the 2 years preceding the renewal due date and is no longer a member of the U.S. Armed Forces must have received an honorable discharge upon separation or discharge; and
- A surviving spouse of a member of the U.S. Armed Forces if such a member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's renewal due date.

In **Section 9**, amending s. 472.016, F.S., the bill also refines the process for renewal fee waivers for BPSM licensees by:

- Extending the time that an active duty member's BPSM license remains in good standing after discharge from active duty from six months to 2 years; and
- Clarifying that if an active duty U.S. Armed Forces member wishes to engage in surveying or mapping in the private sector for profit in this state for the 2 years following active duty discharge, such member must complete all other license renewal requirements except remitting the license renewal fee.

In addition, the bill mandates that those seeking such initial or renewal fee waivers must apply in a format prescribed by the DACS, including the applicant's signature, under penalty of perjury, and supporting documentation.

The bill removes the initial fee waiver time limitations.

Office of Financial Regulation

Present Situation:

The Florida Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[43]

[43] Section 20.121(3)(a)2., F.S.

Mortgage Loan Originators and Brokers

Under ch. 494, F.S., the OFR licenses and regulates the following individuals and businesses engaged in the mortgage business outside of a depository financial institution:

- Loan originator[44] – An individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.
- Mortgage broker[45] – A person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.
- Mortgage lender[46] – A person making a mortgage loan or servicing a mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor. A mortgage lender may act as a mortgage broker.[47]

In order to obtain licensure as a mortgage loan originator under ch. 494, F.S., an individual must meet certain requirements, including paying a nonrefundable application fee of $195 plus a $20 nonrefundable fee for the Mortgage Guaranty Trust Fund.[48]

A mortgage loan originator license must be renewed annually by December 31.[49] As part of renewing such license, an individual must submit a renewal form and a nonrefundable renewal fee of $150 plus a $20 nonrefundable fee for the Mortgage Guaranty Trust Fund.[50]

Associated Persons

In ch. 517, the OFR regulates the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms. “Associated persons” are required to be registered with the OFR to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state.[51] Associated persons include:[52]

- With respect to a dealer or investment adviser, any of the following:
  - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions.
  - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial.

[44] Section 494.001(17), F.S.
[45] Section 494.001(22), F.S.
[46] Section 494.001(23), F.S.
[47] Section 494.0073, F.S.
[48] Section 494.00312, F.S.
[49] Sections 494.00312(7) and 494.00313(3), F.S.
[50] Section 494.00313(1)(a) and (b), F.S.
[51] Section 517.12(1), F.S.
[52] Section 517.021(2)(a), F.S.

- Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser.

- With respect to a federal covered adviser, any person who is an investment adviser representative and who has a place of business in this state.

In order to register as an associated person of a securities dealer or an investment adviser, an individual must meet certain requirements, including paying an assessment fee of $50.[53]

The registration of an associated person expires December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. A registration renewal is subject to a $50 assessment fee.[54]

Effect of Proposed Changes:

Sections 13 and 35 amend ss. 494.00312 and 517.12, F.S., respectively, to require the OFR to waive the $195 initial application fee and $20 fee for the Mortgage Guaranty Trust Fund for a mortgage loan originator and the $50 associated person initial assessment fee for an applicant who:

- Is or was an active duty member of the U.S. Armed Forces. A former servicemember must have received an honorable discharge upon separation or discharge from the military.
- Is married to a current or former member of the U.S. Armed Forces and is or was married to the member during any period of active duty.
- Is the surviving spouse of a member of the U.S. Armed Forces if the member was serving on active duty at the time of death.

Sections 14 and 35 amend 494.00313 and 517.12, F.S., respectively, to require the OFR to waive the $150 renewal fee and $20 fee for the Mortgage Guaranty Trust Fund for a mortgage loan originator and the $50 assessment fee for an associated person renewing his or her registration who:

- Is an active duty member of the U.S. Armed Forces or the spouse of such member.
- Is or was a member of the U.S. Armed Forces and served on active duty within the 2 years preceding the expiration date of the license. A former servicemember who served on active duty within the 2 years preceding the expiration date of the license/registration must have received an honorable discharge upon separation or discharge from the military.
- Is the surviving spouse of a member of the U.S. Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's license/registration expiration date.

An individual seeking such fee waiver must submit proof, in a form prescribed by rule of the Financial Services Commission, that the individual meets one of the above fee waiver qualifications.

[53] Section 517.12(10), F.S.
[54] Section 517.12(11), F.S.

Department of Financial Services

Present Situation:

The Department of Financial Services (DFS) is the state agency responsible for regulation and licensure of professions related to insurance, fire safety, and funeral and cemetery services.[55] There are a number of allowances in statute for veterans and their spouses regarding many types of insurance licenses, but not for licenses for bail bonds, fire safety, and funeral and cemetery services.

The existing allowances administered by DFS are:

- Waiver of application fees[56] – Application fees are waived for applicants seeking licensure as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary for military members and their spouses and recent military retirees (within 24 months of retirement).
- Temporary licensure[57] – A temporary general lines agent license may be issued to an employee, a family member, a business associate, or a personal representative of a licensed general lines agent for the purpose of continuing or winding up the business affairs of the agent or agency in the event the licensed agent has become unable to perform his or her duties because of military service.
- Exception to additional license examination requirement[58] – Reexamination of the agent is required if they have not received an appointment within 48 months of licensure. The DFS may waive this requirement if the circumstance is due to military service (limited to circumstances where the veteran's service did not exceed 3 years and the exception does not apply if 6 years have passed from his or her licensure date).
- Relief from continuing education requirements[59] – Licensees who are unable to comply with the continuing education requirements due to active duty in the military may submit a written request for a waiver to the DFS.
- Licensing and appointment of a non-resident[60] – A natural person, not a resident of this state, may be licensed and appointed to represent an authorized life insurer domiciled in this state or an authorized foreign life insurer which maintains a regional home office in this state, provided such person represents such insurer exclusively at a U.S. military installation located in a foreign country.
- Reappointment after military service[61] – The DFS may, without requiring a further written examination, issue an appointment as an adjuster to a formerly licensed and appointed adjuster of this state who held a current adjuster's appointment at the time of entering service in the U.S. Armed Forces, subject to certain conditions (limited to circumstances where the veteran's service did not exceed 3 years, the application and fee is filed within 12 months of honorable discharge, and the new appointment is of the same type and class).

[55] Chapters 497 (funeral and cemetery), 626 (insurance), 633 (fire), and 648 (bail bonds), F.S.
[56] Section 626.171(6), F.S.
[57] Section 626.175(1)(b) and 626.9271(1), F.S.
[58] Section 626.181(2) and 626.8427(1)(b), F.S.
[59] Section 626.2815(2), F.S.
[60] Section 626.322, F.S.
[61] Section 626.871, F.S.

Effect of Proposed Changes:

Funeral and Cemetery Services

Sections 15-24 and 26-29 amend ss. 497.140, 497.141, 497.281, 497.368, 497.369, 497.370, 497.371, 497.373, 497.374, 497.375, 497.453, 497.466, 497.554, and 497.602, F.S., respectively, to waive initial application fees,[62] provisional licensing fees, and temporary licensing fees, where applicable, including the $5 per license special unlicensed activity fee paid with each license,[63] for members of the U.S. Armed Forces and their spouses and honorably discharged veterans (within 24 months of discharge) for licensure as:

- Embalmer, including Temporary Embalmer, Embalmer Intern, and Embalmer Apprentice;
- Funeral Director, including Temporary Funeral Director and Funeral Director Intern;
- Preneed Sales, including Preneed Sales Agent;
- Burial Rights Broker;
- Direct Disposer; and
- Monument Establishment Sales Agent.

Section 25 creates s. 497.393, F.S., and **Section 29** amends s. 497.602, F.S., to require the Board of Funeral, Cemetery, and Consumer Services or the DFS Division of Funeral, Cemetery, and Consumer Services to recognize applicable military-issued credentials for purposes of licensure as an embalmer or funeral director or as a direct disposer.[64] The applicant must submit a certification that the military-issued credential reflects knowledge, training, and experience substantially similar to the licensing requirements. The board or the division may investigate such information. The board or the division must adopt rules specifying the forms and procedures for use by applicants under these sections.

Insurance

Section 40 amends s. 626.171, F.S., to expand the application fee waiver for insurance profession licenses to include veterans who have "separated" from the military within 2 years before application. Currently, the waiver applies to veterans who "retired" within 2 years. The change will allows veterans who have less than 20 years of military service to receive the allowance.

Sections 41-45 amend ss. 626.732, 626.7851, 626.8311, 626.8417, 626.927, F.S., respectively, to eliminate pre-licensure course requirements for insurance profession licenses for honorably discharged veterans and their spouses.[65]

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[62] Chapter 497, F.S., limits the amount of application fees. Such fees shall not exceed: $200 for an embalmer, temporary embalmer, embalmer intern, embalmer apprentice, funeral director, temporary funeral director, funeral director intern, monument establishment sales agent; $500 for a preneed sales and direct disposer; $300 for a preneed sales agent; and $250 for a burial rights broker.

[63] The fee is $5 per license. s. 497.140, F.S.

[64] Military Occupational Code 92M, Mortuary Affairs Specialist, within the U.S. Army Quartermaster Corps, describes the following functions: performs or supervises duties relating to deceased personnel to include recovery, collection, evacuation, establishment of tentative identification, escort, and temporary burial. They also inventory, safeguard, and evacuate personal effects of deceased personnel. Army.com, *Military Occupational Specialties (MOS)*, available at http://army.com/info/mos/all (last visited Feb. 9, 2018).

[65] Honorably discharged veterans and their spouses must also pass any required licensure exam.

Fire Prevention and Control

Section 46 amends s. 633.414, F.S., to allow the DFS to extend the 4-year period in which a certified firefighter must meet specified conditions to retain certification. The bill allows the DFS to extend the firefighter certification period of a veteran or a veteran's spouse to 12 months after the veteran's honorable discharge from the military.

Section 47 amends s. 633.444, F.S., to waive all living and incidental expenses, excluding expenses for meal plans and bunker gear rentals, associated with attending the Florida State Fire College to obtain a Certificate of Compliance or a Firesafety Inspector I certification for:

- An active duty member of the U.S. Armed Forces;
- An honorably discharged veteran of the U.S. Armed Forces;
- The spouse or surviving spouse of an honorably discharged veteran of the U.S. Armed Forces; and
- The surviving spouse of a member of the U.S. Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's attendance at the college.

Department of Education

Present Situation:

Medal of Honor Day

The Medal of Honor is the "highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States. The Medal is generally presented to recipients by the President of the United States."[66]

Section 1003.42(2), F.S. establishes components of required instruction for public school students. Instructional staff must teach, among other things:

- A character-development program in kindergarten through grade 12;[67] and
- In order to encourage patriotism, the sacrifices that veterans have made in serving our country and protecting democratic values worldwide.[68]

The law encourages the State Board of Education to "adopt standards and pursue assessment of the requirements" of s. 1003.42(2), F.S.

Each district school board is required to develop or adopt a curriculum for the character-development program and submit it to the Department of Education (DOE) for approval. The character-development curriculum must stress the qualities of patriotism; responsibility; citizenship; kindness; respect for authority, life, liberty, and personal property; honesty; charity; self-control; racial, ethnic and religious tolerance; and cooperation. The instruction related to veterans must occur on or before Veteran's day and Memorial Day. Members of the instructional staff are also encouraged to use the assistance of local veterans when practicable.

[66] Congressional Medal of Honor Foundation, *History*, available at http://themedalofhonor.com/cmoh-foundation/history (last visited Feb. 9, 2018).
[67] Section 1003.42(2)(s), F.S.
[68] Section 1003.42(2)(t), F.S.

There are various resources available to educate students about the Medal of Honor and the significance it can play in character development programs.[69]

Effect of Proposed Changes:

Section 48 creates s. 683.147, F.S., to allow the Governor to issue a proclamation designating March 25th as "Medal of Honor Day" and encourages public officials, schools, private organizations, and all residents of the state to commemorate Medal of Honor Day and honor any Floridian who, while serving as a member of the Armed Services, distinguished himself or herself while engaged in action against an enemy of the United States.

Section 50 amends s. 1003.42, F.S., to state that a character development program that incorporates the values of the Congressional Medal of Honor and that is offered as part of a social studies, English Language arts, or other school wide character building and veteran awareness initiative meets the instructional requirements related to character development and veterans. The bill also amends the requirements for the instruction on veterans to include Medal of Honor Recipients; to occur on or before Medal of Honor Day; and encourage the use of the assistance of Medal of Honor recipients when practicable.

Present Situation:

Florida Virtual School

Florida Virtual School (FLVS) was established by law to provide students in kindergarten through grade 12 with technology-based educational opportunities to gain knowledge and skills necessary to succeed.[70]

Enrollment in FLVS is free for Florida residents, and non-residents may enroll but must pay tuition. Currently, children of military personnel who are not stationed in Florida but have a home of record or legal residence certificate stating their residence is in Florida are considered non-residents for purposes of FLVS enrollment, and the students must pay tuition to participate.

Currently, FLVS is required to give priority for enrollment to:

- Students who need expanded access to courses to meet their educational goals, such as home education students and students in inner-city and rural high schools that do not have access to higher level courses; and
- Students seeking accelerated access to obtain a high school diploma at least one semester early.[71]

Effect of Proposed Changes:

Section 49 amends s. 1002.37, F.S., to give priority for enrollment to students who are children of military personnel not stationed in Florida whose home of record or state of legal residence certificate is Florida. This change allows such students to enroll in FLVS without paying tuition.

[69] Congressional Medal of Honor Foundation, *Character Development*, http://themedalofhonor.com/character-development (last visited Feb. 9, 2018).
[70] Section 1002.37(1), F.S.
[71] Section 1012.37(1)(b), F.S.

Present Situation:

Florida Teacher's Classroom Supply Assistance Program

The Florida Teachers Classroom Supply Assistance Program is a fund for classroom teachers employed by a public school district or a public charter school to purchase, on behalf of the school district or charter school, classroom materials and supplies for the public school students assigned to them. For purposes of the program, "classroom teacher" means a certified teacher employed by a public school district or a public charter school in that district on or before September 1 of each year whose full-time or job-share responsibility is the classroom instruction of students in prekindergarten through grade 12, including full-time media specialists and certified school counselors serving students in prekindergarten through grade 12, who are funded through the Florida Education Finance Program.[72]

Instructors of junior reserve officer training (JROTC) may currently be ineligible for the program because they do not meet the definition of "classroom teacher." This is because JROTC instructors are not required to hold an educator certificate.[73]

Effect of Proposed Changes:

Section 51 amends s. 1012.55(4), F.S., to allow JROTC instructors to be eligible to receive funding through the Florida Teachers Classroom Supply Assistance program.

Present Situation:

Educational Leadership Certification

The State Board of Education is required to establish certification requirements for all school-based personnel.[74] In Florida, aspiring school administrators[75] must complete a state-approved school leader preparation program and attain certification as an educational leader.[76]

The State Board of Education has established two classes of certification for school administrators – educational leadership and school principal. Certification in educational leadership qualifies an individual for any position falling under the classification "school administrator."[77]

There are two types of school leader preparation programs:[78]

- Level I programs are offered by school districts and postsecondary institutions and lead to initial certification in educational leadership for the purpose of preparing individuals to serve as school administrators.
- Level II programs are offered by school districts, build upon Level I training, and lead to certification as a school principal.

[72] Section 1012.71 F.S.
[73] Sections 1012.71(1) and 1012.55(4), F.S.
[74] Section 1012.55(1)(b), F.S.
[75] School administrators include school principals, school directors, and assistant principals. *See* s. 1012.01(3)(c), F.S.
[76] *See* s. 1012.55(1)(b), F.S.
[77] *See* s. 1012.562, F.S.
[78] Section 1012.55, F.S.

To receive a Level II certification as a school principal, the individual must:
- Hold an educational leadership certificate.[79]
- Hold a valid professional certificate covering educational leadership, administration, or administration and supervision; and
- Document successful performance of the duties of the school principalship in a DOE approved district school principal certification program.[80]

The State Board of Education must adopt rules to allow an individual who meets the following criteria to be eligible for a temporary certificate in educational leadership:[81]
- Earned a passing score on the Florida Educational Leadership Examination;
- Documented three years of successful experience in an executive management or leadership position; and
- Documented receipt of a bachelor's degree or higher from an accredited institution of higher learning.

An individual operating under a temporary certificate must be under the mentorship of a state-certified school administrator during the term of the temporary certificate.[82]

Effect of Proposed Changes:

Section 51 amends s.1012.55, F.S., to create a pathway for veterans who have served either as commissioned officers or noncommissioned officers to become school principals. The bill requires the DOE to issue a 3-year temporary certificate in educational leadership to an individual whose application indicates that he or she:
- Has earned a passing score on the Florida Educational Leadership Examination;
- Served as a commissioned or noncommissioned military officer in the U.S. Armed Forces for at least 3 years;
- Has been honorably discharged or has retired from the U.S. Armed forces; and
- Is presently employed fulltime in a position for which a Florida educator certificate is required in a Florida school (public or nonpublic) that has a Level II program.

The bill also requires that a Level II program must admit applicants who hold such a temporary certificate and requires the DOE to issue a permanent school principal certificate to an individual who holds the temporary certificate and successfully completes the Level II program.

Present Situation:

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 DOE.[83] Persons seeking employment at a public school as a school supervisor, school principal, teacher,

[79] Rule 6A-4.0083, F.A.C.
[80] Rule 6A-4.0083, F.A.C.
[81] Section 1012.55(1)(d), F.S. *See* Rule 6A-4.004(5), F.A.C.
[82] *Id*.
[83] Sections 1012.55(1) and 1002.33(12)(f), F.S.

library media specialist, school counselor, athletic coach, or in another instructional capacity must also be certified.[84] 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."[85]

The DOE issues a professional certificate and a temporary certificate. The professional certificate is Florida's highest type of full-time educator certification and is valid for five years and is renewable.[86] The temporary certificate covers employment in full-time positions for which educator certification is required, is valid for three years, and is nonrenewable.[87]

A person seeking an educator certificate must meet certain requirements, submit an application to the DOE, and remit the required fee.[88]

An applicant seeking a professional certificate must:
- Meet the basic eligibility requirements for certification;[89]
- Demonstrate mastery of general knowledge;[90]
- Demonstrate mastery of subject area knowledge;[91] and
- Demonstrate mastery of professional preparation and education competence.[92]

A three-year nonrenewable temporary certificate[93] may be issued to an applicant who does not qualify for the professional certificate, but:
- Meets the basic eligibility requirements for certification;
- 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;[94] and
- Demonstrates mastery of subject area knowledge.

An educator who is employed under a temporary certificate must demonstrate mastery of general knowledge within one calendar year after employment in order to remain employed in a position that requires a certificate.[95] The State Board of Education is required to adopt rules to allow the DOE to extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate, not including the mastery of general knowledge requirement, were not completed due to serious illness or injury of the applicant or other extenuating circumstances.[96]

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[84] Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S.
[85] Section 1012.54, F.S.
[86] Section 1012.56(7)(a), F.S.
[87] Section 1012.56(7)(b), F.S.
[88] Section 1012.56(1), F.S.
[89] Section 1012.56(2)(a)-(f), F.S.
[90] Section 1012.56(2)(g), F.S.
[91] Section 1012.56(2)(h), F.S.
[92] Section 1012.56(2)(i), F.S.
[93] Section 1012.56 (7)(b), F.S.
[94] Section 1012.56(1)(b), F.S.
[95] Section 1012.56(7), F.S.
[96] *Id.*

Effect of Proposed Changes:

Section 52 amends s. 1012.56, F.S., to add military service of an applicant's spouse as a circumstance for which the validity of a temporary certificate may be extended by the DOE, as adopted by State Board of Education by rule.

Present Situation:

Educator Certification Fees

The State Board of Education must establish, by rule, fees for applications, examinations, certification, certification renewal, late renewal, record making, and recordkeeping.[97] Fees for taking the Florida Teacher Certification Examination for the first time are as follows:[98]

FTCE Test	Fee
General Knowledge Test	$130
Subject Area Test	$200
Professional Education Test	$150

It is a $75 fee to apply for an initial educator certificate and for renewal of a professional certificate.[99]

Effect of Proposed Changes:

Section 53 amends s. 1012.59, F.S., to require the State Board of Education to waive initial general knowledge, professional education, and subject area examination fees and initial certification fees for the following individuals:

- A member of the U.S. Armed Forces or a reserve component thereof who is serving or has served on active duty;
- The spouse of a member of the U.S. Armed Forces or a reserve component thereof who is serving or has served on active duty;
- The surviving spouse of a member of the U.S. Armed Forces or a reserve component thereof who was serving on active duty at the time of death;
- An honorably discharged veteran of the U.S. Armed Forces or a veteran of a reserve component thereof who served on active duty; and
- The spouse or surviving spouse of an honorably discharged veteran of the U.S. Armed Forces or a veteran of a reserve component thereof who served on active duty.

Present Situation:

Apprenticeship Programs

The DOE is responsible for the development of the apprenticeship and preapprenticeship standards for trades and assisting district school boards and community college district boards of trustees in developing preapprenticeship programs.[100]

[97] Section 1012.59(1), F.S.
[98] Rule 6A-4.0021(4), F.A.C.
[99] *See* Rule 6A-4.0012(1)(a)1., F.A.C.
[100] Section 446.011(2), F.S.

An apprenticeship program is an organized course of instruction that is registered and approved by the DOE and must address all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.[101] The length of an apprenticeship program varies from 1 to 5 years depending on the occupation's training requirements.

An apprenticeship may be offered only in occupations that:

- Are customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training;
- Are commonly recognized throughout the industry or recognized with a positive view toward changing technology;
- Involve manual, mechanical, or technical skills and knowledge that require a minimum of 2,000 hours of work and training, excluding the time spent in related instruction;
- Require related instruction to supplement on-the-job training; and
- Involve the development of skills sufficiently broad to be applicable in like occupations throughout an industry, rather than skills that are of restricted application to the products or services of any one company.[102]

The following categories of occupations may not create an apprenticeship program: selling, retailing, or similar occupations in the distributive field; managerial occupations; and professional and scientific vocations for which entrance requirements customarily require an academic degree.[103]

Effect of Proposed Changes:

Section 4 amends s. 446.041, F.S., to require the DOE to lead and coordinate outreach efforts to educate veterans about apprenticeship and career opportunities.

Section 5 amends s. 446.081, F.S., to specify that laws and rules regulating apprenticeships and approved apprenticeship agreements do not invalidate any special provisions for veterans, minority persons, or women concerning apprenticeship programs.

Effect of Proposed Changes:

Section 54 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[101] Section 446.021(6), F.S.
[102] Section 446.092, F.S.
[103] Section 446.092(6), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill will reduce professional licensing fee revenues to the affected agencies, but the amount is indeterminate. The impact will depend on the number of individuals who take advantage of the new fee waivers.

B. Private Sector Impact:

The bill establishes new fee waivers and expands eligibility for existing fee waivers for a number of Florida professional licenses and registrations for military servicemembers, veterans, and their spouses or surviving spouses.

Pre-licensing education providers may experience a decrease in revenues.

Children of military personnel not stationed in Florida whose home of record or state of legal residence certificate is Florida will be eligible and given priority for FLVS.

Veterans Florida may contract with private entities to administer the veterans' entrepreneurship initiative program. For the training grant program, businesses will be reimbursed for 50 percent of the costs of the training.

C. Government Sector Impact:

The DOH expects to incur non-recurring costs for rulemaking, but the costs can be absorbed within the current budget authority.[104]

The DBPR indicated that a fiscal impact to license revenues is indeterminate at this time, but noted that there are currently 440 licensees under DBPR that are identified as military personnel. Additionally, the modifications necessary to update DBPR's information technology systems can be made within existing resources (196 hours).[105]

The DACS expects reductions of $206,568 in Fiscal Year 2018-2019, $216,896 in Fiscal Year 2019-2020, and $227,741 in Fiscal Year 2020-2021, as a result of the fee waivers authorized in the bill.[106]

The OFR expects a reduction of $412,030 annually in licensing/registration fees as a result of the fee waivers established in the bill.[107] In addition, the OFR states that it will

[104] DOH, *2018 Agency Legislative Bill Analysis: SB 1884* (Jan. 9, 2018).
[105] DBPR, *2018 Agency Legislative Bill Analysis: HB 29* (Jan. 18, 2018).
[106] DACS, *SB 1884 Agency Analysis* (Jan. 29, 2018).
[107] Email from staff of the OFR to staff of the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Re: SB 1884 Cost Information…* (Feb. 13, 2018).

need to manually receive, review, and process reimbursements of the fees waived in the bill. The OFR plans to use OPS as an interim solution to reviewing and processing refunds, and will monitor the actual number of refund requests received and request additional positions for the 2019 Regular Session.

The DFS expects an indeterminate reduction in revenues for the Division of Funeral, Cemetery, and Consumer Services related to the fee waivers, and an indeterminate increase in expenditures to administer the requirements of the bill. For the Division of State Fire Marshal, the DFS expects a significant but indeterminate reduction in revenues – the largest impact of which is the waiver of tuition, housing, and other costs for honorably discharged veterans and their spouses attending the State Fire College (estimated to be about $8,244 per student, excluding expenses for meal plans and bunker gear).[108]

The DFS anticipates it will incur costs to update its computer systems (240 total hours). Other costs to implement and administer the provisions of the bill are indeterminate at this time.[109]

A fiscal impact from the DOE was not available as of the date of this analysis. The impacts of the bill are expected to be minimal; with the exception of the waiver of application and renewal fees – the impact of those provisions it indeterminate. Additionally, the Florida Teacher's Classroom Supply Assistance program receives an annual appropriation, which is provided proportionately to eligible teachers. Expansion of eligibility only changes the amount each teacher may receive, but does not increase the amount of funds appropriated to the program.

A DOE analysis for a similar bill expanding the FLVS program states that the administrative costs of the program would increase but were indeterminate.[110]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 11 amends s. 493.6107, F.S., to waive the initial application fee for the surviving spouse of a member of the U.S. Armed Forces who served on active duty *who died within the 2 years preceding the application*. This is the only provision related to the initial application fee for a surviving spouse that contains this qualification.

The OFR states that the fees in connection with applying for or renewing loan originator licenses are paid via the Nationwide Mortgage Licensing System and Registry or the Central Registration

[108] DFS, *SB 1884 Agency Analysis* (Jan. 18, 2018). Email from DFS staff to staff of the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security, *Re: 1884* (February 12, 2018).
[109] *Id*.
[110] DOE, *2018 Agency Legislative Bill Analysis: SB 1090* (Jan. 25, 2018).

Depository. Because these are not federal systems, the systems will likely not be able to accommodate the fee waivers provided in the bill.[111]
The bill requires the Board of Funeral, Cemetery, and Consumer Services or the DFS Division of Funeral, Cemetery, and Consumer Services to adopt rules specifying the forms and procedures for use by an applicant as an embalmer, funeral director, or direct disposer to submit a certification that the military-issued credential reflects knowledge, training, and experience substantially similar to the licensing requirements.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 295.21, 295.22, 446.041, 446.081, 455.02, 456.024, 472.015, 472.016, 493.6105, 493.6107, 493.6113, 494.00312, 494.00313, 497.140, 497.141, 497.281, 497.368, 497.369, 497.370, 497.371, 497.373, 497.374, 497.375, 497.453, 497.466, 497.554, 497.602, 501.015, 501.605, 501.607, 501.609, 507.03, 517.12, 527.02, 539.001, 559.904, 559.928, 626.171, 626.732, 626.7851, 626.8311, 626.8417, 626.927, 633.414, 633.444, 1002.37, 1003.42, 1012.55, 1012.56, and 1012.59.

This bill creates the following sections of the Florida Statutes: 250.483, 497.393, and 683.147.

IX. Additional Information:

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

CS by Appropriations on February 22, 2018:
The committee substitute:

- Allows members of the Veterans Florida board of directors to serve two four-year terms.
- Makes changes to Veterans Florida's training grant program and veteran entrepreneurship initiative program;
- Deletes provisions waiving fingerprinting requirements for certain veterans applying for funeral and cemetery, insurance, or fire safety-related licenses;
- Revises the waiver of prelicensure coursework requirements for insurance license applicants to include current members of the U.S. Armed Forces and their spouses;
- Removes the waiver of prelicensure coursework requirements in those instances where the coursework is the only knowledge acquisition/demonstration element prior to receiving an insurance license;
- Deletes the proposed extension of time prior to reexamination for two fire safety-related licenses for licensees eligible for an "inactive" status;
- Provides a method for a servicemember or veteran to certify their knowledge, training, and experience to gain credit in licensing for funeral directing, embalming, and direct disposing.
- Clarifies provision relating to firefighter certification retention for veterans and their spouses;

[111] OFR, *2018 Agency Legislative Bill Analysis: SB 1884* (Jan. 19, 2018).

- Clarifies the living and incidental fees that may be waived for servicemembers, veterans, and their spouses attending the Florida Fire College; and
- Removes the proposed waiver of teacher certification renewal fees.

B. Amendments:

None.

By Senator Broxson

1-01587-18 20181884__

A bill to be entitled

An act relating to military and veterans affairs; creating s. 250.483, F.S.; providing requirements relating to licensure or qualification for a trade, occupation, or profession of persons ordered into active duty or state active duty; amending s. 446.041, F.S.; providing duties of the Department of Education with respect to veteran outreach efforts; amending s. 446.081, F.S.; providing construction; amending s. 455.02, F.S.; requiring the Department of Business and Professional Regulation to waive certain fees for certain individuals; amending s. 456.024, F.S.; revising licensure eligibility requirements; specifying conditions under which a spouse of a person serving on active duty in the United States Armed Forces has a defense to a citation and cause of action brought due to the unlicensed practice of a health care profession; amending ss. 472.015, 472.016, 493.6105, 493.6107, and 493.6113, F.S.; requiring the Department of Agriculture and Consumer Services to waive certain fees under specified circumstances; revising formats for certain applications; amending ss. 494.00312 and 494.00313, F.S.; requiring the Office of Financial Regulation to waive certain fees for loan originator licensure; amending s. 497.140, F.S.; providing an exemption from the special unlicensed activity fee; amending s. 497.141, F.S.; conforming a provision to changes made by the act; amending s. 497.142, F.S.; requiring the licensing

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authority to waive fingerprinting requirements for certain individuals seeking licensure under ch. 497, F.S.; amending ss. 497.281, 497.368, 497.369, 497.370, 497.371, 497.373, 497.374, and 497.375, F.S.; providing exemptions from certain fees; creating s. 497.393, F.S.; authorizing the licensing authority to recognize certain military-issued credentials for purposes of licensure; amending ss. 497.453, 497.466, and 497.554, F.S.; providing exemptions from certain fees; amending s. 497.602, F.S.; providing an exemption from an application fee for direct disposers; authorizing the licensing authority to recognize certain military-issued credentials for purposes of licensure; amending s. 501.015, F.S.; requiring the Department of Agriculture and Consumer Services to waive certain fees for specified health studios; prescribing the format of the waiver application; amending ss. 501.605, 501.607, 501.609, and 507.03, F.S.; requiring the Department of Agriculture and Consumer Services to waive certain fees for certain licensees; prescribing the format of the waiver application; amending s. 517.12, F.S.; requiring the Office of Financial Regulation to waive certain fees for certain individuals; amending ss. 527.02 and 539.001, F.S.; requiring the Department of Agriculture and Consumer Services to waive certain licensing fees regarding licensure for the sale of liquefied petroleum gas and pawnbroking, respectively, for certain individuals; amending ss. 559.904 and

559.928, F.S.; requiring the Department of Agriculture and Consumer Services to waive certain registration fees for motor vehicle repair shops and sellers of travel, respectively, under certain circumstances; amending ss. 626.025, 626.171, 626.172, 626.202, 626.292, and 626.321, F.S.; requiring the Department of Financial Services to waive certain fingerprinting requirements for certain individuals; amending ss. 626.732, 626.7355, 626.7851, 626.8311, and 626.8417, F.S.; revising prelicensure course requirements for certain applicants; amending ss. 626.8732 and 626.8734, F.S.; requiring the Department of Financial Services to waive certain fingerprinting requirements for certain applicants; amending ss. 626.927 and 626.9272; providing that prelicensure course requirements do not apply to certain applicants; amending s. 626.9912, F.S.; requiring the department to waive certain fingerprinting requirements for certain applicants for a viatical settlement provider license; amending ss. 633.304 and 633.332, F.S.; authorizing the Division of State Fire Marshal to extend the period within which reexamination for certain certifications is not required for certain persons; amending s. 633.412, F.S.; requiring the Department of Financial Services to waive fingerprinting requirements for certain persons; amending s. 633.414, F.S.; authorizing an extension for firefighter certification renewal for certain persons; amending s. 633.444, F.S.; requiring the

Division of State Fire Marshal to waive certain expenses associated with attending the Florida State Fire College for certain individuals; amending ss. 648.34 and 648.355, F.S.; requiring the Department of Financial Services to waive certain fingerprinting requirements for certain applicants; creating s. 683.147, F.S.; designating March 25 of each year as "Medal of Honor Day"; authorizing the Governor to issue a proclamation in recognizing such observance; amending s. 1002.37, F.S.; revising the list of students who must be given priority by the Florida Virtual School; amending s. 1003.42, F.S.; providing for a character development program that incorporates the values of recipients of the Congressional Medal of Honor; amending s. 1012.55, F.S.; requiring the Department of Education to issue a temporary certificate in educational leadership to certain persons; revising certain exemptions from requirements for teacher certification for certain individuals; authorizing instructors of junior reserve officer training to receive funding through the Florida Teachers Classroom Supply Assistance Program; amending s. 1012.56, F.S.; requiring the State Board of Education to adopt certain rules; amending s. 1012.59, F.S.; requiring the State Board of Education to waive certain certification fees for certain individuals; providing an effective date.

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

Section 1. Section 250.483, Florida Statutes, is created to read:

250.483 Active duty; licensure or qualification.—

(1) If a member of the Florida National Guard or the United States Armed Forces Reserves seeking licensure or qualification for a trade, occupation, or profession is ordered into state active duty or active duty as defined in this chapter, and his or her period of training, study, apprenticeship, or practical experience is interrupted or the start thereof is delayed, he or she is entitled to licensure or qualification under the laws covering his or her licensure or qualification at the time of entrance into active duty pursuant to subsection (2).

(2) A board of examiners or other qualification board regulated under general law shall accept periods of training and practical experience in the Florida National Guard or the United States Armed Forces Reserves in place of the interrupted or delayed periods of training, study, apprenticeship, or practical experience if the board finds the standard and type of work or training performed in the Florida National Guard or the United States Armed Forces Reserves to be substantially the same as the standard and type required under the laws of this state.

(3) A member of the National Guard or the United States Armed Forces Reserves must request licensure or qualification pursuant to this section by the respective board of examiners or other qualification board within 6 months after release from active duty with the Florida National Guard or the United States Armed Forces Reserves.

Section 2. Present subsections (7) through (12) of section

446.041, Florida Statutes, are renumbered as subsections (8) through (13), respectively, and a new subsection (7) is added to that section, to read:

446.041 Apprenticeship program, duties of the department.—The department shall:

(7) Lead and coordinate outreach efforts to educate veterans about apprenticeship and career opportunities.

Section 3. Subsection (4) is added to section 446.081, Florida Statutes, to read:

446.081 Limitation.—

(4) Nothing in ss. 446.011-446.092 or in any rules adopted or contained in any approved apprentice agreement under such sections invalidates any special provision for veterans, minority persons, or women in the standards, qualifications, or operation of the apprenticeship program which is not otherwise prohibited by any applicable general law, rule, or regulation.

Section 4. Subsections (1) and (2) of section 455.02, Florida Statutes, are amended to read:

455.02 Licensure of members of the Armed Forces in good standing and their spouses or surviving spouses with administrative boards or programs.—

(1) Any member of the United States Armed Forces ~~of the United States~~ now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any of the boards or programs listed in s. 20.165 and was entitled to practice or engage in his or her profession or occupation ~~vocation~~ in the state shall be kept in good standing by the applicable board or program, without registering, paying dues or fees, or performing any other act on his or her part to be

performed, as long as he or she is a member of the United States Armed Forces ~~of the United States~~ on active duty and for a period of 2 years after discharge from active duty ~~as a member of the Armed Forces of the United States, if he or she is not engaged in his or her licensed profession or vocation in the private sector for profit~~. A member, during active duty and for a period of 2 years after discharge from active duty, engaged in his or her licensed profession or occupation in the private sector for profit in this state must complete all license renewal provisions except remitting the license renewal fee, which shall be waived by the department.

(2) A spouse of a member of the ~~Armed Services of the~~ United States Armed Forces who is married to a member during a period of active duty, or a surviving spouse of a member who at the time of death was serving on active duty, who is in good standing with any of the boards or programs listed in s. 20.165 shall be kept in good standing by the applicable board or program as described in subsection (1) and shall be exempt from licensure renewal provisions, but only in cases of his or her absence from the state because of his or her spouse's duties with the United States Armed Forces. The department or the appropriate board or program shall waive any license renewal fee for such spouse when he or she is present in this state because of such member's active duty and for a surviving spouse of a member who at the time of death was serving on active duty and died within the 2 years preceding the date of renewal.

Section 5. Paragraphs (a) and (b) of subsection (3) and paragraph (j) of subsection (4) of section 456.024, Florida Statutes, are amended, and subsection (5) is added to that

section, to read:

456.024 Members of Armed Forces in good standing with administrative boards or the department; spouses; licensure.—

(3)(a) A person is eligible for licensure as a health care practitioner in this state if he or she:

1. Serves or has served as a health care practitioner in the United States Armed Forces, the United States Reserve Forces, or the National Guard;

2. Serves or has served on active duty with the United States Armed Forces as a health care practitioner in the United States Public Health Service; or

3. Is a health care practitioner~~, other than a dentist,~~ in another state, the District of Columbia, or a possession or territory of the United States and is the spouse of a person serving on active duty with the United States Armed Forces.

The department shall develop an application form, and each board, or the department if there is no board, shall waive the application fee, licensure fee, and unlicensed activity fee for such applicants. For purposes of this subsection, "health care practitioner" means a health care practitioner as defined in s. 456.001 and a person licensed under part III of chapter 401 or part IV of chapter 468.

(b) The board, or the department if there is no board, shall issue a license to practice in this state to a person who:

1. Submits a complete application.

2. If he or she is a member of the United States Armed Forces, the United States Reserve Forces, or the National Guard, submits proof that he or she has received an honorable discharge

within 6 months before, or will receive an honorable discharge within 6 months after, the date of submission of the application.

3.a. Holds an active, unencumbered license issued by another state, the District of Columbia, or a possession or territory of the United States and who has not had disciplinary action taken against him or her in the 5 years preceding the date of submission of the application;

b. Is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required to practice in the United States Armed Forces, if he or she submits to the department evidence of military training or experience substantially equivalent to the requirements for licensure in this state in that profession and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state; or

c. Is the spouse of a person serving on active duty in the United States Armed Forces and is a health care practitioner in a profession~~, excluding dentistry,~~ for which licensure in another state or jurisdiction is not required, if he or she submits to the department evidence of training or experience substantially equivalent to the requirements for licensure in this state in that profession and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state.

4. Attests that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in

a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.

5. Actively practiced the profession for which he or she is applying for the 3 years preceding the date of submission of the application.

6. Submits a set of fingerprints for a background screening pursuant to s. 456.0135, if required for the profession for which he or she is applying.

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank.

(4)

~~(j) An applicant who is issued a temporary professional license to practice as a dentist pursuant to this section must practice under the indirect supervision, as defined in s. 466.003, of a dentist licensed pursuant to chapter 466.~~

(5) The spouse of a person serving on active duty with the United States Armed Forces has a defense to any citation and related cause of action brought under s. 456.065 if the following conditions are met:

(a) The spouse holds an active, unencumbered license issued by another state or jurisdiction to provide health care services for which there is no equivalent license in this state.

(b) The spouse is providing health care services within the scope of practice of the out-of-state license.

(c) The training or experience required by the out-of-state license is substantially similar to the license requirements to

practice a similar health care profession in this state.

Section 6. Paragraph (b) of subsection (3) of section 472.015, Florida Statutes, is amended to read:

472.015 Licensure.—

(3)

(b) The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces~~;~~ ~~,~~ the spouse or surviving spouse of such a veteran; a current member of the United States Armed Forces who has served on active duty or the spouse of such a member; the surviving spouse of a member of the United States Armed Forces who died while serving on active duty;~~,~~ or a business entity that has a majority ownership held by such a veteran, ~~or~~ spouse, or surviving spouse, if the department receives an application~~,~~ in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the

veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 7. Section 472.016, Florida Statutes, is amended to read:

472.016 Members of Armed Forces in good standing with the board.—

(1) Any member of the United States Armed Forces ~~of the United States~~ who is now or in the future on active duty and who, at the time of becoming such a member of the United States Armed Forces, was in good standing with the board and entitled to practice or engage in surveying and mapping in the state shall be kept in good standing by the board, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the United States Armed Forces ~~of the United States~~ on active duty and for a period of 2 years ~~6 months~~ after discharge from active duty~~, provided that he or she is not engaged in the practice of surveying or mapping in the private sector for profit~~. A member, during active duty and for a period of 2 years after discharge from active duty, engaged in the practice of surveying or mapping in the private sector for profit in this

state must complete all licensure renewal provisions except remitting the license renewal fee, which shall be waived by the department.

(2) The board shall adopt rules exempting the spouses of members of the United States Armed Forces ~~of the United States~~ from licensure renewal provisions, but only in cases of absence from the state because of their spouses' duties with the United States Armed Forces. The department or the appropriate board or program shall waive any license renewal fee for the spouse of a member of the United States Armed Forces when such member is present in this state because of the member's active duty with the United States Armed Forces, and for the surviving spouse of a member who at the time of death was serving on active duty and died within the 2 years preceding the date of renewal.

Section 8. Subsection (1) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(1) Each individual, partner, or principal officer in a corporation, shall file with the department a complete application accompanied by an application fee not to exceed $60, except that an ~~the~~ applicant for a Class "D" or Class "G" license is not required to submit an application fee. An application fee is not required for an applicant who qualifies for the fee waiver in s. 493.6107(6). The application fee is not refundable.

(a) The application submitted by any individual, partner, or corporate officer must be approved by the department before the individual, partner, or corporate officer assumes his or her duties.

(b) Individuals who invest in the ownership of a licensed agency but do not participate in, direct, or control the operations of the agency are not required to file an application.

~~(c) The initial application fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class "C," Class "CC," Class "DI," Class "E," Class "EE," Class "K," Class "M," Class "MA," Class "MB," Class "MR," or Class "RI" license within 24 months after being discharged from a branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs with his or her application in order to obtain a waiver.~~

Section 9. Subsection (6) of section 493.6107, Florida Statutes, is amended to read:

493.6107 Fees.—

(6) The initial application ~~license~~ fee for a veteran, as defined in s. 1.01, the spouse or surviving spouse of such veteran, a member of the United States Armed Forces who has served on active duty, or the spouse or surviving spouse of such member who at the time of death was serving on active duty and died within the 2 years preceding the initial application, must ~~shall~~ be waived if he or she applies for a Class "C," Class "CC," Class "DI," Class "E," Class "EE," Class "K," Class "M," Class "MA," Class "MB," Class "MR," or Class "RI" license in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation ~~Class "M" or Class "K" license within~~

~~24 months after being discharged from any branch of the United States Armed Forces~~. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs with his or her application in order to obtain a waiver.

A licensee seeking such a waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 10. Subsection (7) is added to section 493.6113, Florida Statutes, to read:

493.6113 Renewal application for licensure.—

(7) The department shall waive the respective fees for a licensee who:

(a) Is an active duty member of the United States Armed Forces or the spouse of such member;

(b) Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the license. A licensee who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the application must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

(c) Is the surviving spouse of a member of the United States Armed Forces who was serving on active duty at the time of death and died within the 2 years preceding the expiration date of the license.

A licensee seeking such a waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 11. Subsection (8) is added to section 494.00312, Florida Statutes, to read:

494.00312 Loan originator license.—

(8) The office shall waive the fees required by paragraph (2)(e) for an applicant who:

(a) Is or was an active duty member of the United States Armed Forces. To qualify for the fee waiver, an applicant who is a former member of the United States Armed Forces must have received an honorable discharge upon separation or discharge from the United States Armed Forces;

(b) Is married to a current or former member of the United States Armed Forces and is or was married to the member during any period of active duty; or

(c) Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death.

An applicant seeking such a fee waiver must submit proof, in a form prescribed by commission rule, that the applicant meets one of the qualifications in this subsection.

Section 12. Subsection (4) is added to section 494.00313, Florida Statutes, to read:

494.00313 Loan originator license renewal.—

(4) The office shall waive the fees required by paragraph

(1)(b) for a loan originator who:

(a) Is an active duty member of the United States Armed Forces or the spouse of such member;

(b) Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the license pursuant to s. 494.00312(7). To qualify for the fee waiver, a loan originator who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the license must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

(c) Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's license expiration date pursuant to s. 494.00312(7).

A loan originator seeking such a fee waiver must submit proof, in a form prescribed by commission rule, that the loan originator meets one of the qualifications in this subsection.

Section 13. Paragraph (a) of subsection (6) of section 497.140, Florida Statutes, is amended to read:

497.140 Fees.—

(6)(a)1. The department shall impose, upon initial licensure and each renewal thereof, a special unlicensed activity fee of $5 per licensee, in addition to all other fees provided for in this chapter. Such fee shall be used by the department to fund efforts to identify and combat unlicensed activity which violates this chapter. Such fee shall be in

addition to all other fees collected from each licensee and shall be deposited in a separate account of the Regulatory Trust Fund; however, the department is not limited to the funds in such an account for combating improper unlicensed activity in violation of this chapter.

2. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding the application for licensure are exempt from the special unlicensed activity fee associated with initial licensure. To qualify for the fee exemption under this subparagraph, a licensee must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates that such member is currently in good standing or such veteran was honorably discharged.

Section 14. Subsection (4) of section 497.141, Florida Statutes, is amended to read:

497.141 Licensing; general application procedures.—

(4) Before the issuance of any license, the department shall collect such initial fee as specified by this chapter or, where authorized, by rule of the board, unless an applicant is exempted as specified in this chapter. Upon receipt of a completed application and the appropriate fee, and certification by the board that the applicant meets the applicable requirements of law and rules, the department shall issue the license applied for. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination.

Section 15. Subsection (12) of section 497.142, Florida Statutes, is amended to read:

497.142 Licensing; fingerprinting and criminal background checks.—

(12) The licensing authority may by rule establish forms, procedures, and fees for the submission and processing of fingerprints required to be submitted in accordance with this chapter. The licensing authority may by rule waive the requirement for submission of fingerprints otherwise required by this chapter if the person has within the preceding 24 months submitted fingerprints to the licensing authority and the licensing authority has obtained a criminal history report utilizing those prior fingerprints. The cost for the fingerprint processing shall be paid to the Department of Law Enforcement and may be borne by the Department of Financial Services, the employer, or the person subject to the background check. The licensing authority shall waive fingerprint requirements if the licensee is an honorably discharged veteran of the United States Armed Forces and applies for licensure within 2 years after discharge.

Section 16. Subsection (1) of section 497.281, Florida Statutes, is amended to read:

497.281 Licensure of brokers of burial rights.—

(1)(a) No person shall receive compensation to act as a third party to the sale or transfer of three or more burial rights in a 12-month period unless the person pays a license fee as determined by licensing authority rule but not to exceed $250 and is licensed with the department as a burial rights broker in accordance with this section.

(b) A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial license fee. To qualify for the license fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 17. Paragraph (a) of subsection (1) and subsection (3) of section 497.368, Florida Statutes, are amended to read:

497.368 Embalmers; licensure as an embalmer by examination; provisional license.—

(1) Any person desiring to be licensed as an embalmer shall apply to the licensing authority to take the licensure examination. The licensing authority shall examine each applicant who has remitted an examination fee set by rule of the licensing authority not to exceed $200 plus the actual per applicant cost to the licensing authority for portions of the examination and who has:

(a) Completed the application form and remitted a nonrefundable application fee set by the licensing authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military

dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(3) Any applicant who has completed the required 1-year internship and has been approved for examination as an embalmer may qualify for a provisional license to work in a licensed funeral establishment, under the direct supervision of a licensed embalmer for a limited period of 6 months as provided by rule of the licensing authority. The fee for provisional licensure shall be set by rule of the licensing authority, but may not exceed $200, and shall be nonrefundable and in addition to the fee required in subsection (1). This provisional license may be renewed no more than one time. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial provisional licensure fee. To qualify for the initial provisional licensure fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 18. Paragraph (a) of subsection (1) and subsection (5) of section 497.369, Florida Statutes, are amended to read:

497.369 Embalmers; licensure as an embalmer by endorsement; licensure of a temporary embalmer.—

(1) The licensing authority shall issue a license by

endorsement to practice embalming to an applicant who has remitted an examination fee set by rule of the licensing authority not to exceed $200 and who the licensing authority certifies:

(a) Has completed the application form and remitted a nonrefundable application fee set by rule of the licensing authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(5)(a) There may be adopted by the licensing authority rules authorizing an applicant who has met the requirements of paragraphs (1)(b) and (c) and who is awaiting an opportunity to take the examination required by subsection (4) to be licensed as a temporary licensed embalmer. A temporary licensed embalmer may work as an embalmer in a licensed funeral establishment under the general supervision of a licensed embalmer. Such temporary license shall expire 60 days after the date of the next available examination required under subsection (4); however, the temporary license may be renewed one time under the same conditions as initial issuance. The fee for issuance or renewal of an embalmer temporary license shall be set by rule of

the licensing authority but may not exceed $200. The fee required in this subsection shall be nonrefundable and in addition to the fee required in subsection (1).

(b) A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial issuance fee. To qualify for the initial issuance fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 19. Subsection (1) of section 497.370, Florida Statutes, is amended to read:

497.370 Embalmers; licensure of an embalmer intern.—

(1)(a) Any person desiring to become an embalmer intern shall make application to the licensing authority on forms specified by rule, together with a nonrefundable fee determined by rule of the licensing authority but not to exceed $200.

(b) A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption under this paragraph, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates

such member is currently in good standing or such veteran was honorably discharged.

The application shall indicate the name and address of the licensed embalmer under whose supervision the intern will receive training and the name of the licensed funeral establishment or centralized embalming facility where such training is to be conducted. The embalmer intern shall intern under the direct supervision of a licensed embalmer who has an active, valid license under s. 497.368 or s. 497.369.

Section 20. Section 497.371, Florida Statutes, is amended to read:

497.371 Embalmers; establishment of embalmer apprentice program.—

(1) The licensing authority adopts rules establishing an embalmer apprentice program. An embalmer apprentice may perform only those tasks, functions, and duties relating to embalming which are performed under the direct supervision of an embalmer who has an active, valid license under s. 497.368 or s. 497.369. An embalmer apprentice is eligible to serve in an apprentice capacity for a period not to exceed 3 years as may be determined by licensing authority rule or for a period not to exceed 5 years if the apprentice is enrolled in and attending a course in mortuary science or funeral service education at any mortuary college or funeral service education college or school. An embalmer apprentice shall be issued a license upon payment of a licensure fee as determined by licensing authority rule but not to exceed $200.

(2) A member of the United States Armed Forces, such

member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the licensure fee. To qualify for the licensure fee exemption under this subsection, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

An applicant for the embalmer apprentice program may not be issued a license unless the licensing authority determines that the applicant is of good character and has not demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

Section 21. Paragraph (a) of subsection (1) and subsection (3) of section 497.373, Florida Statutes, are amended to read:

497.373 Funeral directing; licensure as a funeral director by examination; provisional license.—

(1) Any person desiring to be licensed as a funeral director shall apply to the licensing authority to take the licensure examination. The licensing authority shall examine each applicant who has remitted an examination fee set by rule of the licensing authority not to exceed $200 plus the actual per applicant cost to the licensing authority for portions of the examination and who the licensing authority certifies has:

(a) Completed the application form and remitted a nonrefundable application fee set by rule of the licensing

authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(3) Any applicant who has completed the required 1-year internship and has been approved for examination as a funeral director may qualify for a provisional license to work in a licensed funeral establishment, under the direct supervision of a licensed funeral director for 6 months as provided by rule of the licensing authority. However, a provisional licensee may work under the general supervision of a licensed funeral director upon passage of the laws and rules examination required under paragraph (2)(b). The fee for provisional licensure shall be set by rule of the licensing authority but may not exceed $200. The fee required in this subsection shall be nonrefundable and in addition to the fee required by subsection (1). This provisional license may be renewed no more than one time. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial provisional licensure fee. To qualify for the initial provisional licensure fee exemption,

a licensee must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 22. Paragraph (a) of subsection (1) and subsection (5) of section 497.374, Florida Statutes, are amended to read:

497.374 Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.—

(1) The licensing authority shall issue a license by endorsement to practice funeral directing to an applicant who has remitted a fee set by rule of the licensing authority not to exceed $200 and who:

(a) Has completed the application form and remitted a nonrefundable application fee set by rule of the licensing authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the nonrefundable application fee. To qualify for the exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(5) There may be adopted rules authorizing an applicant who has met the requirements of paragraphs (1)(b) and (c) and who is awaiting an opportunity to take the examination required by

subsection (4) to obtain a license as a temporary funeral director. A licensed temporary funeral director may work as a funeral director in a licensed funeral establishment under the general supervision of a funeral director licensed under subsection (1) or s. 497.373. Such license shall expire 60 days after the date of the next available examination required under subsection (4); however, the temporary license may be renewed one time under the same conditions as initial issuance. The fee for initial issuance or renewal of a temporary license under this subsection shall be set by rule of the licensing authority but may not exceed $200. The fee required in this subsection shall be nonrefundable and in addition to the fee required in subsection (1). A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the initial issuance fee. To qualify for the initial issuance fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 23. Paragraph (a) of subsection (1) of section 497.375, Florida Statutes, is amended to read:

497.375 Funeral directing; licensure of a funeral director intern.—

(1)(a) Any person desiring to become a funeral director intern must apply to the licensing authority on forms prescribed by rule of the licensing authority, together with a

nonrefundable fee set by rule of the licensing authority not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 24. Section 497.393, Florida Statutes, is created to read:

497.393 Licensure; military-issued credentials for licensure.—The licensing authority shall recognize military-issued credentials relating to funeral and cemetery services for purposes of licensure as a funeral director or embalmer.

Section 25. Paragraph (n) of subsection (1) of section 497.453, Florida Statutes, is amended to read:

497.453 Application for preneed license, procedures and criteria; renewal; reports.—

(1) PRENEED LICENSE APPLICATION PROCEDURES.—

(n) The application shall be accompanied by a nonrefundable fee as determined by licensing authority rule but not to exceed $500. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a

copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 26. Paragraph (h) of subsection (2) of section 497.466, Florida Statutes, is amended to read:

497.466 Preneed sales agents, license required; application procedures and criteria; appointment of agents; responsibility of preneed licensee.—

(2) PRENEED SALES AGENT LICENSE; APPLICATION PROCEDURES.—

(h) The application shall be accompanied by a nonrefundable fee of $150 if made through the department's online licensing system or $175 if made using paper forms. Payment of either fee shall entitle the applicant to one initial appointment without payment of further fees by the preneed sales agent or the appointing preneed licensee if a preneed sales agent license is issued. The licensing authority may from time to time increase such fees but not to exceed $300. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 27. Paragraph (e) of subsection (2) of section 497.554, Florida Statutes, is amended to read:

497.554 Monument establishment sales representatives.—

(2) APPLICATION PROCEDURES.—Licensure as a monument establishment sales agent shall be by submission of an application for licensure to the department on a form prescribed by rule.

(e) The monument establishment sales agent application shall be accompanied by a fee of $50. The licensing authority may from time to time increase the application fee by rule but not to exceed $200. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

Section 28. Paragraph (i) of subsection (2) and subsection (4) of section 497.602, Florida Statutes, are amended to read:

497.602 Direct disposers, license required; licensing procedures and criteria; regulation.—

(2) APPLICATION PROCEDURES.—

(i) The application shall be accompanied by a nonrefundable fee of $300. The licensing authority may from time to time increase the fee by rule but not to exceed more than $500. A member of the United States Armed Forces, such member's spouse,

and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(4) ISSUANCE OF LICENSE.—Upon approval of the application by the licensing authority, the license shall be issued. The licensing authority shall recognize military-issued credentials relating to funeral and cemetery services for purposes of licensure as a direct disposer.

Section 29. Subsection (2) of section 501.015, Florida Statutes, is amended to read:

501.015 Health studios; registration requirements and fees.—Each health studio shall:

(2) Remit an annual registration fee of $300 to the department at the time of registration for each of the health studio's business locations.

(a) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces;~~,~~ the spouse or surviving spouse of such a veteran; a current member of the United States Armed Forces who has served on active duty; the spouse of such a member; the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty;~~,~~ or a business entity that has a majority ownership held by such a veteran, ~~or~~ spouse,

or surviving spouse, if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(b) The department shall waive the registration renewal fee for a registrant who:

1. Is an active duty member of the United States Armed

Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the date of renewal.

A registrant seeking such a waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 30. Paragraph (b) of subsection (5) of section 501.605, Florida Statutes, is amended to read:

501.605 Licensure of commercial telephone sellers and entities providing substance abuse marketing services.—

(5) An application filed pursuant to this part must be verified and accompanied by:

(b) A fee for licensing in the amount of $1,500. The fee shall be deposited into the General Inspection Trust Fund. The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces~~;~~, the spouse or surviving spouse of such a veteran; a current member of the United States Armed Forces who has served on active duty;

the spouse of such a member; the surviving spouse of a member of the United States Armed Forces if such member died while serving on active duty;~~,~~ or a business entity that has a majority ownership held by such a veteran, ~~or~~ spouse, or surviving spouse, if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was

lawfully married to the veteran at the time of discharge.

Section 31. Paragraph (b) of subsection (2) of section 501.607, Florida Statutes, is amended to read:

501.607 Licensure of salespersons.—

(2) An application filed pursuant to this section must be verified and be accompanied by:

(b) A fee for licensing in the amount of $50 per salesperson. The fee shall be deposited into the General Inspection Trust Fund. The fee for licensing may be paid after the application is filed, but must be paid within 14 days after the applicant begins work as a salesperson. The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces;~~,~~ the spouse or surviving spouse of such a veteran; a current member of the United States Armed Forces who has served on active duty; the spouse of such a member; the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty;~~,~~ or a business entity that has a majority ownership held by such a veteran, ~~or~~ spouse, or surviving spouse, if the department receives an application~~,~~ in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 32. Subsection (5) is added to section 501.609, Florida Statutes, to read:

501.609 License renewal.—

(5) The department shall waive the annual fee to renew for a licensee who:

(a) Is an active duty member of the United States Armed Forces or the spouse of such member;

(b) Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver, a licensee who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon

separation or discharge from the United States Armed Forces; or

(c) Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A licensee seeking such a waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 33. Paragraph (b) of subsection (3) of section 507.03, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

507.03 Registration.—

(3)

(b) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces~~;~~ ~~,~~ the spouse or surviving spouse of such a veteran; a current member of the United States Armed Forces who has served on active duty; the spouse of such a member; the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty~~;~~ ~~,~~ or a business entity that has a majority ownership held by such a veteran, ~~or~~ spouse, or surviving spouse, if the department receives an application~~,~~ in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(c) The department shall waive the biennial fee to renew for a registrant who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date. To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date

of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A registrant seeking such a waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 34. Subsections (10) and (11) of section 517.12, Florida Statutes, are amended to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(10)(a) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprints to be processed by the office. Such fee shall be determined by rule of the commission. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(b) The office shall waive the $50 assessment fee required by paragraph (a) of an associated person for an applicant who:

1. Is or was an active duty member of the United States

Armed Forces. To qualify for the fee waiver, an applicant who is a former member of the United States Armed Forces must have received an honorable discharge upon separation or discharge from the United States Armed Forces;

2. Is married to a current or former member of the United States Armed Forces and is or was married to the member during any period of active duty; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death.

An applicant seeking such a fee waiver must submit proof, in a form prescribed by commission rule, that the applicant meets one of the qualifications in this paragraph.

(11)(a) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in paragraph (10)(a) ~~subsection (10)~~ for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current

registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in paragraph (10)(a) ~~subsection (10)~~ for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(b) The office shall waive the $50 assessment fee required by paragraph (10)(a) of an associated person for a registrant renewing his or her registration who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the registration pursuant to paragraph (a). To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's registration expiration date pursuant to paragraph (a).

A registrant seeking such a fee waiver must submit proof, in a

form prescribed by commission rule, that the registrant meets one of the qualifications in this paragraph.

Section 35. Paragraph (b) of subsection (3) of section 527.02, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

527.02 License; penalty; fees.—

(3)

(b) The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces~~;~~ ~~,~~ the spouse or surviving spouse of such a veteran; a current member of the United States Armed Forces who has served on active duty; the spouse of such a member; the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty~~;~~ ~~,~~ or a business entity that has a majority ownership held by such a veteran, ~~or~~ spouse , or surviving spouse, if the department receives an application~~,~~ in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department

of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(c) The department shall waive license renewal fees for a licensee who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a licensee who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the annual renewal date must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if such member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's renewal.

A licensee seeking such a waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 36. Paragraph (c) of subsection (3) of section 539.001, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

539.001 The Florida Pawnbroking Act.—

(3) LICENSE REQUIRED.—

(c) Each license is valid for a period of 1 year unless it is earlier relinquished, suspended, or revoked. Each license shall be renewed annually, and each licensee shall, initially and annually thereafter, pay to the agency a license fee of $300 for each license held. The agency shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces; ~~,~~ the spouse or surviving spouse of such a veteran; a current member of the United States Armed Forces who has served on active duty; the spouse of such a member; the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty; ~~,~~ or a business entity that has a majority ownership held by such a veteran, ~~or~~ spouse, or surviving spouse, if the agency receives an application ~~,~~ in a format prescribed by the agency. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation ~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver: ~~,~~

1. A veteran must provide to the agency a copy of his or her DD Form 214, as issued by the United States Department of

Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the agency a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the agency proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(g) The agency shall waive license renewal fees for a licensee who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a licensee who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the annual renewal date must have received an honorable discharge upon separation or discharge from the United States

Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A licensee seeking such a waiver must apply in a format prescribed by the agency, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 37. Paragraph (b) of subsection (3) of section 559.904, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

559.904 Motor vehicle repair shop registration; application; exemption.—

(3)

(b) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces~~;~~ the spouse or surviving spouse of such a veteran; a current member of the United States Armed Forces who has served on active duty; the spouse of such a member; the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty~~;~~ or a business entity that has a majority ownership held by such a veteran, ~~or~~ spouse, or surviving spouse, if the department receives an application~~,~~ in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~;~~

1. A veteran must provide to the department a copy of his

or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(c) The department shall waive registration renewal fees for a registrant who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the biennial renewal date must have received an honorable

discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A registrant seeking such a waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 38. Paragraph (c) of subsection (2) of section 559.928, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

559.928 Registration.—

(2)

(c) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces~~;~~ ~~,~~ the spouse or surviving spouse of such a veteran; a current member of the United States Armed Forces who has served on active duty; the spouse of such a member; the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty~~;~~ ~~,~~ or a business entity that has a majority ownership held by such a veteran, ~~or~~ spouse, or surviving spouse, if the department receives an application~~,~~ in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation~~, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces~~. To qualify for the waiver:~~,~~

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(d) The department shall waive the registration renewal fee for a registrant who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding

the annual registration renewal date must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A registrant seeking such a waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

Section 39. Subsection (2) of section 626.025, Florida Statutes, is amended to read:

626.025 Consumer protections.—To transact insurance, agents shall comply with consumer protection laws, including the following, as applicable:

(2) Fingerprinting requirements for resident and nonresident agents, as required under s. 626.171 or s. 626.202. The department shall waive the fingerprinting requirement for an agent who is an honorably discharged veteran of the United States Armed Forces and applies for licensure within 2 years after discharge.

Section 40. Subsections (4) and (6) of section 626.171, Florida Statutes, are amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.—

(4) An applicant for a license as an agent, customer representative, adjuster, service representative, managing

general agent, or reinsurance intermediary must submit a set of the individual applicant's fingerprints, or, if the applicant is not an individual, a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors, to the department and must pay the fingerprint processing fee set forth in s. 624.501. Fingerprints shall be used to investigate the applicant's qualifications pursuant to s. 626.201. The fingerprints shall be taken by a law enforcement agency, designated examination center, or other department-approved entity. The department shall require all designated examination centers to have fingerprinting equipment and to take fingerprints from any applicant or prospective applicant who pays the applicable fee. The department may not approve an application for licensure as an agent, customer service representative, adjuster, service representative, managing general agent, or reinsurance intermediary if fingerprints have not been submitted. The department shall waive fingerprint requirements for an applicant who is an honorably discharged veteran of the United States Armed Forces and applies for licensure within 2 years after discharge.

(6) Members of the United States Armed Forces and their spouses, and veterans of the United States Armed Forces who have separated from service ~~retired~~ within 24 months before application for licensure, are exempt from the application filing fee prescribed in s. 624.501. Qualified individuals must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, ~~or separation document,~~ or ~~a~~ separation document that indicates such members

~~of the United States Armed Forces~~ are currently in good standing or such veterans were honorably discharged.

Section 41. Paragraph (f) of subsection (2) of section 626.172, Florida Statutes, is amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must be signed by an individual required to be listed in the application under paragraph (a). An insurance agency may permit a third party to complete, submit, and sign an application on the insurance agency's behalf; however, the insurance agency is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The application for an insurance agency license must include:

(f) The fingerprints of each of the following:

1. A sole proprietor;

2. Each individual required to be listed in the application under paragraph (a); and

3. Each individual who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must be processed in accordance with s. 624.34. However, fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter. The department shall waive fingerprint requirements for an applicant

who is an honorably discharged veteran of the United States Armed Forces and applies for licensure within 2 years after discharge. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

Section 42. Section 626.202, Florida Statutes, is amended to read:

626.202 Fingerprinting requirements.—If there is a change in ownership or control of any entity licensed under this chapter, or if a new partner, officer, or director is employed or appointed, a set of fingerprints of the new owner, partner, officer, or director must be filed with the department or office within 30 days after the change. The acquisition of 10 percent or more of the voting securities of a licensed entity is considered a change of ownership or control. The fingerprints must be taken by a law enforcement agency or other department-approved entity and be accompanied by the fingerprint processing fee in s. 624.501. The department shall waive the fingerprinting requirement if the owner, partner, officer, or director is an honorably discharged veteran of the United States Armed Forces and is employed or appointed within 2 years after discharge.

Section 43. Paragraph (c) of subsection (2) of section 626.292, Florida Statutes, is amended to read:

626.292 Transfer of license from another state.—

(2) To qualify for a license transfer, an individual applicant must meet the following requirements:

(c) The individual must submit a completed application for this state which is received by the department within 90 days after the date the individual became a resident of this state, along with payment of the applicable fees set forth in s.

624.501 and submission of the following documents:

1. A certification issued by the appropriate official of the applicant's home state identifying the type of license and lines of authority under the license and stating that, at the time the license from the home state was canceled, the applicant was in good standing in that state or that the state's Producer Database records, maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries, indicate that the agent or all-lines adjuster is or was licensed in good standing for the line of authority requested.

2. A set of the applicant's fingerprints in accordance with s. 626.171(4). The department shall waive the fingerprinting requirement for an applicant who is an honorably discharged veteran of the United States Armed Forces and applies for a license transfer within 2 years after discharge.

Section 44. Paragraph (c) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(c) *Travel insurance.*—License covering only policies and certificates of travel insurance which are subject to review by the office. Policies and certificates of travel insurance may provide coverage for risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to

personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. Such policy or certificate may be issued for terms longer than 90 days, but, other than a policy or certificate providing coverage for air ambulatory services only, each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 days. The license may be issued only:

1. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. Such policy may not be for more than 48 hours or more than the duration of a specified one-way trip or round trip.

2. To an entity or individual that is:

a. The developer of a timeshare plan that is the subject of an approved public offering statement under chapter 721;

b. An exchange company operating an exchange program approved under chapter 721;

c. A managing entity operating a timeshare plan approved under chapter 721;

d. A seller of travel as defined in chapter 559; or

e. A subsidiary or affiliate of any of the entities described in sub-subparagraphs a.-d.

3. To a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services if insurance sales activities authorized by the license

are in connection with, and incidental to, travel.

a. A license issued to a business entity that offers travel planning services must encompass each office, branch office, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.

b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee shall notify the department within 30 days after the closing or terminating of an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.

c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees and parties with whom the licensee has entered into a contractual agreement to offer travel insurance.

A licensee shall require each individual who offers policies or certificates under subparagraph 2. or subparagraph 3. to receive initial training from a general lines agent or an insurer authorized under chapter 624 to transact insurance within this state. For an entity applying for a license as a travel insurance agent, the fingerprinting requirement of this section

applies only to the president, secretary, and treasurer and to any other officer or person who directs or controls the travel insurance operations of the entity. The department shall waive the fingerprinting requirement for an individual who is an honorably discharged veteran of the United States Armed Forces who has been discharged within the previous 2 years.

Section 45. Subsection (6) of section 626.732, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

626.732 Requirement as to knowledge, experience, or instruction.—

(6) Prelicensure coursework is not required for an applicant who is an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran.

Section 46. Subsection (13) is added to section 626.7355, Florida Statutes, to read:

626.7355 Temporary license as customer representative pending examination.—

(13) Evidence of prelicensure customer representative educational course enrollment is not required for an applicant who is an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran.

Section 47. Section 626.7851, Florida Statutes, is amended to read:

626.7851 Requirement as to knowledge, experience, or instruction.—An applicant for a license as a life agent, except for a chartered life underwriter (CLU), shall not be qualified or licensed unless within the 4 years immediately preceding the date the application for a license is filed with the department

he or she has:

(1) Successfully completed 40 hours of coursework in life insurance, annuities, and variable contracts approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(2) Successfully completed a minimum of 60 hours of coursework in multiple areas of insurance, which included life insurance, annuities, and variable contracts, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(3) Earned or maintained an active designation as Chartered Financial Consultant (ChFC) from the American College of Financial Services; or Fellow, Life Management Institute (FLMI) from the Life Management Institute;

(4) Held an active license in life insurance in another state. This provision may not be used unless the other state grants reciprocal treatment to licensees formerly licensed in the state; or

(5) Been employed by the department or office for at least 1 year, full time in life insurance regulatory matters and who was not terminated for cause, and application for examination is made within 4 years after the date of termination of his or her employment with the department or office.

The successful completion of prelicensure coursework required by subsection (1) is not required for an applicant who is an honorably discharged veteran of the United States Armed Forces

or the spouse of such a veteran.

Section 48. Section 626.8311, Florida Statutes, is amended to read:

626.8311 Requirement as to knowledge, experience, or instruction.—An applicant for a license as a health agent, except for a chartered life underwriter (CLU), shall not be qualified or licensed unless within the 4 years immediately preceding the date the application for license is filed with the department he or she has:

(1) Successfully completed 40 hours of coursework in health insurance, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of health insurance by employers to their employees and the regulation thereof;

(2) Successfully completed a minimum of 60 hours of coursework in multiple areas of insurance, which included health insurance, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(3) Earned or maintained an active designation as a Registered Health Underwriter (RHU), Chartered Healthcare Consultant (ChHC), or Registered Employee Benefits Consultant (REBC) from the American College of Financial Services; Certified Employee Benefit Specialist (CEBS) from the Wharton

School of the University of Pennsylvania; or Health Insurance Associate (HIA) from America's Health Insurance Plans;

(4) Held an active license in health insurance in another state. This provision may not be utilized unless the other state grants reciprocal treatment to licensees formerly licensed in Florida; or

(5) Been employed by the department or office for at least 1 year, full time in health insurance regulatory matters and who was not terminated for cause, and application for examination is made within 4 years after the date of termination of his or her employment with the department or office.

The successful completion of prelicensure coursework required by subsection (1) is not required for an applicant who is an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran.

Section 49. Subsection (7) is added to section 626.8417, Florida Statutes, to read:

626.8417 Title insurance agent licensure; exemptions.—

(7) The successful completion of prelicensure coursework required by paragraph (3)(a) is not required for an applicant who is an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran.

Section 50. Paragraph (a) of subsection (2) of section 626.8732, Florida Statutes, is amended to read:

626.8732 Nonresident public adjuster's qualifications, bond.—

(2) The applicant shall furnish the following with his or her application:

(a) A complete set of his or her fingerprints. The applicant's fingerprints must be certified by an authorized law enforcement officer. The department may not authorize an applicant to take the required examination or issue a nonresident public adjuster's license to the applicant until the department has received a report from the Florida Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints. The department shall waive the fingerprinting requirement for an applicant who is an honorably discharged veteran of the United States Armed Forces and applies for licensure within 2 years after discharge.

Section 51. Paragraph (a) of subsection (2) of section 626.8734, Florida Statutes, is amended to read:

626.8734 Nonresident all-lines adjuster license qualifications.—

(2) The applicant must furnish the following with his or her application:

(a) A complete set of his or her fingerprints. The applicant's fingerprints must be certified by an authorized law enforcement officer. The department shall waive the fingerprinting requirement for an applicant who is an honorably discharged veteran of the United States Armed Forces and applies for licensure within 2 years after discharge.

Section 52. Subsection (7) is added to section 626.927, Florida Statutes, to read:

626.927 Licensing of surplus lines agent.—

(7) Successful completion of prelicensure coursework is not required for an individual who is an honorably discharged

veteran of the United States Armed Forces or the spouse of such a veteran.

Section 53. Subsection (7) is added to section 626.9272, Florida Statutes, to read:

626.9272 Licensing of nonresident surplus lines agents.—

(7) Successful completion of prelicensure coursework is not required for an applicant who is an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran.

Section 54. Paragraph (e) of subsection (3) of section 626.9912, Florida Statutes, is amended to read:

626.9912 Viatical settlement provider license required; application for license.—

(3) In the application, the applicant must provide all of the following:

(e) With respect to each individual identified under paragraph (d):

1. A sworn biographical statement on forms adopted by the commission and supplied by the office.

2. A set of fingerprints on forms prescribed by the commission, certified by a law enforcement officer, and accompanied by the fingerprinting fee specified in s. 624.501. The department shall waive the fingerprinting requirement for an applicant who is an honorably discharged veteran of the United States Armed Forces and applies for licensure within 2 years after discharge.

3. Authority for release of information relating to the investigation of the individual's background.

Section 55. Paragraph (a) of subsection (4) of section

633.304, Florida Statutes, is amended to read:

633.304 Fire suppression equipment; license to install or maintain.—

(4)

(a) Such licenses and permits shall be issued by the division for 2 years beginning January 1, 2000, and each 2-year period thereafter and expiring December 31 of the second year. All licenses or permits issued will expire on December 31 of each odd-numbered year. The failure to renew a license or permit by December 31 of the second year will cause the license or permit to become inoperative. The holder of an inoperative license or permit may not engage in any activities for which a license or permit is required by this section. A license or permit which is inoperative because of the failure to renew it shall be restored upon payment of the applicable fee plus a penalty equal to the applicable fee, if the application for renewal is filed no later than the following March 31. If the application for restoration is not made before the March 31st deadline, the fee for restoration shall be equal to the original application fee and the penalty provided for herein, and, in addition, the State Fire Marshal shall require reexamination of the applicant. The period within which reexamination is not required may, in the discretion of the department, be extended to 12 months after discharge from military service if the military service does not exceed 3 years, but not more than 6 years from the date of issue or renewal, if applicable, for licenses or permits held by an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran. A qualifying veteran and the spouse of such veteran are not

subject to the penalty fee. The fee for a license or permit issued for 1 year or less shall be prorated at 50 percent of the applicable fee for a biennial license or permit.

Section 56. Subsection (1) of section 633.332, Florida Statutes, is amended to read:

633.332 Certificate; expiration; renewal; inactive certificate; continuing education.—

(1) Certificates shall expire every 2 years at midnight on June 30. All certificates must be renewed every 2 years. The failure to renew a certificate before June 30 shall cause the certificate to become inoperative, and it is unlawful thereafter for a person to engage, offer to engage, or hold herself or himself out as engaging in contracting under the certificate unless the certificate is restored or reissued. A certificate which is inoperative because of failure to renew shall be restored on payment of the proper renewal fee if the application for restoration is made within 90 days after June 30. If the application for restoration is not made within the 90-day period, the fee for restoration must be equal to the original application fee, and, in addition, the State Fire Marshal must require examination or reexamination of the applicant. The period within which reexamination is not required may, in the discretion of the department, be extended to 12 months after discharge from military service if the military service does not exceed 3 years, but not more than 6 years from the date of issue or renewal, if applicable, for certificates held by an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran.

Section 57. Subsection (3) of section 633.412, Florida

Statutes, is amended to read:

633.412 Firefighters; qualifications for certification.—A person applying for certification as a firefighter must:

(3) Submit a set of fingerprints to the division with a current processing fee. The fingerprints will be forwarded to the Department of Law Enforcement for state processing and forwarded by the Department of Law Enforcement to the Federal Bureau of Investigation for national processing. The department shall waive the fingerprinting requirement for an applicant who is an honorably discharged veteran of the United States Armed Forces and applies for certification within 2 years after discharge.

Section 58. Section 633.414, Florida Statutes, is amended to read:

633.414 Retention of firefighter and volunteer firefighter certifications.—

(1) In order for a firefighter to retain her or his Firefighter Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(a) Be active as a firefighter.

(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.

(c) Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed

by rule.

(d) Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

(2) In order for a volunteer firefighter to retain her or his Volunteer Firefighter Certificate of Completion, every 4 years he or she must:

(a) Be active as a volunteer firefighter; or

(b) Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule.

(3) Subsection (1) does not apply to state-certified firefighters who are certified and employed full-time, as determined by the fire service provider, as firesafety inspectors or fire investigators, regardless of their employment status as firefighters or volunteer firefighters.

(4) For the purposes of this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter for a cumulative period of 6 months within a 4-year period.

(5) The 4-year period begins upon issuance of the certificate or separation from employment.

(6) A certificate for a firefighter or volunteer firefighter expires if he or she fails to meet the requirements of this section.

(7) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firefighter or volunteer firefighter if the State Fire Marshal finds that any of the following grounds exists:

(a) Any cause for which issuance of a certificate could

have been denied if it had then existed and had been known to the division.

(b) A violation of any provision of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of a record relating to any certificate issued by the division.

The 4-year period may, in the discretion of the department, be extended for an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran to 12 months after discharge from military service if the military service does not exceed 3 years, but in no event more than 6 years from the date of issue or renewal, if applicable.

Section 59. Subsection (3) is added to section 633.444, Florida Statutes, to read:

633.444 Division powers and duties; Florida State Fire College.—

(3) The division shall waive all living and incidental expenses associated with attending the Florida State Fire College for an active duty member of the United States Armed Forces, the spouse of such a member who was serving on active duty at the time of death and died within the 2 years preceding the spouse attending the college, an honorably discharged veteran of the United States Armed Forces, or the spouse or surviving spouse of such a veteran.

Section 60. Subsection (4) of section 648.34, Florida Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(4) The applicant shall furnish, with his or her

application, a complete set of his or her fingerprints and a recent credential-sized, fullface photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The department shall not authorize an applicant to take the required examination until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints. The department shall waive the fingerprinting requirement for an applicant who is an honorably discharged veteran of the United States Armed Forces and applies for licensure within 2 years after discharge.

Section 61. Subsection (4) of section 648.355, Florida Statutes, is amended to read:

648.355 Temporary limited license as limited surety agent or professional bail bond agent; pending examination.—

(4) The applicant shall furnish, with the application for temporary license, a complete set of the applicant's fingerprints and a recent credential-sized, fullface photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The department shall not issue a temporary license under this section until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints. The department shall waive the fingerprinting requirement for an applicant who is an honorably discharged veteran of the United States Armed Forces and applies for licensure within 2 years

after discharge.

Section 62. Section 683.147, Florida Statutes, is created to read:

683.147 Medal of Honor Day.—

(1) March 25 of each year is designated as "Medal of Honor Day."

(2) The Governor may annually issue a proclamation designating March 25 as "Medal of Honor Day" and calling upon public officials, schools, private organizations, and all residents of the state to commemorate Medal of Honor Day and honor recipients of the Congressional Medal of Honor who distinguished themselves through their conspicuous bravery and gallantry during wartime, at considerable risk to their own lives, while serving as members of the United States Armed Forces.

Section 63. Paragraph (b) of subsection (1) of section 1002.37, Florida Statutes, is amended to read:

1002.37 The Florida Virtual School.—

(1)

(b) The mission of the Florida Virtual School is to provide students with technology-based educational opportunities to gain the knowledge and skills necessary to succeed. The school shall serve any student in the state who meets the profile for success in this educational delivery context and shall give priority to:

1. Students who need expanded access to courses in order to meet their educational goals, such as home education students and students in inner-city and rural high schools who do not have access to higher-level courses.

2. Students seeking accelerated access in order to obtain a

high school diploma at least one semester early.

3. Students who are children of an active duty member of the United States Armed Forces who is not stationed in this state whose home of record or state of legal residence is Florida.

The board of trustees of the Florida Virtual School shall identify appropriate performance measures and standards based on student achievement that reflect the school's statutory mission and priorities, and shall implement an accountability system for the school that includes assessment of its effectiveness and efficiency in providing quality services that encourage high student achievement, seamless articulation, and maximum access.

Section 64. Subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historical accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

(a) The history and content of the Declaration of Independence, including national sovereignty, natural law, self-evident truth, equality of all persons, limited government, popular sovereignty, and inalienable rights of life, liberty, and property, and how they form the philosophical foundation of our government.

(b) The history, meaning, significance, and effect of the provisions of the Constitution of the United States and amendments thereto, with emphasis on each of the 10 amendments that make up the Bill of Rights and how the constitution provides the structure of our government.

(c) The arguments in support of adopting our republican form of government, as they are embodied in the most important of the Federalist Papers.

(d) Flag education, including proper flag display and flag salute.

(e) The elements of civil government, including the primary functions of and interrelationships between the Federal Government, the state, and its counties, municipalities, school districts, and special districts.

(f) The history of the United States, including the period of discovery, early colonies, the War for Independence, the Civil War, the expansion of the United States to its present boundaries, the world wars, and the civil rights movement to the present. American history shall be viewed as factual, not as constructed, shall be viewed as knowable, teachable, and testable, and shall be defined as the creation of a new nation based largely on the universal principles stated in the Declaration of Independence.

(g) The history of the Holocaust (1933-1945), the systematic, planned annihilation of European Jews and other groups by Nazi Germany, a watershed event in the history of humanity, to be taught in a manner that leads to an investigation of human behavior, an understanding of the ramifications of prejudice, racism, and stereotyping, and an

examination of what it means to be a responsible and respectful person, for the purposes of encouraging tolerance of diversity in a pluralistic society and for nurturing and protecting democratic values and institutions.

(h) The history of African Americans, including the history of African peoples before the political conflicts that led to the development of slavery, the passage to America, the enslavement experience, abolition, and the contributions of African Americans to society. Instructional materials shall include the contributions of African Americans to American society.

(i) The elementary principles of agriculture.

(j) The true effects of all alcoholic and intoxicating liquors and beverages and narcotics upon the human body and mind.

(k) Kindness to animals.

(l) The history of the state.

(m) The conservation of natural resources.

(n) Comprehensive health education that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; nutrition; personal health; prevention and control of disease; and substance use and abuse. The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating

violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

(o) Such additional materials, subjects, courses, or fields in such grades as are prescribed by law or by rules of the State Board of Education and the district school board in fulfilling the requirements of law.

(p) The study of Hispanic contributions to the United States.

(q) The study of women's contributions to the United States.

(r) The nature and importance of free enterprise to the United States economy.

(s) A character-development program in the elementary schools, similar to Character First or Character Counts, which is secular in nature. Beginning in school year 2004-2005, the character-development program shall be required in kindergarten through grade 12. Each district school board shall develop or adopt a curriculum for the character-development program that shall be submitted to the department for approval. The character-development curriculum shall stress the qualities of patriotism; responsibility; citizenship; kindness; respect for authority, life, liberty, and personal property; honesty; charity; self-control; racial, ethnic, and religious tolerance; and cooperation. The character-development curriculum for grades 9 through 12 shall, at a minimum, include instruction on developing leadership skills, interpersonal skills, organization skills, and research skills; creating a resume; developing and

practicing the skills necessary for employment interviews; conflict resolution, workplace ethics, and workplace law; managing stress and expectations; and developing skills that enable students to become more resilient and self-motivated.

(t) In order to encourage patriotism, the sacrifices that veterans and Medal of Honor recipients have made in serving our country and protecting democratic values worldwide. Such instruction must occur on or before Medal of Honor Day, Veterans' Day, and Memorial Day. Members of the instructional staff are encouraged to use the assistance of local veterans and Medal of Honor recipients when practicable.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection. A character development program that incorporates the values of the recipients of the Congressional Medal of Honor and that is offered as part of a social studies, English Language Arts, or other schoolwide character-building and veteran awareness initiative meets the requirements of paragraphs (s) and (t).

Section 65. Subsection (4) of section 1012.55, Florida Statutes, is amended, and paragraph (e) is added to subsection (1) of that section, to read:

1012.55 Positions for which certificates required.—

(1)

(e)1. The department shall issue a 3-year temporary certificate in educational leadership under s. 1012.56(7) to an individual who:

a. Earned a passing score on the Florida Educational Leadership Examination;

b. Served as a commissioned or noncommissioned military officer in the United States Armed Forces for at least 3 years;

c. Was honorably discharged or has retired from the United States Armed Forces; and

d. Is employed full time in a position for which an educator certificate is required in a Florida public school, state-supported school, or nonpublic school that has a Level II program approved under s. 1012.562.

2. A Level II program approved under s. 1012.562 must accept an applicant who holds a temporary certificate as required under subparagraph 1. The department shall issue a permanent certification as a school principal to an individual who holds a temporary certificate issued under subparagraph 1. and successfully completes the Level II program.

(4) A commissioned or noncommissioned military officer who is an instructor of junior reserve officer training shall be exempt from requirements for teacher certification, except for the background screening pursuant to s. 1012.32, if he or she meets the following qualifications:

(a) Is retired from active military duty, pursuant to chapter 102 of Title 10 U.S.C.

(b) Satisfies criteria established by the appropriate military service for certification by the service as a junior reserve officer training instructor.

(c) Has an exemplary military record.

If such instructor is assigned instructional duties other than junior reserve officer training, he or she shall hold the certificate required by law and rules of the state board for the

type of service rendered. An instructor of junior reserve officer training under this subsection may receive funding through the Florida Teachers Classroom Supply Assistance Program established in s. 1012.71.

Section 66. Subsection (7) of section 1012.56, Florida Statutes, is amended to read:

1012.56 Educator certification requirements.—

(7) TYPES AND TERMS OF CERTIFICATION.—

(a) The Department of Education shall issue a professional certificate for a period not to exceed 5 years to any applicant who fulfills one of the following:

1. Meets all the requirements outlined in subsection (2).

2. For a professional certificate covering grades 6 through 12:

a. Meets the requirements of paragraphs (2)(a)-(h).

b. Holds a master's or higher degree in the area of science, technology, engineering, or mathematics.

c. Teaches a high school course in the subject of the advanced degree.

d. Is rated highly effective as determined by the teacher's performance evaluation under s. 1012.34, based in part on student performance as measured by a statewide, standardized assessment or an Advanced Placement, Advanced International Certificate of Education, or International Baccalaureate examination.

e. Achieves a passing score on the Florida professional education competency examination required by state board rule.

3. Meets the requirements of paragraphs (2)(a)-(h) and completes a professional preparation and education competence

program approved by the department pursuant to paragraph (8)(c). An applicant who completes the program and is rated highly effective as determined by his or her performance evaluation under s. 1012.34 is not required to take or achieve a passing score on the professional education competency examination in order to be awarded a professional certificate.

(b) The department shall issue a temporary certificate to any applicant who completes the requirements outlined in paragraphs (2)(a)-(f) and completes the subject area content requirements specified in state board rule or demonstrates mastery of subject area knowledge pursuant to subsection (5) and holds an accredited degree or a degree approved by the Department of Education at the level required for the subject area specialization in state board rule.

(c) The department shall issue one nonrenewable 2-year temporary certificate and one nonrenewable 5-year professional certificate to a qualified applicant who holds a bachelor's degree in the area of speech-language impairment to allow for completion of a master's degree program in speech-language impairment.

Each temporary certificate is valid for 3 school fiscal years and is nonrenewable. However, the requirement in paragraph (2)(g) must be met within 1 calendar year of the date of employment under the temporary certificate. Individuals who are employed under contract at the end of the 1 calendar year time period may continue to be employed through the end of the school year in which they have been contracted. A school district shall not employ, or continue the employment of, an individual in a

position for which a temporary certificate is required beyond this time period if the individual has not met the requirement of paragraph (2)(g). At least 1 year before an individual's temporary certificate is set to expire, the department shall electronically notify the individual of the date on which his or her certificate will expire and provide a list of each method by which the qualifications for a professional certificate can be completed. The State Board of Education shall adopt rules to allow the department to extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate, not including the requirement in paragraph (2)(g), were not completed due to the serious illness or injury of the applicant, the military service of an applicant's spouse, or other extraordinary extenuating circumstances. The rules must authorize the department to extend the validity period of a temporary certificate ~~or~~ for 1 year if the ~~temporary~~ certificateholder is rated effective or highly effective based solely on a student learning growth formula approved by the Commissioner of Education pursuant to s. 1012.34(8). The department shall reissue the temporary certificate for 2 additional years upon approval by the Commissioner of Education. A written request for reissuance of the certificate shall be submitted by the district school superintendent, the governing authority of a university lab school, the governing authority of a state-supported school, or the governing authority of a private school.

Section 67. Subsection (3) is added to section 1012.59, Florida Statutes, to read:

1012.59 Certification fees.—

(3) The State Board of Education shall waive initial general knowledge, professional education, and subject area examination fees and certification and certification renewal fees for:

(a) A member of the United States Armed Forces or a reserve component thereof who is serving or has served on active duty or the spouse of such a member.

(b) The surviving spouse of a member of the United States Armed Forces or a reserve component thereof who was serving on active duty at the time of death and died within the 2 years preceding the spouse's application for certification or certification renewal or registration for an examination.

(c) An honorably discharged veteran of the United States Armed Forces or a veteran of a reserve component thereof who served on active duty and the spouse or surviving spouse of such a veteran.

Section 68. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1884
Bill Number (if applicable)

Topic Military & Veterans Affairs

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Legislative Affairs Director / Dept. Financial Services

Address 200 E. Gaines Street
Street

Phone 850-413-2890

Tallahassee FL 32399
City *State* *Zip*

Email BGM04fsu@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Financial Services

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: KN 412 **Case No.:** **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 2/22/2018 2:01:53 PM
Ends: 2/22/2018 5:00:06 PM **Length: 02:58:14**

2:02:15 PM Sen. Bradley (Chair)
2:04:34 PM S 440
2:04:40 PM Sen. Garcia
2:07:17 PM Alina Avalos, Florida Legal Services (waives in support)
2:07:25 PM Jim Brainard, Attorney, Marine Corps League (waives in support)
2:07:39 PM Bob Astalos, Chief Lobbyist, Florida Health Care Association (waives in support)
2:08:30 PM Sen. Garcia
2:09:55 PM S 1132
2:09:58 PM PCS 237298
2:10:08 PM Sen. Hutson
2:11:49 PM S 1876
2:11:52 PM PCS 764628
2:11:55 PM Sen. Young
2:16:19 PM Am. 917002
2:16:23 PM Sen. Young
2:19:56 PM Am. 398166
2:20:17 PM Sen. Braynon
2:23:00 PM Sen. Bradley
2:24:09 PM Am. 788174
2:24:15 PM Am. 917002 (cont.)
2:24:26 PM Ellen N. Anderson, Director of Government Relations, Community Health System (waives in support)
2:24:36 PM Mark Delegal, General Counsel, Safety Net Hospital Alliance (waives in support)
2:25:30 PM Sen. Gibson
2:26:50 PM Mark McKenney, Trauma Medical Director, Kendall Regional Medical Center
2:30:15 PM Dr. Keith Meyer, Medical Director, Children's Critical Care Specialists
2:32:30 PM Christina Martinez, Miami-Dade County Parent
2:38:46 PM Tom Panza, Jackson Memorial Hospital - Ryder Trauma Center
2:41:27 PM Steve Ecenia, Attorney, Health Care Association (waives in support)
2:41:30 PM Sen. Young
2:43:16 PM S 438
2:43:20 PM PCS 583222
2:43:49 PM Sen. Lee
2:47:48 PM Eric Thorn, Staff Counsel, Florida Life Care Residents Association (waives in support)
2:47:55 PM Tim Meenan, Brookdale Senior Living (waives in support)
2:48:11 PM Steve Bahmer, Presient/CEO, Leading Age Florida (waives in support)
2:48:20 PM Sen. Lee
2:50:47 PM S 1426
2:50:50 PM Sen. Lee
2:52:27 PM Laura Youmans, Florida Association of Counties
2:53:24 PM Sen. Powell
2:53:58 PM L. Youmans
2:54:23 PM Sen. Powell
2:54:36 PM L. Youmans
2:55:21 PM Amber Hughes, Sr. Legislative Advocate, Florida League of Cities
2:57:01 PM Sen. Bradley
2:57:28 PM A. Hughes
2:58:40 PM Sen. Gainer
2:59:28 PM Sen. Lee
3:02:02 PM S 654
3:02:05 PM PCS 362096
3:02:08 PM Sen. Perry
3:05:09 PM S 1402

3:06:25 PM Sen. Simmons
3:10:49 PM Kim Ross, Executive Director
3:11:33 PM Amber Crooks, Environmental Policy Manager, Conservancy of Southwest Florida
3:16:49 PM David Cullen, Lobbyist, Sierra Club Florida
3:18:09 PM Julie Wraithmell, Interim Director, Audubon Florida
3:19:56 PM Rusty Payton, CEO, Florida Home Builders Association (waives in support)
3:19:59 PM David Childs, Legal Cousel, Florida Chamber of Commerce (waives in support)
3:20:04 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
3:20:14 PM Jonathan Wesser, Deputy Director, Florida Conservation Voter (waives against)
3:20:24 PM Jenn Zipperer, Associate Director of Communications, Rethink Energy Florida (waives against)
3:20:36 PM Charlie Cordell, Rethink Energy Florida (waives against)
3:20:43 PM John Lorenz, Retired, Rethink Energy Florida (waives against)
3:20:47 PM Dell Cates, Retired, Rethink Energy Florida (waives against)
3:21:22 PM Brendalee Lennick, Retired, Our Future Youth (waives against)
3:21:36 PM Sean Stafford, The Nature Conservancy (waives in support)
3:22:17 PM John Truitt, Deputy Secretary of Regulatory Programs, Department of Environmental Protection
3:22:24 PM Sen. Stewart
3:22:42 PM J. Truitt
3:23:23 PM Sen. Stewart
3:23:34 PM J. Truitt
3:24:31 PM Sen. Stewart
3:24:39 PM J. Truitt
3:26:40 PM Sen. Stewart
3:27:06 PM J. Truitt
3:27:44 PM Sen. Gibson
3:28:35 PM J. Truitt
3:29:29 PM Sen. Baxley
3:30:06 PM Sen. Simmons
3:32:38 PM S 1308
3:32:43 PM Sen. Perry
3:33:25 PM Am. 960706
3:33:31 PM Sen. Perry
3:34:10 PM Am. 778974
3:34:15 PM Sen. Brandes
3:34:49 PM Sen. Stewart
3:34:53 PM Sen. Brandes
3:35:14 PM S 1308 (cont.)
3:35:17 PM Sen. Powell
3:36:14 PM Sen. Perry
3:37:05 PM David Childs, Legal Counsel, Florida Water Environment Association Utility Council
3:37:53 PM David Cullen, Lobbyist, Sierra Club Florida
3:38:38 PM Sen. Simmons
3:39:38 PM D. Cullen
3:41:00 PM Kenya Cory, Lobbyist, National Waste and Recycling Association (waives in support)
3:41:05 PM Jonathan Webber, Deputy Director, Florida Conservation Voters (waives against)
3:41:22 PM Amy Datz, Citizen (waives against)
3:42:00 PM Sen. Perry
3:43:06 PM S 460
3:43:09 PM Sen. Gainer
3:46:10 PM Jack Capra, Government Relations, Northwest Florida State College
3:46:55 PM S 740
3:47:11 PM Sen. Stargel
3:48:08 PM S 764
3:48:10 PM PCS 631516
3:48:15 PM Sen. Bean
3:49:24 PM Sen. Gibson
3:50:04 PM Sen. Bean
3:50:40 PM Sen. Montford
3:51:38 PM Sen. Bean
3:51:42 PM Sen. Montford
3:52:12 PM Joanne Hart, Chief Legislative Officer, Florida Dental Association (waives in support)
3:52:19 PM David Fifer, Associate, The Pew Charitable Trusts (waives in support)

3:52:37 PM Sen. Montford
3:54:10 PM Sen. Bean
3:54:30 PM Sen. Braynon
3:55:07 PM Sen. Bradley
3:56:28 PM S 740
3:56:37 PM Sen. Stargel
3:56:48 PM Am. 350394
3:56:53 PM Sen. Stargel
3:57:40 PM Am. 106924
3:58:01 PM Sen. Grimsley
3:58:27 PM Am. 844272
3:58:31 PM Sen. Grimsley
3:59:16 PM Am. 591144
3:59:22 PM Sen. Grimsley
3:59:58 PM Gabrielle Craft, Florida Cattlemans Association (waives in support)
4:00:43 PM Am. 318746
4:00:50 PM Grace Lovett, Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services (waives in support)
4:01:00 PM S 740 (cont.)
4:01:15 PM Sen. Stargel
4:02:21 PM S 1224
4:02:32 PM Sen. Flores (Chair)
4:02:36 PM Sen. Bradley
4:02:52 PM Am. 413734
4:02:55 PM Sen. Bradley
4:03:34 PM S 1224 (cont.)
4:03:38 PM Max Herrle, President, Tallahassee Bar and Hospitality Association
4:03:40 PM Eric Criss, President, Beer Industry of Florida (waives against)
4:03:48 PM Josh Aubuchon, Attorney, Florida Brewers Guild (waives against)
4:03:56 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
4:04:01 PM Richard Turner, Senior Vice President of Legal and Legislative Affairs, Florida Restaurant and Lodging Association (waives in support)
4:04:04 PM Jake Farmer, Legislative Coordinator, Florida Retail Federation (waives in support)
4:04:09 PM Natalie King, Vice President, Pepsi Distributing (waives in support)
4:04:14 PM Jonathan Rees, Senior Manager of State Affairs, Anheuser-Busch Inc. (waives in support)
4:04:23 PM Scott Dick, Lobbyist, ABC Liquors and Florida Independent Spirits Association (waives in support)
4:04:35 PM Sen. Bradley
4:05:46 PM S 1526
4:05:50 PM PCS 440736
4:05:52 PM Sen. Gibson
4:07:24 PM S 1528
4:07:25 PM PCS 449902
4:07:30 PM Sen. Gibson
4:08:45 PM S 1184
4:09:05 PM Sen. Gibson
4:10:51 PM S 1398
4:10:57 PM Sen. Benacquisto
4:12:27 PM S 1622
4:12:31 PM Sen. Flores
4:13:55 PM S 408
4:13:59 PM Sen. Flores
4:14:31 PM Ellen Anderson, Director of Government Relations, Community Health Systems (waives in support)
4:15:27 PM S 1884
4:15:30 PM PCS 259984
4:15:45 PM Sen. Passidomo
4:16:13 PM BG Murphy, Legislative Affairs Director, Department of Financial Services (waives in support)
4:17:07 PM S 1002
4:17:10 PM PCS 799584
4:17:31 PM Sen. Passidomo
4:17:55 PM Am. 167214
4:18:07 PM S 1002 (cont.)
4:18:25 PM Carl Hill Galloway, Advocate, Galloway Family (waives in support)

4:18:42 PM Zayne Smith, Assistant Staff Director, American Association of Retired Persons (waives in support)
4:18:48 PM Fred Baggett, Chair Greenberg Traurig, Florida Court Clerks and Comptrollers (waives in support)
4:20:16 PM S 1788
4:20:18 PM PCS 847484
4:20:23 PM Sen. Passidomo
4:21:06 PM Am. 677650
4:21:14 PM Sen. Passidomo
4:21:49 PM Caleb Hawkes, Legislative Affairs, Director, Agency for Persons with Disabilities (waives in support)
4:22:02 PM S 1788 (cont.)
4:23:05 PM S 694
4:23:08 PM PCS 960376
4:23:09 PM Sen. Brandes
4:23:43 PM Albert Balido, Campaign for Criminal Justice Reform (waives in support)
4:24:22 PM Sal Nuzzo, Vice President of Policy, The James Madison Institute
4:26:07 PM Barney Bishop, CEO, Florida Smart Justice Alliance
4:31:18 PM Sen. Bradley
4:31:42 PM Chelsea Murphy, State Director, Right on Crime (waives in support)
4:31:46 PM Christopher Minor, Executive Director, Florida Juvenile Justice Association (waives in support)
4:31:51 PM Greg Newburn, State Policy Director, Families Against Mandatory Minimums (waives in support)
4:31:56 PM Leah Courtney, Communications Coordinator, Florida Tax Watch (waives in support)
4:32:03 PM Jorge Chamizo, Attorney, Florida Association of Criminal Defense Lawyers (waives in support)
4:32:22 PM Sen. Brandes
4:35:00 PM Sen. Stewart
4:35:08 PM Sen. Simmons
4:35:35 PM Sen. Galvano
4:35:39 PM Sen. Baxley
4:35:47 PM Sen. Grimsley
4:36:03 PM Sen. Braynon
4:36:28 PM S 632
4:36:44 PM Sen. Montford
4:37:58 PM S 856
4:38:01 PM Sen. Montford
4:38:40 PM Theresa King, President, Florida Building and Construction Trades (waives in support)
4:38:50 PM J.B. Clark, Lobbyist, Florida Electrical Workers Association (waives in support)
4:39:43 PM S 34
4:39:48 PM Sen. Montford
4:40:32 PM Gary Hunter, Attorney, Shuler Brothers Limited Partnership (waives in support)
4:41:32 PM S 1500
4:41:35 PM Sen. Baxley
4:42:43 PM S 854
4:43:10 PM Sen. Brandes
4:43:13 PM Chelsea Murphy, State Director, Right on Crime (waives in support)
4:43:19 PM Jared Torres, Legislative Affairs Director, Florida Department of Corrections (waives in support)
4:43:26 PM Barney Bishop, CEO, Florida Smart Justice Alliance (waives in support)
4:44:16 PM S 872
4:44:18 PM PCS 620914
4:44:20 PM Sen. Grimsley
4:45:38 PM Gabrielle Craft, Florida Cattleman's Association (waives in support)
4:46:26 PM S 1046
4:46:29 PM Sen. Book
4:47:32 PM Barney Bishop, CEO, Florida Smart Justice Alliance (waives in support)
4:48:22 PM S 280
4:48:25 PM Sen. Bean
4:49:30 PM Layne Smith, Director of State Government Relations, Mayo Clinic (waives in support)
4:49:34 PM Joanne Hart, Chief Legislative Officer, Florida Dental Assocaition (waives in support)
4:49:39 PM Brittney Hunt, Policy Director, Florida Chamber of Commerce (waives in support)
4:49:44 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
4:49:46 PM Jack Hebert, Florida Chiropractic Association (waives in support)
4:49:55 PM Leah Courtney, Communications Coordinator, Florida Tax Watch (waives in support)
4:50:00 PM Dorene Barker, Assistant Staff Director, American Association of Retired Persons (waives in support)
4:50:55 PM S 1552
4:50:57 PM PCS 517024

4:50:59 PM Sen. Bracy
4:51:38 PM Barney Bishop, CEO, Florida Smart Justice Alliance (waives in support)
4:51:52 PM Ingrid Delgado, Associate for Social Concerns, Florida Conference of Catholic Bishops (waives in support)
4:51:55 PM Sal Nuzzo, Vice President of Policy, The James Madison Institute (waives in support)
4:52:11 PM Albert Balido, Campaign for Criminal Justice Reform (waives in support)
4:52:45 PM S 1226
4:52:47 PM Sen. Book
4:53:59 PM Jess McCarty, Assistant County Attorney, Miami-Dade County (waives in suppport)
4:54:08 PM Barney Bishop, CEO, Florida Smart Justice Alliance (waives in support)
4:54:59 PM Sen. Galvano
4:55:16 PM S 648
4:55:19 PM Sen. Baxley
4:55:43 PM Alexander Anderson, Deputy Director of Government Relations, Department of Education (waives in support)
4:55:46 PM Allison Flanagan, Director, Vocational Rehabilitation (waives in support)
4:55:51 PM Robert Doyle, Director, Division of Blind Services (waives in support)
4:55:54 PM Dixie Sansom, Lobbyist, The Arc of Florida (waives in support)
4:55:57 PM Natalie King, Vice President, Pepsi Distributing (waives in support)
4:56:01 PM Suzanne Sewell, President, Florida Association of Rehabilitation Facilities (waives in support)
4:56:50 PM S 1562
4:57:16 PM Zayne Smith, Assistant Staff Director, American Association of Retired Persons (waives in support)
4:57:24 PM Brian Jogerst, Academy of Florida Elder Law Attorneys and Elder Law Section of The Florida Bar (waives in support)
4:57:31 PM Barney Bishop, CEO, Florida Smart Justice Alliance (waives in support)
4:57:36 PM Melody Arnold, Associate Director of Government Affairs, Florida Health Care Association (waives in support)
4:58:23 PM S 1594
4:58:27 PM Sen. Brandes
4:59:47 PM Sen. Grimsley